



CITY OF HOUSTON  
HCD Purchasing Unit 3200

SRO NUMBER MUST APPEAR ON ALL PAYMENT AND  
DELIVERY CORRESPONDENCE

POSSIBLE DUPLICATE COPY DO NOT DUPLICATE SHIPMENT  
OR SERVICE  
**SERVICE RELEASE ORDER**

<b>Vendor Address</b> Vendor Address Number 159615 APPIAN WAY OPPORTUNITY FUND LLC 3200 N MACGREGOR WAY APT 1 HOUSTON TX 77004 USA	<b>Information</b> SRO Number/Date 4500335442-0 / 10/28/2020 CoH Vendor Number 159615 Page 1 of 3 Buyer's Name Arva Dearborne 458 Buyer's Telephone Number 832-394-6328 Buyer's Fax Number Buyer's E-mail Address Arva.dearborne@houstontx.gov
<b>Mail Invoice to</b> COH HOUSING & COMMUNITY DEV FINANCIAL SERVICES SEC, ACCT PAY PO Box 1562 HOUSTON TX 77251-1562	<b>CONFIRM RECEIPT AND ACCEPTANCE OF PURCHASE ORDER TO BUYER'S E-MAIL ADDRESS</b>

<b>Shipping Address</b>	HOUSING & COMMUNITY DEVELOPMENT PROCUREMENT SERVICES 2100 TRAVIS, 9TH FLOOR HOUSTON TX 77002 USA
<b>Terms of payment :</b>	Pay net 30 w/o deduction <span>Currency USD</span>
<b>Shipping Terms</b>	FOB(Free on board) /DESTINATION
<b>Our reference:</b>	2021-0063
<b>Your person responsible:</b>	KEVIN WOOD
<b>Your reference:</b>	2021-0063
Agreement between City of Houston and Appian Way Opportunity Fund for the purchase of 3200 N. MacGregor Way . Property eligible under Harvey Buyout Program	

Item	Quantity	UM	Material # / Description	Unit Cost	Extended Cost
10	1.00	AU	99884 REAL ESTATE (INCL. B 3200 N. MacGregor Way_Est Purch Release Order against contract 4600016319 Item 00010 10/28/2020 AYD  3200 MacGregor Way Est. Purchase Price: \$6,050,000.00 Est Due Diligence & Closing: \$ 70,000.00 Est. Operating Cost: \$ 149,500.00	6,050,000.00 / AU	6,050,000.00
Gross Price			USD 1 AU	1.000	6,050,000.00
6,050,000.00			*** Item partially delivered ***		
			Expected value of unplanned services: 6,050,000.00		



**CITY OF HOUSTON**  
HCD Purchasing Unit 3200

SRO NUMBER MUST APPEAR ON ALL PAYMENT AND  
DELIVERY CORRESPONDENCE

**POSSIBLE DUPLICATE COPY DO NOT DUPLICATE SHIPMENT  
OR SERVICE**  
**SERVICE RELEASE ORDER**

PO number/date 4500335442 -0 / 10/28/2020 Page 2 of 3

Item	Quantity	UM	Material # / Description	Unit Cost	Extended Cost
Delivery Date: 06/30/2021					
20	1.00	AU	99884 REAL ESTATE (INCL. B 3200 N. MacGregor Way_Est Closing Cost Release Order against contract 4600016319 Item 00020 10/28/2020 AYD  3200 MacGregor Way Est. Purchase Price: \$6,050,000.00 Est Due Diligence & Closing: \$ 70,000.00 Est. Operating Cost: \$ 149,500.00	70,000.00 / AU	70,000.00
Gross Price			70,000.00 USD 1 AU	1.000	70,000.00
*** Item partially delivered ***					
Expected value of unplanned services: 70,000.00					
Delivery Date: 06/30/2021					
30	1.00	AU	99884 REAL ESTATE (INCL. B 3200 N. MacGregor Way_Est Operating Cost Release Order against contract 4600016319 Item 00030 10/28/2020 AYD  3200 MacGregor Way Est. Purchase Price: \$6,050,000.00 Est Due Diligence & Closing: \$ 70,000.00 Est. Operating Cost: \$ 149,500.00	149,500.00 / AU	149,500.00
Gross Price			149,500.00 USD 1 AU	1.000	149,500.00
*** Item partially delivered ***					
Expected value of unplanned services: 149,500.00					
Delivery Date: 06/30/2021					





**CITY OF HOUSTON**  
HCD Purchasing Unit 3200

SRO NUMBER MUST APPEAR ON ALL PAYMENT AND  
DELIVERY CORRESPONDENCE

**POSSIBLE DUPLICATE COPY DO NOT DUPLICATE SHIPMENT  
OR SERVICE**  
**SERVICE RELEASE ORDER**

PO number/date 4500335442 -0 / 10/28/2020 Page 3 of 3

<b>Total ****</b>	<b>USD 6,269,500.00</b>
2021-0066 ORD PASSED 2/3/2021;AGMT	
MAYOR EXECT'D 2/4/21;CS 2/5/21	

NOTICE -- This is a contract release order against the contract referenced herein. The terms and conditions in the referenced contract are hereby incorporated into this contract release order as if set forth in full text. All work performed pursuant to this contract release order shall be performed in strict accordance with the referenced contract's statement of work/scope of services.

I hereby certify a certificate of the necessity of this expenditure is on file in this department.

I hereby certify that the expenditure for the above goods has been duly authorized and appropriated and that sufficient funds are available to liquidate same.

Mayor

Chief Procurement Officer

Controller

4600016319  
2021-0066

### AGREEMENT FOR OPTION TO PURCHASE REAL PROPERTY

This Agreement for Option to Purchase Real Property (this "Agreement") is made and entered into by and between **APPIAN WAY OPPORTUNITY FUND, LLC**, a Texas limited liability company ("Seller"), and the **CITY OF HOUSTON, TEXAS**, a municipal corporation situated in Harris, Fort Bend and Montgomery Counties, Texas ("Purchaser"). Seller and Purchaser shall sometimes hereinafter collectively be referred to as the "**parties**" and each as a "**party**". This Agreement shall be effective on the date that it is countersigned by the City Controller of the City of Houston, Texas (the "Effective Date").

**WHEREAS**, Purchaser is a subrecipient of Hurricane Harvey Community Development Block Grant – Disaster Recovery ("CDBG-DR") funds administered by the U.S. Department of Housing and Urban Development ("HUD") through the Texas General Land Office ("GLO"); and

**WHEREAS**, Purchaser desires to utilize CDBG-DR funds to purchase that certain Property, as defined in Section 1 of this Agreement, and to fund certain related CDBG-DR-eligible expenses related to the purchase thereof, for the purpose of meeting the CDBG-DR National Objective of benefitting low- and moderate-income ("LMI") persons by creating an LMI Area benefit through the expansion of greenspace and/or detention, which will benefit at least 51% of the LMI residential service area; and

**WHEREAS**, in consideration of the Option Fee (as defined herein), Seller desires to grant to Purchaser the exclusive option to purchase the Property on the terms and conditions outlined herein;

**NOW, THEREFORE**, Seller and Purchaser hereby agree as follows:

1. **Option to Purchase**. Purchaser has the exclusive option and right (the "Option") to purchase and accept from Seller, for the Purchase Price (as hereinafter defined) and subject to the terms and conditions of this Agreement, the following tract or parcel of land generally known as 3200 N. MacGregor Way, Houston, Texas, 77004:

A tract or parcel of land containing approximately 1.092 acres (47,890 square feet) of land conveyed to Appian Way Opportunity Fund LLC, a Texas limited liability company, by deed dated June 18, 2019, recorded June 19, 2019, under Clerk's File No. RP-2019-259594, Official Public Records, Harris County, Texas,

being more particularly described in **Exhibit "A"** and being made a part of this Agreement (the "Land"), together with all improvements thereon (including approximately 37,138 square feet of multi-family residential improvements) and all fixtures permanently attached thereto, including but not limited to plumbing and wiring (but excluding Chattels, as that term is defined in Section 10 of this Agreement), all rights and interests appurtenant to the above-described Land, including all of Seller's rights, title and interest, if any, in and to adjacent streets, alleys, rights-of-way, easements, any adjacent strips or gores of land (collectively, the "Improvements"). The Land and Improvements are collectively referred to in this Agreement as the "Property". Notwithstanding the legal description for the Land contained in this Agreement, the parties agree that for purposes of conveyance of the Land, the final location, acreage, and metes and bounds description of the Land shall be determined by the New/Updated Survey described in Section 6.d. of this Agreement, which will be attached as the legal description to include in the Deed referred to in Section 8.b. of this Agreement. The Property shall be conveyed to Purchaser at Closing (as defined in Section 8.b. of this



Agreement), in its entirety, free and clear of all liens, claims, easements and encumbrances whatsoever, except for the Permitted Encumbrances (as defined in Section 6.g.ii. of this Agreement).

2. **Purchase Price.** The price for which Seller agrees to sell and convey the Property to Purchaser, and which Purchaser agrees to pay to Seller, subject to the terms of this Agreement, is in the amount of **SIX MILLION FIFTY THOUSAND DOLLARS AND 00/100 (\$6,050,000.00)**. Purchaser shall pay the Purchase Price to Seller by wire of such amount in immediately available funds to an account designated by the Title Company (as defined in Section 5.a. of this Agreement) on the Closing Date (as defined in Section 8.b. of this Agreement), subject to any adjustments provided for in this Agreement.

3. **Seller's Representations, Warranties and Covenants.** Seller hereby represents and warrants to, and covenants with Purchaser that:

a. Seller will have, as of the Closing Date, good and indefeasible title in fee simple to the Property, subject only to the Permitted Encumbrances, and free and clear of all liens;

b. As of the Closing Date, there will be no leases, franchises, licenses, occupancy agreements, or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to the Property, or any prepaid rents or deposits, security or otherwise, made by tenants, other than as has been disclosed in writing to Purchaser;

c. There are no, and, as of the Closing Date, there will be no actions, suits, claims, assessments that are past due, or proceedings pending or, to the actual knowledge of Seller, threatened that could materially adversely affect the ownership, operation, or maintenance of the Property or Seller's ability to perform under this Agreement, other than as has been disclosed in writing to Purchaser;

d. The Property is located: within the city limits of the City of Houston, Texas; in a targeted buyout area under the City's Hurricane Harvey CDBG-DR Multi-family Voluntary Buyout Program (the "Program"); and in the 100-year floodplain; and the Property was substantially damaged by Hurricane Harvey;

e. From the Effective Date of this Agreement until the Closing Date, Seller shall use good faith efforts to promptly notify, in writing, Purchaser of any material change with respect to the Property or with respect to any information respecting the Property and obtained by seller prior to or after the Effective Date;

f. From the Effective Date of this Agreement until the Closing Date, Seller shall:

(i) maintain and operate the Property in a good and business-like manner in accordance with good and prudent business practices, and not commit or consent to be committed any waste to the Property;

(ii) not enter into any agreement, instrument, or covenant or take any action that would constitute an encumbrance of the Property, that would bind Purchaser or the Property, or that would be

outside the normal scope of maintaining and operating the Property, without the prior written consent of Purchaser; and

(iii) afford Purchaser and its representatives the continuing right to enter, inspect, and perform tests on the Property at reasonable hours and upon reasonable notice, and provide for inspection to Purchaser any and all books, records, contracts, and other documents or data pertaining to the ownership, insurance, operation, or maintenance of the Property.

g. All bills, property taxes, and other payments due from Seller with respect to the ownership, operation, and maintenance of the Property through the Closing Date have been (or by the Closing Date will be) paid by Seller and no liens, delinquent property taxes, or other claims for the same have been (or by the Closing Date will be) filed or asserted against any part of the Property;

h. Seller has full right, power and authority to execute, deliver, and perform this Agreement without obtaining any consents or approvals from, or the taking of any other actions with respect to, any third parties (or if any such consents, approvals, or other actions are required, the same will be accomplished prior to the Seller's execution of this Agreement and Purchaser's submission of this Agreement to the City Council of the City of Houston, Texas for its approval), and this Agreement, when executed and delivered by Seller and Purchaser, in the manner and subject to the approvals described herein, will constitute the valid and binding agreement of Seller, enforceable against Seller in accordance with its terms;

i. Seller is not a "foreign person" (as defined in Internal Revenue Code Section 1445(f)(3) and its appurtenant regulations);

j. Seller (i) is not in receivership or dissolution, (ii) has not made any assignment for the benefit of creditors, (iii) has not admitted in writing their inability to pay their debts as they mature, (iv) has not been adjudicated a bankrupt, (v) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law, or any other similar law or statute of the United States or any state, or (vi) does not have any such petition described in (v) filed against Seller;

k. Seller is not "debarred" as cited on federal and state debarment lists in accordance with 24 C.F.R. Section 570.609 or other applicable law;

l. Seller is not indebted to the City nor in default of, or the subject of any negative collection actions relating to, any financial obligation to the City of Houston, Texas, any other public agency, or private lender;

m. Seller does not discriminate based on ethnicity, race, color, creed, religion, gender, national origin, age, disability, marital status, sexual orientation, gender identity, or Veteran's discharge status; and

n. Seller is aware that Purchaser is relying on the representations and warranties contained in this Agreement, and that but for such representations and warranties by Seller, Purchaser would not enter into this Agreement.

**4. Purchaser's Representations, Warranties, and Covenants.**  
Purchaser hereby represents and warrants to, and covenants with, Seller that:



a. Purchaser has full right, power, and authority to execute, deliver, and perform this Agreement, subject to approval of this Agreement by the City Council of the City of Houston, Texas, the signature of the Mayor of the City of Houston, Texas and the countersignature of the City Controller of the City of Houston, Texas, but otherwise without obtaining any consents or approvals from, or the taking of any other actions with respect to, any third parties, except for such consents, approvals and actions outlined herein, which consents, approvals, or other actions must be accomplished prior to the expiration of the Option Period (as defined in Section 8.a. of this Agreement).

b. The Purchaser's ability to proceed to Closing is subject to the availability and approval of federal funds, including CDBG-DR funds, to purchase the Property, prior to the expiration of the Option Period.

c. The Purchaser's exercise of the Option is subject to the Purchaser's determination during the Option Period on the desirability of the Property as a result of the Purchaser's completion of due diligence investigations regarding the Property, including environmental review of the Property in accordance with the applicable law and the terms of this Agreement.

d. This Agreement, when executed and delivered by Seller and Purchaser, in the manner and subject to the approvals described in this Section 4, will constitute the valid and binding agreement of Purchaser, enforceable against Purchaser in accordance with its terms. Purchaser is aware that Seller is relying on the representations and warranties contained in this Agreement, and that but for such representations and warranties by Purchaser, Seller would not enter into this Agreement.

5. **Option Fee.**

a. The option fee for this Agreement is **SIXTY THOUSAND AND 00/100 DOLLARS (\$60,000)** (the "Option Fee"). The Option Fee shall be deposited in escrow with Chicago Title Insurance Company (the "Title Company") within fifteen (15) days following the Effective Date. The Title Company shall acknowledge receipt of the Option Fee and shall hold the Option Fee in an interest-bearing account.

Escrow Officer:

Mr. Rudy Ruiz  
Chicago Title Company  
3700 Buffalo Speedway Suite 1100  
Houston, TX 77098  
Telephone: (713)-418-7032  
E-mail: rudy.ruiz@ctt.com

b. A portion of the Option Fee in the initial amount of **THIRTY THOUSAND AND 00/100 DOLLARS (\$30,000)** shall be non-refundable and forfeited to Seller as earnest money if Purchaser terminates the Agreement during the initial ninety (90) days of the Option Period due to inability to obtain HUD or GLO environmental clearance for the Property or any other reason, provided that the amount of the Option Fee that is non-refundable (the "Non-Refundable Option Deposit") will increase in the event of an extension of the Option Period, as detailed in Section 5.c., and the Title Company shall release the Non-Refundable Option Deposit to Seller within five (5) business days after the Agreement is terminated. At Closing (as defined in Section 8.b. of this Agreement), the Non-Refundable Option Deposit shall be applied to the Purchase Price.

c. Purchaser shall have the right to elect to extend the initial ninety (90)-day Option Period (as defined below) by exercising up to three (3) extension rights of thirty (30) days each by delivering written notice of such election to exercise an extension right (each, an "Extension Notice") to Seller and the Title Company not later than by 5:00 p.m. Central Time on the date which is three (3) business days prior to the expiration of the then-current Option Period.

(i) For the first extension of the Option Period, the Non-Refundable Option Deposit shall be increased by **TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00)** for a total Non-Refundable Option Deposit of **FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000.00)**.

(ii) For the second extension of the Option Period, the Non-Refundable Option Deposit shall be increased by **FIVE THOUSAND AND 00/100 DOLLARS (\$5,000.00)** for a total Non-Refundable Option Deposit of **FIFTY-FIVE THOUSAND AND 00/100 DOLLARS (\$55,000.00)**.

(iii) For the third extension of the Option Period, the Non-Refundable Option Deposit shall be increased by **FIVE THOUSAND AND 00/100 DOLLARS (\$5,000.00)** for a total Non-Refundable Option Deposit of **SIXTY THOUSAND AND 00/100 DOLLARS (\$60,000.00)**.

The Option Fee shall be applied to the Purchase Price if Purchaser elects to exercise the Option and proceed to Closing. If Purchaser fails to issue an Extension Notice to extend the Option Period, this Agreement shall automatically terminate, in which event the Title Company shall release the Non-Refundable Option Deposit to Seller, and neither party hereto shall have any further rights, duties, obligations or liabilities hereunder except those provisions hereof that expressly survive such termination.

## **6. Option Period.**

a. Within ten (10) days following the Effective Date, Seller shall provide to Purchaser the following items in Seller's possession or in the possession of a third party who is controlled by Seller or who had or is under a contract with Seller with respect to the Property: (i) copies of all tax bills and government assessments relating to the Property for the past three (3) years, if any; (ii) copies of all documents, if any, indicating compliance or noncompliance with all governmental entities with jurisdiction of any sort over the Property; (iii) copies of all soil, engineering and environmental reports and environmental testing, inspection or remediation services with respect to the Property, if any.; (iv) a copy of any existing survey (the "Existing Survey") of the Property; (v) copies of any contracts not cancelable in thirty (30) days; (vi) copies of all current leases, licenses, and other agreements granting any third party any rights to possess or use any portion of the Property, and any other agreements affecting the Property that would survive Closing; and (vii) any income statements and balance sheets.

b. Commencing on the Effective Date and ending at the expiration of ninety (90) days, plus any extension period authorized under Section 5.d. of this



Agreement (collectively, the "Option Period"), in accordance with Section 8.a. of this Agreement, by Purchaser exercising the Option, Purchaser shall have the right to enter the property during the Option Period to conduct a due diligence investigation of the Property at Seller's sole cost and expense (but subject to reimbursement at Closing as provided in Section 8.c.(i).(5)), including but not limited to analyzing any land use or regulatory issues affecting the Purchaser's proposed development of the Property, reviewing Seller's environmental reports, if any, conducting tests and surveys, and undertaking such other reviews and activities as Purchaser, in its sole but reasonable discretion, may deem necessary, and to obtain required third party approvals necessary to proceed with the purchase of the Property, including, but not limited to, conducting and completing an environmental review, as required by the CDBG-DR regulations, which environmental review may not exceed the scope of what is required under applicable federal regulations without Seller's consent, which shall not be unreasonably withheld. All environmental activities and reports must conform with the CDBG-DR regulations including, without limitation, the regulations at 24 C.F.R. Parts 50, 58, and 570, as applicable. Prior to the expiration of the Option Period, should Seller withhold consent to complete any environmental review or additional testing that exceeds the scope of what is required under applicable federal laws and regulations, Purchaser may provide Seller with written notice of its election to terminate this Agreement, in which event the Title Company shall release the Non-Refundable Option Deposit to Seller, and neither Purchaser nor Seller shall have any further right, obligations or liabilities under this Agreement except those provisions hereof that expressly survive such termination.

c. In the event that Purchaser's environmental testing reveals the presence of any environmental contamination in levels requiring remediation under state, federal or local statutes, laws, regulations, rules or ordinances, Purchaser shall immediately provide Seller written notice with a copy of all environmental assessments and reports evidencing the environmental conditions of the Property that require remediation. Upon issuance of the written notice, Purchaser may provide Seller with written notice of its election to terminate this Agreement, in which event the Title Company shall release the Non-Refundable Option Deposit to Seller and neither party to this Agreement shall have any further rights, duties, obligations or liabilities under this Agreement except those provisions hereof that expressly survive such termination. Alternatively, Seller and Purchaser may enter into good faith negotiations to mutually agree on how to address matters relating to environmental remediation of the Property, which may include the timing for remediation, the party responsible for remediation, and adjustments to the Purchase Price relating to the remediation. In the event Seller and Purchaser enter into good faith negotiations to mutually agree on how to address matters relating to environmental remediation of the Property, the terms of the remediation will be evidenced in writing and any deadline in this Agreement may be extended by up to thirty (30) calendar days to allow Seller and Purchaser to finalize the transaction contemplated hereunder. Purchaser shall bear no liability for the environmental testing, except that Purchaser shall be responsible for repairing any damage to the Property for which Seller can produce objective documentation evidencing that Purchaser's testing activities caused the damage.

d. During the Option Period, Seller, at its sole cost and expense (but subject to reimbursement at Closing as provided in Section 8.c.(i).(5)), will obtain a new survey or an update to the Existing Survey (the "New/Updated Survey"), prepared by a Registered Professional Land Surveyor licensed by the State of Texas and acceptable to the Title Company and approved by Houston Public Works – Construction Branch – Survey/ROW/Mapping. The New/Updated Survey shall comply with the current requirements of the Texas Society of Professional Surveyors Standards and



Specifications for a Category 1A Condition II Land Title Survey and contain such other information as Purchaser may reasonably request.

e. During the Option Period, Seller, at its sole cost and expense, shall cause the Title Company to issue a commitment to issue title insurance (the "Title Commitment") accompanied by copies of all recorded documents relating to easements, rights-of-way, and all other matters of record affecting the Property together with Owner's Policy of Title Insurance at Closing. Seller shall pay the basic premium of the Owner's Policy of Title Insurance, but Purchaser shall pay the additional premium for the area and boundary deletion and any other endorsements requested by Purchaser.

f. Following the receipt of the New/Updated Survey and the Title Commitment, Purchaser shall have thirty (30) days to examine and specify to Seller those items affecting the Property that Purchaser finds objectionable (each an "Encumbrance" and collectively, "Encumbrances"). Seller shall have ten (10) days to cure such objections. Items shown in the Title Commitment or New/Updated Survey and not objected to by Purchaser in its written objections within such period shall be deemed items that Purchaser will accept title subject to (the "Permitted Encumbrances"). The Title Company shall deliver an amended Title Commitment reflecting the cure of the Encumbrances at or prior to the Closing Date. Any liens affecting the Property shall be Encumbrances, whether so specified in any notice by Purchaser, and Seller shall cause the same to be released at or prior to Closing.

g. If Seller fails or is unwilling to cause all of the Encumbrances to be removed or cured by the Closing Date, or if the Title Commitment or New/Updated Survey indicates that Seller does not own indefeasible fee simple title to the Property, Purchaser shall have the following rights, as its sole and exclusive remedies:

(i) to terminate this Agreement by giving Seller written notice of termination, in which event the Title Company shall release the Non-Refundable Option Deposit to Seller and neither party hereto shall have any further rights, duties, obligations or liabilities under this Agreement except those provisions hereof that expressly survive such termination; or

(ii) to elect to waive the Encumbrances not so removed or cured and close the purchase and sale contemplated by this Agreement without any reduction in the Purchase Price in accordance with the remaining terms and provisions, whereupon the Encumbrances not so removed or cured shall become a "Permitted Encumbrance", to be treated in the manner provided herein for Permitted Encumbrances.

h. On or prior to the expiration of the Option Period, Purchaser may notify Seller in writing of Purchaser's desires to terminate this Agreement if: (i) Purchaser, in its sole discretion, determines that the Property is not suitable for purchase by Purchaser for Purchaser's purposes; (ii) Purchaser is unable to obtain the approval from HUD, GLO or Houston City Council to use CDBG-DR funds to purchase the Property or such other approvals to use United States Department of Housing and Urban Development ("HUD") funds as may be required to purchase the Property; or (iii) Purchaser is unable to obtain approval from the GLO of the *City of Houston Harvey Buyout Program Guidelines*. The Option Period may be further extended for up to twelve (12) months thereafter, by written agreement between Purchaser and Seller, if Purchaser has not obtained the requisite HUD or GLO approvals for the purchase of the Property described in this subsection. If Purchaser and Seller do not agree on an extension of the Option Period, then this Agreement shall automatically terminate at the



end of the Option Period. In the event of termination under this subsection, the Title Company shall release the Non-Refundable Option Deposit to Seller, and neither party hereto shall have any further rights, duties, obligations or liabilities hereunder, except for those provisions hereof that expressly survive such termination.

7. **As-Is, Where-Is.** Purchaser and its representatives, prior to the date of Closing, will have been afforded the opportunity to make such inspections of the Property and matters related thereto as Purchaser and its representatives desire. Purchaser acknowledges and agrees that the Property is to be sold and accepted by Purchaser in an "as-is" condition, with all faults except for (a) Seller's representations, warranties and covenants set forth in Section 3, and (b) the warranty of title in the Deed referred to in Section 8.b.

8. **Option Period and Closing.**

a. The Option under this Agreement shall be exclusively available to and exercisable by Purchaser from the Effective Date until the expiration of the Option Period, as may be extended in accordance with Section 5 of this Agreement. Unless otherwise terminated or expired in accordance with the terms of Section 7 of this Agreement, the Option Period shall terminate on the date on which Purchaser exercises the Option.

b. The consummation and closing of the sale by Seller to Purchaser of the Property contemplated by this Agreement (the "Closing") shall take place on or before the thirtieth (30<sup>th</sup>) day after expiration of the Option Period (the "Closing Date"), with the exact time, date and location of Closing to be specified in a written notice from Purchaser to Seller at least seven (7) days in advance of such Closing Date. The time, date or location of Closing may be modified by agreement of the parties.

c. At the Closing, the following (which are mutually concurrent conditions) shall occur:

(i). Purchaser, at its sole cost and expense, shall deliver or cause to be delivered to Seller, through the Title Company:

(1) The balance due for the Purchase Price such amount to be paid in immediately available funds;

(2) Evidence satisfactory to Seller and the Title Company that the person executing the Closing documents on behalf of Purchaser has full right, power, and authority to do so;

(3) Such other instruments duly executed by Purchaser as are customarily executed in Harris County, Texas to effectuate the conveyance of property similar to the Property, as may be reasonably required by the Title Company.

(4) Purchaser shall pay, in addition to any other costs to be paid by Purchaser as provided elsewhere in this Agreement: (a) the additional premium for area and boundary deletion and any endorsements to the Owner's Policy of Title Insurance requested by Purchaser; (b) if applicable, any costs of Purchaser's remediation of the Property; (c) incidental expenses described in 49 C.F.R. 24.106; (d) the cost to record the Deed; and (e) Purchaser's attorneys' fees. The Purchaser will reimburse the Seller the full amount of the cost of the New/Updated Survey and the full amount of the Seller's costs incurred for any environmental reports and activities

conducted on Purchaser's behalf pursuant to Section 6.b.-c. and evidenced by reasonable supporting documentation, at Closing.

(ii). Seller, at its sole cost and expense, shall deliver or cause to be delivered to Purchaser, through the Title Company, the following:

(1) A Special Warranty Deed in form and substance substantially equivalent to the form shown on **Exhibit "B"** attached hereto and incorporated herein, fully executed and acknowledged by Seller, conveying to Purchaser good and indefeasible fee simple title in and to the Property, subject only to the Permitted Encumbrances, which shall be set forth in an exhibit thereto and attached prior to recordation of such instrument;

(2) Evidence satisfactory to Purchaser and the Title Company that the person executing the Closing documents on behalf of Seller has full right, power, and authority to do so;

(3) An executed and acknowledged affidavit that Seller is not a "foreign person" as described in Section 3.i.;

(4) A certificate, executed and sworn to by Seller, confirming that there are no unpaid bills, claims, debts, or liens relating to the Property arising through or under Seller as of the Closing Date, except with respect to specified bills, claims, debts, or liens;

(5) The Chattel Inventory; and

(6) Such other instruments duly executed by Seller as are customarily executed in Harris County, Texas to effectuate the conveyance of property similar to the Property, as may be reasonably required by the Title Company with the effect that, after the Closing, Purchaser will have succeeded to all of the rights, titles and interests of Seller related to the Property and Seller will no longer have any rights, titles or interests in and to the Property.

(7) Seller shall pay, in addition to any other costs to be paid by Seller as provided elsewhere in this Agreement: (a) the cost to record any releases of Encumbrances that will be filed in the real property records of Harris County, Texas at Closing; (b) if applicable, any costs of remediation of the Property; (c) Seller's own attorneys' fees; and, (d) the basic premium of the Owner's Policy of Title Insurance.

d. Any escrow fees and delivery fees charged by the Title Company, and any other routine closing fees, shall be allocated equally between Seller and Purchaser (except for amounts paid by Purchaser as incidental expenses in accordance with Section 6.j.). Except as provided above, all normal and customarily pro-ratable items, including but not limited to real estate and personal property taxes, rents, and utility bills, if any, shall be prorated as of the Closing Date, Seller being charged and credited for all of the same up to such date and Purchaser being charged and credited for all of same on and after such date. If the actual amounts to be prorated are not known at the Closing Date, the prorations shall be made on the basis of the best evidence available, and thereafter, when actual figures are received, a cash settlement will be made between Seller and Purchaser. Seller hereby acknowledges that Purchaser is not subject to ad valorem taxes.

**9. Lease-back to Seller.** In the event the Property is not vacant on the Closing Date, the Seller and Purchaser shall execute a lease agreement substantially



in the form attached hereto as **Exhibit "C"** ("Lease Agreement") providing for the Seller's continued occupancy and management of the Property for a period commencing on the effective date of the Lease Agreement and expiring on the date that is thirty (30) days after the date the last tenant vacates the Property ("Lease Term"), which Lease Term may not extend beyond the date that is twelve (12) months from the Closing Date, unless extended in accordance with the terms and conditions of the Lease Agreement. The Lease Agreement shall not operate to assign to Purchaser any tenant leases existing on the Closing Date. The Seller shall retain the contractual obligations and responsibilities provided in all said leases at the commencement and throughout the Lease Term.

**10. Chattels.** "Chattels" means all personal property owned by Seller located upon the Property on the Closing Date and included in the inventory list provided by Seller to Purchaser at Closing ("Chattel Inventory"), including but not limited to appliances. Seller shall retain ownership of Chattels and shall remove all Chattels within thirty (30) days from the later of (i) the Closing Date, or (ii) the date on which the Post-Closing Period Expires. **The provisions of this paragraph will survive the Closing.**

**11. Notices.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same with the United States Postal Service, addressed to the party to be notified, postage prepaid and in registered or certified form, with return receipt requested, or by deposit with Federal Express for overnight delivery, or other reputable overnight courier, facsimile (with retained receipt) or email (with retained receipt). Notice given as prescribed in this Section 9 shall be effective on the date actually received at the address to which such notice was sent, or if delivery is refused or not accepted, such notice shall be effective on the date of such refusal or failure to accept delivery. Notice given in any other manner shall be effective only upon receipt by the party to whom it is addressed. For purposes of notice, the addresses of the parties shall be as follows:

If to Seller, to: Mr. Kevin Wood  
Woodbaker Investment Holdings  
2450 Louisiana St., Suite 427  
Houston, Texas 77006  
Telephone: 832-444-9284  
E-mail: kevin@stagecoachequity.com

With copy to: Kelsey W. Gray  
Telephone: 832-7414-9491  
Email: kelseywalkergray@gmail.com

If to Purchaser, to: City of Houston, Texas  
Housing and Community Development Department  
Attention: Rupa Sen  
2100 Travis Street, 9<sup>th</sup> Floor  
Houston, Texas 77002  
Telephone: (832) 393-6217  
E-mail: [rupa.sen@houstontx.gov](mailto:rupa.sen@houstontx.gov)

With copy to: City of Houston Legal Department  
900 Bagby Street, 4th Floor  
Houston, Texas 77002

Either party may change its address to another location in the continental United States, upon five (5) days' prior written notice to the other given in the manner provided above.

**12. Brokerage.** Purchaser has not engaged a broker or agent in connection with the negotiation or execution of this Agreement. In the event any agent or broker shall make a claim against Seller and Purchaser for a commission or fee, the party allegedly engaging, hiring or retaining such broker or agent shall be responsible for payment thereof.

**13. Assignment.** Except for an assignment by Purchaser to a qualified governmental entity (including a local government corporation) after giving written notice to Seller, neither Seller nor Purchaser may assign this Agreement or any right or interest under this Agreement without the prior written consent of the other party, which will not be unreasonably withheld. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding on the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

**14. Governing Law; Enforcement.**

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

b. Should any provision of this Agreement require judicial interpretation, Seller and Purchaser hereby agree and stipulate that the court interpreting or considering the same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of any rule or conclusion that a document should be construed more strictly against the party who prepared the same, it being agreed that all parties to this Agreement have participated in the preparation of this Agreement and that each party had full opportunity to consult legal counsel of its choice before the execution of this Agreement.

c. Purchaser's city attorney or its designee (the "City Attorney") shall have the right to enforce all legal rights and obligations under this Agreement without further authorization from other City of Houston officials, and Seller covenants to use commercially reasonable efforts to provide the City Attorney with all documents and records that the City Attorney reasonably deems necessary to assist in determining Seller's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

**15. Remedies.**

a. If Purchaser fails or is unable to perform its obligations pursuant to this Agreement for any reason other than Purchaser's termination hereof pursuant to a right granted to Purchaser in this Agreement to do so, or breach by Seller of its promises, representations, warranties under this Agreement, then Seller shall give Purchaser written notice of the default. If Purchaser fails to cure its default within thirty (30) days after receipt of such notice, Seller, as its sole and exclusive remedy, shall have the right to terminate this Agreement by giving Purchaser written notice thereof, in which event neither party hereto shall have any further rights, duties, obligations or liabilities hereunder except those provisions hereof that expressly survive such termination, and the Title Company shall release the Non-Refundable Option Deposit,



and any interest thereon, to Seller and shall release the remaining portion of the Option Fee, if any, and any interest thereon, to Purchaser.

b. If Seller fails or is unable to perform any of its obligations pursuant to this Agreement for any reason other than Seller's right of termination of this Agreement pursuant to a right granted to Seller in this Agreement to do so, or breach by Purchaser of its promises, representations, or warranties under this Agreement, then Purchaser shall give Seller written notice of the default. If Seller fails to cure its default within thirty (30) days after receipt of such notice, or if any of Seller's promises, representations or warranties made under this Agreement, or any of the information furnished by Seller pursuant hereto, should be either false or misleading in any material respect, then Purchaser shall have the right and option, as its sole and exclusive remedies, to:

(i) terminate this Agreement by giving Seller written notice of termination, in which event neither party to this Agreement shall have any further rights, duties, obligations or liabilities under this Agreement except those provisions that expressly survive such termination, and the Title Company shall release the Option Fee and interest thereon, save and except the Non-Refundable Option Deposit to be released to Seller, to Purchaser; or

(ii) enforce specific performance of the obligations of Seller to convey the Property to Purchaser pursuant to the terms hereof and to perform its other obligations under this Agreement, provided that, in the event that Purchaser seeks specific performance, an action seeking such remedy must be filed within six (6) months of Seller's default or alleged default, or the same shall be deemed barred and Purchaser's sole remedy shall be as set forth in (i) above.

**16. Damage or Taking Prior to Closing.** Prior to Closing, risk of loss with regard to the Property shall be borne by Seller. If, prior to Closing, the Property, or any portion of the Property, is materially damaged or becomes subject to a taking (other than by the Purchaser) by virtue of eminent domain, Purchaser shall have the option, which must be exercised by it within fifteen (15) business days (and the Closing will be automatically extended, if necessary, to provide Purchaser with such fifteen (15) business day period) after its receipt of written notice from Seller advising of such damage or taking (which Seller hereby agrees to give), to terminate this Agreement or to proceed with the Closing. If Purchaser elects to terminate this Agreement for any reason set forth in this Section, all rights, duties, obligations and liabilities created under this Agreement shall cease except those provisions hereof that expressly survive such termination, and the Title Company shall release the Non-Refundable Option Deposit to Seller and shall release the remaining portion of the Option Fee, if any, to Purchaser. If Purchaser elects to proceed with the Closing, all rights, duties, obligations and liabilities created under this Agreement shall continue, and (a) Purchaser shall be entitled to any and all insurance proceeds or condemnation awards payable as a result of such damage or taking, and (b) Seller shall assign to Purchaser at Closing all of Seller's rights to such proceeds or awards.

**17. Entire Agreement.** This Agreement is the entire agreement between Seller and Purchaser concerning the sale of the Property and no modification of this Agreement or subsequent agreement relative to the subject matter of this Agreement shall be binding on either party unless in writing and signed by both parties. This Agreement may be amended only by written instrument executed on behalf of

Purchaser (by authority of an ordinance adopted by the City Council of the City of Houston, Texas) and Seller.

**18. Exhibits and Schedules.** Attached hereto and incorporated in this Agreement by this reference for all purposes is the following exhibits and schedules:

Exhibit "A"	PROPERTY DESCRIPTION
Exhibit "B"	SPECIAL WARRANTY DEED
Exhibit "C"	LEASE AGREEMENT
Schedule 1	Voluntary Acquisition – Informational Notice
Schedule 2	Texas Disclosures

**19. Confidentiality.** Seller and Purchaser agree to use their best efforts to keep confidential price, terms, condition, and all other information that is a part of this transaction. Seller and Purchaser agree that they will disclose such matters only to such third parties as may be necessary to carry out usual and customary activities related to the transaction. Notwithstanding the foregoing, both parties acknowledge that the terms of this transaction may become known to the public when the matter is considered by the City Council of the City of Houston, Texas, or pursuant to a request under the Texas Public Information Act.

**20. Miscellaneous.**

a. The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

b. Each and every agreement contained in this Agreement is, and shall be construed as, a separate and independent agreement. If any provision of this Agreement should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected.

c. The obligations of the Agreement that cannot be performed before termination of this Agreement, or before Closing, will survive termination of this Agreement or Closing, and the legal doctrine of merger will not apply to these matters. However, if there is any express conflict between the closing documents provided pursuant to Section 8 hereinabove and this Agreement, the closing documents will control.

d. Time is of the essence in this Agreement.

e. If this Agreement is executed in multiple counterparts, all counterparts taken together will constitute this Agreement.

f. Following the execution of this Agreement by Purchaser through its Mayor and countersigned by the City of Houston Controller, the Director of the Housing and Community Development Department, City of Houston, Texas, or his designee (the "Director"), shall have the authority to act on the behalf of Purchaser in making extensions to the Closing Date or to make other minor modifications to this Agreement, in writing and in consultation with the City Attorney, for the purposes of enabling the achievement of the Purchaser's objectives to acquire the Property from Seller and which do not require further approvals by the City Council of the City of Houston, Texas. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.



**21. Signature Authority.** Each party represents that the person signing this Agreement on behalf of such party 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 under this Agreement 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.

**22. Voluntary Acquisitions Program.** Seller acknowledges the following:

a. The acquisition of the Property with CDBG-DR funds is subject to the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("URA"). Specifically, 24 C.F.R. 570.606(e) requires that acquisition of the Property must comply with URA requirements at 49 C.F.R. Part 24.

b. Purchaser is interested in acquiring the Property with CDBG-DR funds for a buyout activities under the Harvey Buyout Program.

c. Seller has no obligation to sell the Property for the project, but Seller is voluntarily selling the Property to Purchaser, subject to the terms and conditions of this Agreement, and Purchaser will not use the power of eminent domain to acquire the Property. Seller has received and executed the Voluntary Acquisition – Informational Notice dated January 8, 2020, a copy of which is attached to this Agreement as Schedule 1 and incorporated herein, as well as any other written communications, as required by applicable laws, regulations and procedures.

d. In accordance with the URA, owner-occupants who move as a result of a voluntary acquisition are not eligible for relocation assistance. However, any resulting displacement of a tenant is subject to the regulations in 49 C.F.R. Part 24.

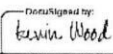
**23. Texas Disclosures.** Seller hereby makes the required notices and disclosures attached hereto as Schedule 2 to Purchaser.

***[Execution pages follow]***

**EXECUTED IN MULTIPLE ORIGINAL COUNTERPARTS**, each of which shall be an original, which together shall constitute but one and the same instrument, effective as of the date of countersignature by the City Controller of the City of Houston. 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.

SELLER

**APPIAN WAY OPPORTUNITY FUND, LLC**,  
a Texas limited liability company

By:  \_\_\_\_\_  
Name: Kevin Wood  
Title: President



PURCHASER

CITY OF HOUSTON, TEXAS, a  
municipal corporation

ATTEST:



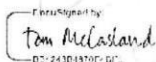
Pat Jefferson-Daniel  
Interim City Secretary



Sylvester Turner  
Mayor of the City of Houston

2-5-2021

APPROVED AND RECOMMENDED:



Tom McCasland  
Director, Housing and Community  
Development Department

COUNTERSIGNED



Chris B. Brown  
City Controller

Countersignature Date:

2-5-21

APPROVED AS TO FORM:



Assistant City Attorney  
L.D. File Number: 0292000506001

\_\_\_\_\_, 2021

An original, fully executed copy of this Agreement has been received by the Title Company, and by execution hereof the Title Company hereby covenants and agrees to be bound by the terms of this Agreement to the extent permissible, without violation of Procedural Rule 35, as promulgated by the Texas State Board of Insurance.

CHICAGO TITLE INSURANCE COMPANY

By:  
Name:  
Title:

**EXHIBIT "A"**

A tract or parcel of land containing approximately 1.092 acres (47,552 square feet) of land conveyed to Appian Way Opportunity Fund LLC, a Texas limited liability company by deed dated June 18, 2019, recorded June 19, 2019 under Clerk's File No. RP-2019-259594, Official Public Records, Harris County, Texas

EXHIBIT "B"

When recorded, return to:

THE CITY OF HOUSTON  
2100 Travis, 9<sup>th</sup> Floor  
Houston, TX 77251-1562  
Attention: Real Estate Manager-Ms. Rupa Sen, Housing and Community  
Development Department

SPECIAL WARRANTY DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

\_\_\_\_\_, 2021

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

**APPIAN WAY OPPORTUNITY FUND LLC**, a Texas limited liability company ("**Grantor**"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which consideration are hereby acknowledged, by these presents does hereby Grant, Bargain, Sell, and Convey, unto the **CITY OF HOUSTON, TEXAS**, a municipal corporation situated in Harris, Fort Bend and Montgomery Counties, Texas ("**Grantee**"), for itself and its successors and assigns (i) all that real property situated in the County of Harris, State of Texas, and more particularly described on **Exhibit A** attached hereto and made a part hereof for all purposes, and (ii) together with all improvements now or hereafter situated thereon (collectively, the "**Property**"), TOGETHER with all and singular tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining thereto.

This Deed is made and accepted expressly subject to the matters set forth in **Exhibit B** attached hereto and made a part hereof for all purposes ("Permitted Encumbrances").



TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances belonging in any way to the Property, unto the said Grantee, its successors and assigns forever, and Grantor binds itself and its successors and assigns to warrant and forever defend all and singular the Property to Grantee, its successors and assigns against every person lawfully claiming or to claim all or any part of the Property, by, through or under Grantor, but not otherwise.

### **COVENANTS RUNNING WITH THE PROPERTY**

WHEREAS, Community Development Block Grant – Disaster Recovery ("CDBG-DR") funding for this Agreement is appropriated to the U.S. Department of Housing and Urban Development ("HUD") under the Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Pub. L. 115-56) for activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. §5301 et. seq.) related to disaster relief long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from Hurricane Harvey, under Federal Emergency Management Agency designation "DR-4332", which are Presidentially declared major disaster areas under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. §5121, et. seq.);

WHEREAS, supplemental CDBG-DR funding was appropriated to HUD under the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Pub. Law 115-123) (together with Pub. L. 115-56, the "Appropriation");

WHEREAS, through the publication of 83 Fed. Reg. 5844 (Feb. 9, 2018) and 83 Fed. Reg. 40314 (Aug. 14, 2018), HUD allocated, from the Appropriation, \$5,676,390,000 in CDBG-DR funding (the "State Allocation") to the Texas General Land Office ("GLO");

WHEREAS, from the State Allocation, the Grantee has received a direct allocation from the GLO of \$1,275,878,041 of CDBG-DR development and implementation of programs that directly benefit the residents of the City of Houston, Texas;

WHEREAS, Grantee has created the Multi-family Voluntary Buyout Program ("MVB Program") to acquire residential properties located in a floodway or floodplain to reduce the risk of future flooding by converting the properties to greenspace or detention basins in areas in the City of Houston with at least a 51% Low- to Moderate-Income ("LMI") population; and

WHEREAS, properties acquired by Grantee pursuant to the MVB Program must be dedicated and maintained as greenspace or detention in perpetuity;

NOW, THEREFORE, in accordance with and in furtherance of the requirements set forth in 81 Fed. Reg. 83254, the conveyance of the Property is made by Grantor and accepted by Grantee subject to the following:

1. The Property shall be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or floodplain and wetlands management practices.

2. No new structure will be erected on property acquired, accepted, or from which a structure was removed under the acquisition or relocation program other than: (a) a public facility that is open on all sides and functionally related to a designated open space (e.g., a park, campground, or outdoor recreation area); (b) a rest room; or (c) a flood control structure, provided that structure does not reduce valley storage, increase erosive velocities, or increase flood heights on the opposite bank, upstream, or downstream and that the local floodplain manager approves, in writing, before the commencement of the construction of the structure.

3. No subsequent application for additional disaster assistance for any purpose or to repair damage or make improvements of any sort will be made by the recipient to any Federal entity in perpetuity.

4. The foregoing covenants and agreements are adopted for, and placed upon the Property, and shall run with the land, be binding upon all parties, now and at any time hereafter, having or claiming any right, title or interest in or to the Property or any part thereof, their heirs, legal representatives, executors, administrators, successors and assigns, regardless of the source of, or the manner in which any such right, title or interest is or may be acquired and any conveyance of any interest in the Property by Grantee or a subsequent owner must reference and incorporate the foregoing covenants and require the Property to be dedicated and maintained for compatible uses in perpetuity. The foregoing covenants may be enforced by Grantee, GLO or HUD, jointly or severally; however, failure, refusal or inability by either Grantee, GLO or HUD, jointly or severally, to enforce any of the foregoing covenants shall in no event be deemed a waiver or release of the right to do so thereafter. If one or more of the foregoing covenants shall be held unenforceable, invalid or illegal in any respect, such unenforceability, invalidity or illegality shall not affect any other provision of said covenants, which shall be construed as if such unenforceable, invalid or illegal provision had never been a part hereof.

IN WITNESS WHEREOF, the parties have executed this Special Warranty Deed to be effective as of the date first written herein.

GRANTOR:

**APPIAN WAY OPPORTUNITY FUND LLC,**  
a Texas limited liability company

By: \_\_\_\_\_  
Name: Kevin Wood  
Title: President

THE STATE OF TEXAS

§

§

COUNTY OF HARRIS

§

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2021, by Kevin Wood, President of Appian Way Opportunity Fund LLC, a Texas limited liability company, on behalf of said limited liability company.

\_\_\_\_\_  
Notary Public

GRANTEE:

**CITY OF HOUSTON, TEXAS**, a  
municipal corporation

ATTEST:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Sylvester Turner  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney  
L.D. File Number: 0292000506001

THE STATE OF TEXAS

§

§

COUNTY OF HARRIS

§

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2021, by Sylvester Turner, Mayor of the City of Houston, Texas, a municipal corporation, on behalf of said municipal corporation.

\_\_\_\_\_  
Notary Public

Grantee's Address:

City of Houston  
2100 Travis, 9<sup>th</sup> Floor  
Houston, TX 77251-1562  
Attention: Real Estate Manager-Ms. Rupa Sen, Housing and Community  
Development Department



EXHIBIT A  
Legal Description

A tract or parcel of land containing approximately 1.092 acres (47,552 square feet) of land conveyed to Appian Way Opportunity Fund LLC, a Texas limited liability company by deed dated June 18, 2019, recorded June 19, 2019 under Clerk's File No. RP-2019-259594, Official Public Records, Harris County, Texas

## EXHIBIT B

### Permitted Encumbrances

The conveyance of the Property is made subject and subordinate to the following terms, provisions, conditions and restrictions (collectively, the "Permitted Encumbrances"):

- a. Rights of tenants in possession, as tenants only, under unrecorded lease agreements.
- b. An easement five (5) feet wide along the south property line and an aerial easement adjoining thereto five feet wide from a plane twenty feet above the ground upward as shown by the recorded plat and dedication set out in Volume 998, Page 379, Deed Records, Harris County, Texas and recorded in Volume 1083, Page 172 affected by Volume 1130, Page 414, Deed Records, Harris County, Texas.
- c. Terms, conditions and provisions contained in that certain Lease Agreement, by and between Coinmach (tenant) and Bayou Crest Investments, L.P., dba Bayou View Gardens Apartments (landlord), a Memorandum of which is filed under Clerk's File No. W817887, Official Public Records, Harris County, Texas.
- d. Royalty interest in and to all coal, lignite, oil, gas or other mineral interest(s), together with rights incident thereto, contained in instrument dated April 15, 1924, recorded April 22, 1924 at Volume 569, Page 599, Deed Records, Harris County, Texas. Reference to which instrument is here made for full particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).
- e. The Land is located within the City of Houston or within its extra territorial jurisdiction (within 5 miles of the city limits but outside another municipality). It is subject to the terms, conditions, and provisions of City of Houston Ordinance No. 85-1878, pertaining to among other things, the platting and replatting of real property and to the establishment of building lines (25 feet along major thoroughfares and 10 feet along other streets). A certified copy of said ordinance was filed August 1, 1991, at Clerk's File No. N253886.

**EXHIBIT "C"**  
**Lease Agreement**

## **LEASE AGREEMENT**

### **APPIAN WAY APARTMENTS**

THIS LEASE AGREEMENT (this "Agreement") is made by and between the CITY OF HOUSTON, TEXAS, a municipal corporation situated in Harris, Fort Bend and Montgomery Counties (the "City"), and APPIAN WAY OPPORTUNITY FUND, LLC, a Texas limited liability company ("Agent"), and is effective as of the date of the City Controller's countersignature (the "Effective Date").

### **RECITALS**

WHEREAS, the City purchased certain real property containing a multifamily housing development, located at 3200 N. MacGregor Way, Houston, TX 77004, together with all improvements, appurtenances, and equipment located thereon, commonly known as APPIAN WAY APARTMENTS (collectively, the "Property") pursuant to the Agreement for Option to Purchase Real Property signed by Agent and the City (the "Option Agreement");

WHEREAS, the City purchased the Property from Agent in connection with the City's Disaster Recovery (DR-17) Multifamily Voluntary Buyout Program with the purpose of demolishing the improvements on the Property and reducing the risk of future flooding by converting the Property into greenspace and/or detention;

WHEREAS, pursuant to the Option Agreement, the City and Agent agreed to execute a lease agreement providing for Agent's continued operation and management of the Property if any Rental Units were not vacated prior to the closing date stated in the Option Agreement (the "Closing Date");

WHEREAS, as of the Closing Date, less than 100% of the Rental Units were vacant, and additional time is needed to relocate the existing Tenants; and

WHEREAS, while the Tenants are being relocated, the City will lease the Property to Agent so that Agent can continue to operate and manage the Property during the relocation process, subject to the terms and provisions of this Agreement, and Agent agrees to perform such services in exchange for the Lease-back Fee provided herein;

NOW, THEREFORE, the City and Agent, in consideration of the sum of \$1.00 paid by the City to Agent, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby mutually covenant and agree as follows:



## **ARTICLE I**

### **GRANTING CLAUSE**

The City hereby demises and leases to Agent, and Agent hereby rents, accepts and takes from the City, the Property to have and to hold said Property for the Lease Term, and pursuant to the terms, provisions, covenants, agreements and conditions set forth in this Agreement.

## **ARTICLE II**

### **DEFINITIONS**

As used in this Agreement:

**"Additional Flow Down Provisions"** shall have the meaning in Section 18.12(b).

**"Auditing Documents"** shall have the meaning set forth in Section 7.02(e).

**"Auditing Entities"** shall have the meaning set forth in Section 7.01.

**"Automatic Renewal"** shall have the meaning set forth in Article III.

**"City Attorney"** means the City Attorney of the City of Houston, or his designee.

**"City Controller"** means the City Controller of the City of Houston, or his designee.

**"Condemnation Award"** means the amount of money awarded by special commissioners, judge, or jury, through settlement, for the whole Property or part Taken and any remainder damages. The term shall also include relocation monies.

**"Condemnation Proceedings"** means any action brought for any Taking of the Property, or any part thereof, or any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Property), by a governmental authority or entity as a result of the exercise of its power of eminent domain, including a voluntary sale to such authority or entity either under the threat of condemnation or while such action or proceeding is pending.

**"Director"** means the Director of the City of Houston's Housing and Community Development Department, or his designee.

**"Force Majeure"** means any contingency or cause beyond the reasonable control of a party including, without limitation: acts of God or the public enemy, war, riot, civil commotion, insurrection, acts of superior governmental or military authority, fires, explosions, epidemics, pandemics, and floods. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn, strikes, or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical.

**"GLO Agreement"** means the subrecipient agreement between the City and the Texas General Land Office ("GLO"), GLO Contract No. 19-147-001-B489, Community Development Block Grant Disaster Recovery Program Projects Non-Research & Development Harvey Round 1 Funding ("CDBG-DR17 Program") countersigned by the City Controller on January 4, 2019 and approved by City of Houston Ordinance No. 2019-10 and No. 2019-904, and any amendments thereto.

**"Hazardous Material"** means any chemical, substance, material or waste or component thereof which is now or hereafter listed, defined or regulated as a hazardous or toxic chemical, substance, material or waste or component thereof by any federal, state or local governing or regulatory body having jurisdiction, or which would trigger any employee or community "right-to-know" requirements adopted by any such body.

**"Lease"** means any written or oral agreement between Agent and Tenant that establishes or modifies the terms, conditions, rules, or other provisions regarding the use and occupancy of a Rental Unit.

**"Lease Term"** shall have the meaning set forth in Article III.

**"Notice of Appeal"** shall have the meaning set forth in Section 7.05(a).

**"Operating Account"** shall have the meaning set forth in Section 8.012.

**"Operating Budget"** means the operating budget for the Lease Term, attached hereto as **Exhibit "C"** and incorporated herein, which will be prepared by Agent and approved by the Director, as may be amended from time to time in writing by Agent.

**"Original Allocation"** shall have the meaning set forth in Section 8.04(b)(ii).

**"Relocation Requirements"** means the federal relocation requirements set forth in the Uniform Relocation Assistance Act and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1894 (codified at 42 U.S.C. §§ 4601-4655, as amended, and Section 104(d) of Housing and Community Development Act of 1974, Pub. L. 93-383, 88 Stat. 633-2 (codified as amended at 42 U.S.C. §§ 5301-5321), as applicable.

**"Renewal Term"** shall have the meaning set forth in Article III.

**"Rent"** means the monthly amount that a Tenant is obligated to pay Agent pursuant to the terms of a Lease.

**"Rental Unit"** means one or more rooms rented for use as a permanent residence at the Property, under a single Lease to one or more Tenants.

**"Supplemental Allocation"** shall have the meaning set forth in Section 8.04(b)(ii).

**"Taking"** or **"Taken"** means the date the governmental authority or other person deposits money into the registry of the court for purposes of obtaining title to the Property, or any part thereof, or



any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Property), pursuant to a Condemnation Proceeding, or the date of execution and delivery of a deed-in-lieu of condemnation.

**"Temporary Taking"** shall have the meaning set forth in Section 12.04.

**"Tenant(s)"** means a person who is authorized by a Lease to occupy a Rental Unit at the Property, to the exclusion of others, and who is obligated under the Lease to pay Rent.

**"Tenant Deposit"** means any advance of money, other than a rental application deposit or an advance payment of rent, that is intended primarily to secure performance under a Lease.

### **ARTICLE III**

#### **TERM AND AUTOMATIC RENEWAL**

This Agreement shall commence on the Effective Date and shall expire on the earlier of (i) the date that is thirty (30) days after the date the last Tenant vacates the Property; or (ii) the date that is twelve (12) months from the Effective Date (the "Lease Term"). This Agreement shall operate in full force and effect for the duration of the Lease Term, unless terminated by the City or Agent in accordance with Article X.

In the event that all Tenants have not vacated the Property at the expiration of the Lease Term, this Agreement shall automatically renew (the "Automatic Renewal") for one (1) additional twelve (12)-month term, or until thirty (30) days after the date the last Tenant vacates the Property, whichever is sooner ("Renewal Term").

### **ARTICLE IV**

#### **SERVICES OF AGENT**

**Section 4.01 Standard of Conduct.** Agent shall provide all labor, material and supervision necessary to perform the services described in this Agreement. Agent represents that it is experienced in professional operation and management multifamily rental properties similar to the Property, and Agent shall operate and manage the Property in accordance with industry standards for multifamily rental properties of the Property's type.

**Section 4.02 Collection of Rents and Other Receipts.** Agent shall collect, when due, all Rents, charges, and other amounts receivable from Tenant(s) and shall deposit said funds into the Operating Account in accordance with the provisions of Section 8.02(a). Under no circumstances shall the funds be commingled with Agent's other funds not derived from the Rents, charges, and other amounts collected under this Agreement.

**Section 4.03 Lease Enforcement.**

(a) **Lease Enforcement.** Agent shall ensure each Tenant abides by his Lease. Agent shall properly assess and collect from each Tenant or, the Tenant Deposit as the case

may be, the cost of repairing any damages to a Rental Unit arising during Tenant's occupancy. Agent shall also disburse Tenant Deposits in accordance with the terms of each Lease and Chapter 92 of the Texas Property Code, as may be amended from time to time.

(b) Relocation of Tenants. Agent shall comply with all Relocation Requirements. Agent shall emphasize a Tenant's voluntary compliance with Relocation Requirements and counsel Tenants and make referrals to community agencies in cases of financial hardship or under other circumstances deemed appropriate by the Director and Agent to avoid any involuntary termination of tenancies to the maximum extent consistent with sound management of the Property.

(c) Termination of Lease and Attorneys' Fees.

(i) Agent may, and shall, if requested by the Director, lawfully terminate any tenancy when, in Agent or the Director's judgment, sufficient cause for termination occurs under the terms of Tenant's Lease. To determine if a tenancy should be terminated, Agent shall request from the Director, in writing, the ability to consult with legal counsel. If authorized to do so, Agent may consult with legal counsel selected by Agent and approved by the City Attorney to determine appropriateness of bringing an eviction action, executing notices to vacate and/or filing other relevant judicial proceedings against a Tenant. Agent shall keep the Director informed of any and all legal actions and shall abide by any and all directions to proceed or refrain from proceeding issued by the Director and/or the City Attorney.

(ii) Reasonable attorneys' fees and other actual and necessary costs incurred in connection with such actions, as determined by the Director, and supported by invoices, are to be paid out of the Operating Account, but shall not exceed \$5,000.00 in the aggregate, without written, advance permission from the Director and/or the City Attorney. Such expenses are subject to the expenditure provisions in Section 8.03.

**Section 4.04 Maintenance, Repairs and Capital Improvements.** Agent shall maintain the Property in a decent, safe, and sanitary condition. Additionally, Agent shall maintain the Property in a condition acceptable to the Director and in compliance to industry standards for a multifamily development of similar type. Incident thereto, the following provisions shall apply:

(a) No later than ten (10) days after the Effective Date, Agent shall submit a preventative maintenance plan for the Lease Term to the Director for approval and adhered to by Agent.

(b) Agent shall contract with qualified independent contractors for the maintenance and repair of major mechanical systems and for the performance of extraordinary repairs beyond the capability of regular maintenance personnel. Prior to commencement of any work, Agent shall provide the Director with all contractors' current



insurance certificates that satisfy the City's standard requirements for insurance coverage according to the work to be performed.

(c) Agent shall promptly investigate all service requests from Tenants, take appropriate action to remedy the request, if justified, and keep records of the transactions. Excluding emergencies, the prior written approval of the Director shall be required for any service expenditure that exceeds Five Hundred and No/100 Dollars (\$500.00), per instance. Upon Agent's receipt of any emergency requests, including requests regarding heating, cooling, plumbing, and/or flooding, Agent shall (i) promptly report to the Director the pricing of all costs associated with the request, (ii) service the request within twenty-four (24) hours of the request, or as is standard based on best business practices of the industry, and (iii) after completion of the service, provide the Director with a service report, including total costs incurred by Agent and details on the issue and resolution. Agent shall pay standard prices for all emergency costs and be responsible for demonstrating to the Director the reasonableness and necessity of all emergency costs. Any costs incurred above the amount of emergency costs approved by the Director shall be borne by Agent. Additionally, during the Lease Term, Agent shall take all necessary actions related to exercising all rights provided by guarantees and warranties associated with repairs performed on the Property.

(d) Except as otherwise provided in this Section, subject to expenditure provisions in Section 8.03, Agent is authorized to purchase, using funds from the Operating Account, any needed materials, equipment, tools, appliances, supplies, and services necessary for proper maintenance and repair of the Property, of which Agent is not already in possession of. The prior written approval of the Director is required for any expenditure for labor, maintenance and/or materials not outlined on the Operating Budget that exceeds One Thousand and No/100 Dollars (\$1,000.00), per instance. Agent shall secure all discounts, rebates, and/or commissions obtainable with respect to purchase, service contracts, and all other transactions made by Agent on the City's behalf.

(e) In the event of emergency repairs involving manifest danger to persons or property or requiring the suspension of any necessary service to the Property, Agent shall notify the Director of the facts promptly and in no event later than twenty-four (24) hours after the occurrence of the event. Such emergency expenditures shall not exceed Two Thousand and No/100 Dollars (\$2,000.00), per instance, without the prior written approval of the Director. Such expenses are subject to the expenditure provisions provided in Section 8.03.

(f) Within ten (10) days after the date a Tenant vacates the Property, Agent shall conduct a final inspection of the Tenant's Rental Unit, remove all chattel from the Rental Unit, secure the Rental Unit and submit a move-out inspection report for the Rental Unit to the Director.

**Section 4.05 Utilities and Services.** Agent shall maintain water, electricity, gas, sewage, trash disposal, vermin extermination, laundry facilities, telephone services, and other necessary services in connection with the Property as may be outlined in the Tenant Lease.

**Section 4.06 Personnel.** Agent shall hire and employ all necessary personnel to operate, manage, and maintain the Property in accordance with the provisions of the Agreement. All property management personnel, including maintenance and custodial workers, shall be contracted service providers or employees of Agent. Such property management personnel are not the City's employees, agents, contractors, or subcontractors for any purpose whatsoever, and Agent shall have no authority to employ City personnel.

(a) Agent shall employ an adequate amount of properly trained employees or contractors to provide efficient service to the Tenants. The City reserves the right to monitor Agent's employees' customer service quality, and, should such service become unacceptable, the Director will notify Agent of the deficiency in writing and outline required corrective action. Agent agrees to promptly review the Director's suggestions and immediately take corrective action.

(b) Agent shall keep accurate records of the names, addresses, and other legal identification of employees to assure proper identification and legal working status of employment at any time required by the City or any other proper agency.

**Section 4.07 Licenses and Permits.** Agent is required to obtain and maintain all permits required by the City or any other governmental agency with authority to regulate the Property as well as perform, or allow to be performed, any periodic inspections that are required by any such governmental agency. Agent shall also acquire and abide by all licenses and permits required for the operation of the Property as rental housing.

**Section 4.08 Records and Reports.** Agent shall follow recognized, modern business practices to provide efficient and adequate services to the Tenants. Accurate, prompt, and timely reporting is of the essence, and the Agent's failure to do so shall constitute a default subject to the notice and cure rights and remedies outlined in Article X. The Director may require audited statements of Agent's operations under this Agreement for any period of time during the Lease Term with such expense being borne by Agent. In addition to any requirements specified in this Agreement, Agent has the following responsibilities with respect to records and reports:

(a) Agent shall establish and maintain a system of records, books, and accounts in a manner that is satisfactory to the Director and the City Controller. All records, books, and accounts are subject to audit and examination by the Director and the City Controller at reasonable hours upon reasonable notice to Agent.

(b) Agent shall prepare monthly reports in a form satisfactory to the Director, along with any other reports that are requested by the Director that are consistent with Agent's duties hereunder, containing and including at least the following:

(i) a statement of income and expenses and accounts receivable and payable for the preceding month, including an itemized list of all delinquent Rents for the month and a report of actions taken on the delinquent accounts by Agent;

(ii) rent roll/cash receipts from the previous month;



(iii) a disbursement summary for the previous month, including paid invoices and evidence of payment of insurance premiums;

(iv) a statement comparing budgeted revenues and expenses to actual revenues and expenses, including any indication that the actual annual net operating income is anticipated to be more than five percent (5%) less than budgeted in the Operating Budget;

(v) current bank statements of the Operating Account with a detailed report on any financial deficits experienced during the reported period, including the deficit amounts and any out-of-pocket expenses incurred by Agent in reconciling such deficits;

(vi) a narrative of any unusual actions taken or emergencies responded to by Agent;

(vii) a full report of any accidents, claims, and potential claims for the previous month; and

(viii) any other information required by the Director.

Agent shall submit each report to the Director on or before the tenth (10<sup>th</sup>) day of each month.

(c) All bookkeeping, data processing services, and management overhead expenses are to be paid for by Agent.

(d) Agent shall furnish whatever additional information (including monthly occupancy reports) requested from time to time by the Director within the time period provided in the request with respect to the leasing and financial, physical, or operational condition of the Property.

(e) Agent shall establish and maintain Tenant files containing copies of all Leases, certification forms, notices, and other documentation required by the Director. Said files shall be easily accessible to the Director upon request.

**Section 4.09 City Communications.** Agent shall be available for communications with the Director and inform the Director of items materially affecting the Property within twenty-four (24) hours after the occurrence of the material event.

## ARTICLE V

### MANAGEMENT AUTHORITY

#### Section 5.01 Authority.

(a) Agent's authority is expressly limited to the provisions contained herein as they may be amended in writing from time to time in accordance with the provisions of this Agreement.

(b) The City expressly withholds from Agent any power or authority to undertake the following actions:

(i) make any structural change in or to the Property or to make any other major alterations or additions in or to the Property or fixtures or equipment therein;

(ii) execute or promise any new Leases or Lease renewals, or approve any sublets or assignments;

(iii) implement or enforce any Rent increases in accordance with a Lease that would take effect during the Lease Term;

(iv) enter into any agreement, instrument or covenant or take any action that would:

1) constitute an encumbrance on the Property;

2) bind the City or the Property;

3) be outside a normal, reasonable, and necessary act needed to perform Agent's duties under this Agreement; or

4) have a term that will exceed the Lease Term or that cannot be terminated with thirty (30) days' notice;

(v) incur any expense not outlined in the Operating Budget without the prior written consent of the Director; and/or

(vi) commit or allow Tenant to commit waste on or to the detriment of the Property.

(c) Agent is an independent contractor and shall perform the services provided for in this Agreement in that capacity.

**Section 5.02 Delegation of Duties.** Agent has the right to engage independent contractors for performance of Agent's duties hereunder as Agent deems necessary, but Agent has the responsibility of supervising the performance of those duties. All contracts with independent

contractors are subject to the prior written consent of the Director. Expenses associated with the delegation of Agent's duties will be the sole financial responsibility of Agent.

**Section 5.03 Compliance with Law.** Agent shall take all necessary actions to comply with any and all statutes, laws, ordinances, orders and requirements of federal, state, county, and municipal authorities having jurisdiction over the Property, including orders of any insurance companies and other similar bodies, relative to the leasing, use, operation, repair, and maintenance of the Property. Upon receiving notice of any violation, Agent shall promptly remedy any violation of any law, ordinance, rule, or regulation, and shall notify the Director in writing by the end of the next business day of the violation and how and when the violation has been or will be remedied.

## **ARTICLE VI**

### **INSURANCE AND INDEMNIFICATION**

**Section 6.01 Liability of Agent.** Agent shall be personally liable for its breaches of this Agreement and for uninsured damages and costs (including reasonable attorneys' fees) resulting from Agent's negligence or misconduct and Agent's employees and contractors' negligence and misconduct.

**Section 6.02 Insurance.**

(a) Agent shall at all times during the Lease Term, at its own expense, keep and maintain, the following insurance policies having at least the following minimum limits:

(i) Commercial General Liability, including Contractual Liability, Bodily Injury and Property Damage, Personal & Advertising Injury, and Products and Completed Operations, with at least the following limits:

General Aggregate Limit	\$2,000,000
Personal and Advertising Injury Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000

(ii) Texas Statutory Workers' Compensation, including Employer's Liability with at least the following limits:

Each Accident	\$1,000,000
Each Employee	\$1,000,000
Policy Limit	\$1,000,000

(iii) Business Automobile Liability, covering (a) any auto or (b) all owned, hired and non-owned autos with at least the following limits:

Combined Single Limit	\$1,000,000
-----------------------	-------------



(iv) Commercial Umbrella or Excess Liability to provide excess liability limits over the underlying Commercial General Liability and Business Auto Liability policies. Coverage terms must "follow from" or be broader than the underlying policies. Any combination of underlying and Umbrella or Excess limits can be used to provide total liability limits of at least:

Per Occurrence	\$10,000,000
General Aggregate	\$10,000,000

(iii) Pollution Liability with at least the following limits:

Per Occurrence	\$2,000,000
Aggregate per 12-month period	\$4,000,000

(iv) Crime policy, which shall include but not be limited to coverage for the following: losses arising out of or in connection with fraudulent or dishonest acts committed by the employees of Agent, acting alone or in collusion with others, including the property and funds of others in their care, custody or control; employee theft; counterfeit money; computer fraud coverage; funds transfer coverage; forgery or alteration coverage; money and securities coverage; and theft per loss coverage. The Crime Policy coverage shall also include an extension for property of others.

Per Occurrence	\$100,000.00
----------------	--------------

(c) General Provisions. Prior to beginning performance under this Agreement, at any time upon the Director's request, or each time coverage is renewed or updated, Agent and its contractors shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Agent and its contractors shall be responsible for and pay (i) all premiums and (ii) any claims or losses to the extent of any deductible amounts. Agent and its contractors waive any claim they may have for premiums or deductibles against the City, its officers, agents, or employees. If any insurance policy required hereunder does not have a flat premium rate and such premium has not been paid in full, such policy must have a rider or other appropriate certificate or waiver sufficient to establish that the issuer is entitled to look only to Agent and its contractors for any further premium payment and has no right to recover any premiums from the City. Agent and its contractors shall also require all subcontractors or consultants whose subcontracts exceed \$100,000.00 to provide proof of insurance coverage meeting all requirements stated above except the amount must be commensurate with the amount of the subcontract, but no less than \$500,000.00 per claim.

(k) Form of Insurance. The insurance form 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 Article, or (ii) waive or estop the City from asserting its rights to terminate this Agreement. The policy issuer shall (1) have a certificate of authority to transact insurance business in the State of Texas issued by the Texas Board of Insurance, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+. The policy issuer shall have a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide.

(d) Required Coverage. The City shall be an additional insured under this Agreement, and all policies, except workers' 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. Agent and its contractors waive any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Agent's and its contractors' insurance policies. Each policy, except workers' compensation, 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.

(e) Notice. AGENT AND ITS CONTRACTOR SHALL GIVE THIRTY (30) DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED. Within the 30-day period, Agent and its contractors shall provide other suitable policies in order to maintain the required coverage. If Agent or its contractors fails to comply with this requirement, the Director, at his sole discretion, may immediately terminate this Agreement, suspend Agent and its contractors from any further performance under this Agreement, and begin procedures to terminate for default.

(f) Certificates of Insurance. The insurance coverages may be represented in one or more certificates of insurance. It is agreed, however, that nothing included within or omitted from the insurance certificates shall relieve Agent from its duties to provide the required coverage.

(g) Deductibles. A policy may contain deductible amounts as approved by Agent and its contractors. Agent and its contractors shall assume and bear any claims or losses to the extent of such deductible amounts, and waive any claim they may ever have for the same against the City, its officers, agents or employees with respect to such deductible amounts.

(h) Blanket Policies. Agent and its contractors shall be entitled to purchase and maintain the insurance required under this Article under so called "blanket" policies, provided the coverage thereunder is at least equal to the levels contained herein and is otherwise adequate in keeping with prudent underwriting standards.

(i) Policies. At the Director's request, copies of all policies referred to above, certified by the agent or attorney-in-fact issuing them, together with written proof that the premiums have been paid, shall be deposited by Agent with the Director. If the Director fails to request copies of such policies, Agent shall provide certificates of insurance, in lieu



of policies, reflecting that the terms of this Section have been met, with such certificates to be provided before the Agent begins any work in, on or about the Property. Along with such policies or certificates, Agent shall provide the Director with a list of any claims paid out against the aggregate total of any such policy.

(j) WAIVER OF RIGHT OF RECOVERY. ANYTHING TO THE CONTRARY IN THIS AGREEMENT NOTWITHSTANDING, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE CITY AND AGENT EACH WAIVE ALL RIGHTS OF RECOVERY, CLAIMS, ACTIONS OR CAUSES OF ACTION OR SUBROGATION AGAINST THE OTHER AND THE OTHER'S AFFILIATES AND THEIR RESPECTIVE PARTNERS, AGENTS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES OR REPRESENTATIVES FOR ANY DAMAGE TO THE PROPERTY AND/OR THE IMPROVEMENTS, TO THE EXTENT THAT SUCH DAMAGE IS DUE TO AN INSURED CASUALTY RISK REGARDLESS OF CAUSE OR ORIGIN, INCLUDING NEGLIGENCE OF THE CITY, AGENT, THEIR AFFILIATES OR THEIR PARTNERS, AGENTS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES OR REPRESENTATIVES.

**Section 6.03 Cooperation.** Agent shall furnish whatever readily available information is requested by the Director for the purpose of obtaining insurance coverage and shall aid and cooperate in every reasonable way with respect to the insurance and any loss thereunder.

**Section 6.04 Contractor's Insurance.** Agent shall require that every contractor working on the Property maintain, at the contractor's own expense, commercial general liability, workers' compensation, business automobile liability, and commercial umbrella or excess liability insurance in the amounts stated in Section 6.02. Agent must be notified promptly if the Director waives any of the requirements in this Section.

**Section 6.05 Standard of Care.** In the performance of its duties and obligations under this Agreement, Agent shall diligently and in good faith seek to protect the property rights and interests of the City, to protect the best economic interests of the City in its ownership and operating of the Property, and to manage the Property in accordance with normal and accepted industry standards.

**Section 6.06 Release.** AGENT AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY FOR THIS SECTION, 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. AGENT HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELEASED BY AGENT UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.



## ARTICLE VII

### AUDIT, INSPECTION AND MAINTENANCE OF RECORDS

**Section 7.01** City representatives (including without limitation the Director and the City Controller), State of Texas and Federal Government authorized representatives (collectively "Auditing Entities") may perform (1) audits of Agent's books and records or (2) inspections of the Property. Agent shall retain its books and records (including without limitation any documentation required under 2 C.F.R. Part 200, Subpart D) to be available for City representatives to review for at least (i) three (3) years after the General Land Office's ("GLO") closeout of the CDBG-DR17 program that is the subject of the GLO Agreement; (ii) the time period required by 2 C.F.R. § 200.333 (retention requirements for records) in the event this Agreement is wholly or partially federally funded; or (iii) seven (7) years after this Agreement terminates, whichever is longer. If the books and records are located outside of Harris County, Texas, Agent shall make them available in Harris County, Texas.

**Section 7.02** Within twenty-four (24) hours of Agent's receipt of written notice, Auditing Entities have the right to audit and inspect Agent's books, documents, papers, and records, both written and electronic, that pertain to the Property, Rental Units, or services provided under this Agreement. Such documents may include, but are not limited to:

- (a) payroll and personnel records, such as salaries, benefits and bonuses;
- (b) subcontractor agreements, records and invoices;
- (c) any and all records pertaining to the Property saved within Agent's accounting or management systems;
- (d) records and information saved on all computers or servers on which the City information is stored; and
- (e) all documents or records evidencing costs and expenses, direct and indirect, relating to Agent's operation and maintenance of the Property (collectively, "Audited Documents").

**Section 7.03** Agent shall permit Auditing Entities to reproduce or copy and retain any and all Audited Documents.

**Section 7.04** Agent shall provide Auditing Entities access to the Property during regular business hours.

#### **Section 7.05 Audit Findings of Disallowed Disbursements or Expenditures.**

- (a) Audit Findings by the City. Within thirty (30) days of the Director's request, Agent shall refund the City a sum equivalent to the amount of any disallowed disbursements made by the City to Agent or Agent's expenditures, in the event the City,

through the review of a monthly financial report(s) and/or audit(s), monitoring finding, or other action, determines that the disbursement or expenditure of any funds disbursed under this Agreement was not made in compliance with this Agreement, applicable law, or applicable regulations. If Agent intends to appeal the disallowance, then no later than five (5) business days after receiving the Director's request, Agent shall provide the Director with written notice to appeal the disallowance ("Notice of Appeal"), which shall explain the reasons supporting Agent's appeal. Agent's Notice of Appeal shall include bank statements, time sheets, receipts, and any other documentation reasonably requested by the Director. Within ten (10) business days of receiving Agent's Notice of Appeal, the Director shall render a decision to accept or deny Agent's appeal of a disallowance. The Director's decision shall be final. Within thirty (30) days of receiving a denial of the Notice of Appeal, Agent shall pay the City the amount disallowed.

(b) Audit Findings by Other Auditing Entities. If any audit or inspection performed by an Auditing Entity, other than the City, results in the disallowance, recapture, repayment, refund, return and/or reimbursement of Federal funds used by the City to reimburse Agent for fees and/or expenses related to the operation and maintenance of the Property, Agent shall cooperate with the Director and/or the City Controller to support the City's responses to any applicable Auditing Entity's repayment requests. If the City is unable to satisfy repayment findings, Agent shall reimburse the City for all such Federal fees and/or expenses required to be repaid by the City to an applicable Auditing Entity. Agent shall pay any adjustments or payments that were determined as a result of any such audit or inspection of the Agent's performance under the Agreement, including invoices or records, within thirty (30) days from presentation of the written findings by the Director to Agent.

**Section 7.06** Agent has been advised that the City is a party to the GLO Agreement.

**Section 7.07 Correction of Discrepancies.** If the Director discovers any discrepancies in Agent's records and/or documents, the Director may, in his discretion, require Agent to immediately correct said discrepancies and provide the Director with the corrected records and/or documents within ten (10) business days.

## ARTICLE VIII

### OPERATING BUDGET AND REMITTANCE OF FUNDS

#### **Section 8.01 Operating Budget.**

(a) Initial Operating Budget. Agent has prepared, and the Director has approved, the initial Operating Budget, as attached herein as **Exhibit "C"**.

(b) Revisions to Operating Budget. If the total expenditures accrued under this Agreement are less than the budgeted expenditures or revenues are higher than budgeted for the Lease Term, Agent shall revise the estimated cost of the affected line items in the



Operating Budget. Such revisions for decreased expenditures or increased revenues does not require a formal amendment of this Agreement and is evidenced by a revised Operating Budget submitted by Agent to the Director within three (3) business days of the budget revision. Any excess funds remaining after revising the affected line items in the Operating Budget are subject to reallocation to other line items in the Operating Budget, projects and/or contracts related to the Property at the Director's sole discretion. Any revisions for a variance of 15% of expenditures higher or revenues lower than budgeted under this Agreement must be approved by the Director.

**Section 8.02            Operating Account.** On or before the Effective Date, Agent shall establish a new bank account, solely in the Agent's name, to be used for revenue deposits and Property operation and maintenance expenditures (the "Operating Account"). The City shall not be named as an authorized user of the Operating Account, nor shall the City have signature authority on the account. Disbursements from the Operating Account are to be made in accordance with the Operating Budget, or as otherwise approved in writing by the Director.

(a)    Deposit of Funds into Operating Account. Upon receipt, Agent shall immediately deposit all Rents and other funds collected from the operation of the Property into the Operating Account.

(b)    Expense Payments from Operating Account. Expenses shall be paid out of the Operating Account in accordance with the Operating Budget, or as otherwise approved in writing by the Director. Expenses not included in the Operating Budget shall be subject to the terms and conditions set forth in Article IV. Upon expenditure of funds out of the Operating Account, Agent shall include in the monthly financial report, described in subsection (c), an itemization of the expenditures funded by the Operating Account, for the Director's review and approval.

(c)    Monthly Financial Reporting. Agent shall provide the Director a monthly financial report in accordance with Section 4.08(b). The Director shall approve the financial report if, in the Director's opinion, Agent expended funds in accordance with this Agreement.

(d)    Minimum Reserve Amount for Tenant Deposits. All existing Tenant Deposits shall be transferred to the Operating Account within ten (10) days after the Effective Date. At all times, the Operating Account shall maintain a minimum reserve amount equal to the total amount of Tenant Deposits owed to Tenants. Agent shall maintain detailed records of all Tenant Deposits, and the records must be open for inspection by the Director at all times. The required minimum reserve amount shall only decrease in direct correlation to reimbursed Tenant Deposits, as required by Texas Property Code Section 92.103, during the Lease Term. Agent shall document each Tenant Deposit reimbursed during the Lease Term and designate such reimbursement as a line item in the monthly financial report required under Section 4.08(b).



### **Section 8.03                      Expenditures.**

(a)    Expenditure Reimbursements to Agent. If Agent incurs any out-of-pocket expenses in reconciling any financial deficits detailed in Section 4.08(b), Agent shall submit requests for expenditure reimbursements to the Director for review and approval. Requests for expenditure reimbursements shall include:

- (i)     an itemized invoice(s) that sufficiently describes the charge(s) so that financial reporting can be achieved as described in Section 4.08(b);
- (ii)    a receipt(s) evidencing payment of the invoice(s); and
- (iii)   any additional documentation as may be requested by the Director and/or the City Controller.

After the Director's approval, the City will reimburse Agent for such out-of-pocket expenses in accordance with the Operating Budget, or as otherwise approved in writing by the Director, and the Texas Private Prompt Payment Act, Chapter 28 of the Texas Property Code.

(b)    Advanced Payments Made by Agent. Agent may, but is not obligated to, make any advance payment to the Operating Account or to pay any amount except out of funds in the Operating Account, and Agent is not obligated to incur any extraordinary liability or obligation outside of the Operating Budget unless the Director approves of such liability or obligation and the Director furnishes Agent with the necessary funds for the discharge thereof.

**Section 8.04                      Insufficient Funds in Operating Account.** If the balance in the Operating Account is at any time insufficient to pay expenses due and payable under this Agreement, Agent shall promptly inform the Director of the insufficiency and the City may then remit sufficient funds to Agent to cover the deficiency. Agent is required to notify the Director of an insufficient balance in the Operating Account when the balance in the Operating Account is or is expected to be less than 100% of the allowable expenses for the following month, as established by the Operating Budget and other expenses approved in accordance with this Agreement. Agent must immediately notify the Director of such insufficiency, including the estimated percentage of funds available in the Operating Account to cover the allowable expenses, but no later than twenty-four (24) hours after Agent's determination of the insufficiency.

(a)    If Agent determines that the Operating Account has funds available to cover at least 90% of the allowable expenses, Agent shall cover the deficiency with its own funds and request reimbursement from the City for incurring such out-of-pocket expenses. Such reimbursements shall be subject to the terms provided in Section 8.03(a).

(b)    If Agent determines that the Operating Account has funds available to cover less than 90% of the budgeted monthly expenses, Agent shall request payment from the Director to cover such deficiency in the notice required in this Section. To request

payment, Agent shall submit the invoice(s) that will not be paid with funds from the Operating Account due to insufficient funds. Within 30 days of the Director's review and approval of such invoice(s), the City shall remit funds to cover the payment of such invoice(s).

(viii) The City's duty to pay Agent under this Agreement or make any payments in connection with this Agreement, including without limitation, into the Operating Account due to insufficient funds in the Operating Account, is limited in its entirety by the provisions of this Section and the Operating Budget, as may be amended from time to time.

(ix) 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 up to \$100,000.00 to pay Agent under this Agreement or make any payments in connection with this Agreement, including without limitation, into the Operating Account due to insufficient funds in the Operating Account during the Lease Term (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Section of the Agreement (the "Supplemental Allocation"), but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

5) The City has not allocated supplemental funds or made a Supplemental Allocation for this Agreement unless the City has issued to Agent 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 the City Council.

#### **NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS**

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

\$

6) The Original Allocation plus all Supplemental Allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Section in excess of the Allocated Funds. Agent must

assure itself that sufficient allocations have been made to pay disbursement due and payable under this Section. If Allocated Funds are exhausted, Agent'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 City and no right to damages of any kind.

**Section 8.05 Taxes.** The City is exempt from payment of federal excise and transportation tax and Texas limited sales and use tax. Agent's invoices to the City must not contain assessments of any of these taxes. The City will furnish the City's exemption certificate and federal tax identification number to Agent if requested.

## **ARTICLE IX**

### **COMPENSATION**

**Section 9.01 Lease-back Fee.** The City will compensate Agent \$49,500.00 (the "Lease-back Fee") for its services under this Agreement in twelve (12) monthly payments, in accordance with the monthly schedule below, to be treated as an operating expense and paid out of the Operating Account. The monthly fee will be payable on the first (1st) day of each month during the term of the Agreement with respect to the services performed during the prior month. The Lease-back Fee shall be paid monthly as follows:

<u>Month</u>	<u>Lease-back Fee</u>	<u>Cumulative Total Lease-back Fees</u>
1	\$12,000.00	\$12,000.00
2	\$10,000.00	\$22,000.00
3	\$8,000.00	\$30,000.00
4	\$3,000.00	\$33,000.00
5	\$3,000.00	\$36,000.00
6	\$3,000.00	\$39,000.00
7	\$3,000.00	\$42,000.00
8	\$1,500.00	\$43,500.00
9	\$1,500.00	\$45,000.00
10	\$1,500.00	\$46,500.00
11	\$1,500.00	\$48,000.00



12

\$1,500.00

\$49,500.00

The parties agree that Agent shall not receive any amount exceeding the Lease-back Fee or any other additional compensation from the City if this Agreement extends into the Renewal Term.

**Section 9.02 Early Termination.** If the Agreement terminates prior to the expiration of the Lease Term, Agent shall be entitled to payment of the remaining unpaid portion of the Lease-back Fee so long as such termination did not occur pursuant to Article X. Agent shall receive payment of the remaining unpaid portion of the Lease-back Fee no later than sixty (60) days after the termination of this Agreement.

## ARTICLE X

### DEFAULT AND TERMINATION; REMEDIES; INDEMNIFICATION

#### Section 10.01 Termination.

(a) Termination for Convenience by the City. The City may terminate this Agreement at any time by giving thirty (30) days' written notice to Agent. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future. On receiving the notice, Agent 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. The City shall (i) pay Agent any unpaid Lease-back Fee pro rata as to the days services were provided by Agent during the month in which termination occurs; and (ii) reimburse Agent for any Property expenditures incurred in performing the services, but not already reimbursed, in the same manner as prescribed in Section 8.03

RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE AGENT'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. AGENT 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.

(b) Default by Agent; Termination for Cause by the City. If Agent defaults under this Agreement, the City may either terminate this Agreement or require Agent to cure the default as provided below. The City's right to terminate this Agreement for Agent's default is cumulative of all rights and remedies which exist now or in the future. Default by Agent occurs if:

(i) Agent fails to operate the Property as a residential multi-family rental facility;

(ii) there is a (i) filing of a voluntary petition in bankruptcy on Agent's behalf; (ii) adjudication of Agent as a bankrupt; (iii) filing of any petition or other pleading in any action seeking reorganization, rearrangement, adjustment, or composition of, or in respect of, Agent under the United States Bankruptcy Code or any other similar state or federal law dealing with creditors' rights generally, unless within ninety (90) days after such filing such proceeding is stayed or discharged; or (iv) appointment of a receiver, trustee or other similar official of Agent;

(iii) Agent fails to reasonably correct within a reasonable period any hazardous condition, caused by Agent after written notice of such condition was provided by the City. In the event Agent does not promptly remedy the hazardous condition, the City may exercise all of its rights under this Agreement, including the right of the City to perform Agent's obligations as set forth in this Agreement; or

(iv) Agent fails to keep, observe or perform any of the terms, covenants or agreements contained in this Agreement to be kept, performed or observed by Agent. If (i) such failure is not remedied by Agent within thirty (30) days after written notice from the Director of such default or (ii) in the case of any such default which cannot with due diligence and good faith be cured within thirty (30) days, Agent fails to commence to cure such default within thirty (30) days after written notice from the Director of such default or Agent fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith; it being intended that, in connection with any such default which is not susceptible of being cured with due diligence and in good faith within thirty (30) days, the time within which Agent is required to cure such default shall be extended for such additional period as may be necessary for the curing thereof with due diligence and in good faith.

If a default occurs, the Director shall deliver a written notice to Agent describing the default and the termination date. The Director, at his or her sole option, may extend the termination date to a later date. If the Director allows Agent to cure the default and Agent does so to the Director's satisfaction before the termination date, then the termination is ineffective. If the Director allows Agent to cure and Agent 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.

**Section 10.02 Remedies Cumulative.** Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.



**Section 10.03 Final Accounting and Closing Operations.** Within thirty (30) days after the termination or expiration of this Agreement, Agent shall transfer to the City the following:

- (a) Any outstanding balance remaining in the Operating Account;
- (b) All certificates of deposits, if any;
- (c) Any money belonging to the City held by Agent on the City's behalf;
- (d) All records, contracts, Leases, keys, receipts for deposits, unpaid bills, as authorized under the Operating Budget or otherwise in writing by the Director, and other papers, files, documents, books and records relating to the Property; and
- (e) All reports required under this Agreement hereof to the date of the termination.

Within three (3) days of the City's request, Agent shall assign to the City all contracts requested by the City concerning the Property, to the extent permitted by the contracts, and shall cooperate with the City in connection with the transition to a new manager, if necessary.

**Section 10.04 Indemnification.**

(a) AGENT AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY FOR THIS SECTION, 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:

(i) AGENT AND/OR ITS AGENTS', EMPLOYEES, OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS (i)-(iii), "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

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

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



(b) **AGENT'S FOREGOING INDEMNIFICATION OBLIGATION SHALL APPLY DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THIS AGREEMENT TERMINATES. AGENT'S FOREGOING INDEMNIFICATION IS LIMITED TO \$1,000,000 PER OCCURRENCE. AGENT SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.**

(c) **SUBCONTRACTOR'S INDEMNITY. AGENT 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.**

(d) **INDEMNIFICATION PROCEDURES.**

(i) Notice of Claims. If the City or Agent receives notice of any claim or circumstances which could give rise to an indemnified or non-indemnified loss, the receiving party shall give written notice to the other party within five (5) days. For an indemnified loss, the notice must include the following:

- (1) a description of the indemnification event in reasonable detail;
- (2) the basis on which indemnification may be due; and
- (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 Director does not provide this notice within the required 5-day period, it does not waive any right to indemnification except to the extent that Agent is prejudiced, suffers loss, or incurs expense because of the delay.

(ii) Defense of Claims.

(1) Assumption of Defense. Agent may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City Attorney. Agent 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 be unreasonably withheld. Within five (5) days after receiving written notice of the indemnification request, Agent must advise the Director as to whether or not it will defend the claim. If Agent does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

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

(3) Non-indemnified Claims. The party in receipt of a non-indemnified claim notice shall promptly give to the other party all pertinent information and reasonable assistance in the defense or other disposition thereof, at its sole expense.

(e) Survival of Indemnity Obligations. The indemnity obligations contained in this Agreement will survive the termination of this Agreement.

## **ARTICLE XI**

### **DAMAGE OR DESTRUCTION**

**Section 11.01 Occurrence of Casualty and Use of Insurance Proceeds.** If all or any part of the Property is materially damaged or destroyed, Agent will immediately notify the Director as to the nature and extent of such damage or destruction. Agent shall assign to the City all insurance proceeds received with respect to any material damage or destruction to the Property.

**Section 11.02 Repairs.** Promptly upon the City's receipt of any insurance proceeds relating to damage or destruction to the Property, Agent shall consult with the Director in determining the next appropriate steps regarding any repairs conducted on the Property.

**Section 11.03 Property at Agent's Risk.** Agent's supplies and all merchandise, effects, and other property of every kind, nature, and description belonging to Agent, which may be on or in the Property during the Lease Term shall be at the sole risk and hazard of Agent; and if the whole or any part thereof shall be destroyed or damaged for any reason, the City shall not be liable or responsible.

**Section 11.04 Destruction of Properties under Contract.** If the Property is destroyed or materially damaged to such extent that the Director determines that the Property is wholly unfit, in whole or a material part, for use by Agent in its operations, the City may terminate this Agreement.

## **ARTICLE XII**

### **EMINENT DOMAIN**

**Section 10.01 Efforts to Prevent Taking.** The City shall use reasonable efforts to cause all other governmental authorities and/or entities with the power of eminent domain to refrain from instituting any Condemnation Proceedings or exercising any other powers of eminent domain with respect to the Property, or any interest in any of the foregoing during the Lease Term.

**Section 10.02 Entire Taking.** If all or at least 75% of the square footage of the Property is Taken in Condemnation Proceedings, Agent shall have the right to terminate this



Agreement in accordance with Article X effective as of the date of such Taking, and from and after such date Agent and the City shall not have any further obligations under this Agreement with respect to the portion of the Property so Taken, provided the City has fully complied with its obligations under this Section.

**Section 10.03          Partial Taking.**

(a) If less than 75% of the square footage of the Property is Taken in Condemnation Proceedings, after the Taking, Agent and the City shall not have any further obligations under this Agreement with respect to the portion of the Property so Taken.

(b) If, following any partial Taking, Agent exercises any right of termination under this Agreement as to the Property, then Agent may vacate the Property and, after vacation, Agent and the City shall not have any other obligations under this Agreement with respect to the Property, provided the City has fully complied with its obligations under this Section.

(c) If Agent does not elect to vacate the Property upon any partial Taking thereof, then the Property shall be reduced by the portion Taken in the Condemnation Proceeding.

**Section 10.04          Temporary Taking.** A Taking shall be considered temporary if the Taking will only affect the Property for a period of three (3) months or less ("Temporary Taking"). If any portion of the Property is subject to a Temporary Taking, Agent and the City's obligations under this Agreement shall be abated for the affected portion of the Property for the duration of the Temporary Taking. Once the Temporary Taking has expired, Agent and the City's obligations under this Agreement will resume as to the affected portion of the Property and shall continue for the duration of the Term.

**Section 10.05          Condemnation Award.**

(a) At any time within one hundred eighty (180) days after a Taking, following which Agent vacates the Property or a portion thereof, the Director or Agent may terminate this Agreement by delivering a written termination notice to the other party specifying the effective date of such termination, in which event this Agreement shall terminate as to the Property or a portion thereof as of the date specified by the Director or Agent in such notice, and the entire condemnation award attributable to such Taking shall be paid to the City.

(b) In the event all or any portion of the Property is not terminated from the scope of this Agreement in connection with a Taking as provided above, the Condemnation Award shall be paid to the City. Should the Condemnation Award be deposited into the registry of the court, the City shall withdraw the money from the registry of the court with no objections from the Agent.

**Section 10.06          Survival.** The provisions contained in this Article shall survive the expiration or earlier termination of this Agreement, but only insofar as such provisions relate to



any Condemnation Proceedings or condemnation awards that arose prior to the expiration or termination of this Agreement.

## **ARTICLE XI**

### **ENVIRONMENTAL RESTRICTIONS**

**Section 11.01 Hazardous Material.** Neither the City nor Agent shall transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any Hazardous Material upon or about the Property, nor permit their employees, agents, and contractors to engage in such activities upon or about the Property. However, the foregoing provisions shall not prohibit the transportation to and from, and use, storage, maintenance and handling within, the Property of substances customarily used in owning, managing, repairing, leasing, or operating real estate similar to the Property; provided (i) such substances shall be used and maintained only in such quantities as are reasonably necessary and in accordance with applicable law and the manufacturers' instructions therefor and (ii) such substances may be disposed of, released or discharged at the Property if permitted by and in compliance with applicable laws, and shall be transported to and from the Property in compliance with all applicable laws.

**Section 11.02 Notification.** Each party shall promptly notify the other party upon the notifying party becoming aware of: (i) any enforcement, cleanup, or other regulatory action taken or threatened against either party by any governmental or regulatory authority with respect to the presence of any Hazardous Material on the Property, (ii) any demands or claims made or threatened by any party against the City or Agent relating to any loss or injury resulting from any Hazardous Material, (iii) any unlawful release, discharge or nonroutine, improper or unlawful disposal or transportation of any Hazardous Material on or from the Property, and (iv) any matters where the party is required by law to give a notice to any governmental or regulatory authority respecting any Hazardous Materials on the Property.

**Section 11.03 Clean up and Removal.** If any Hazardous Material is released, discharged or disposed of by Agent or its employees, agents or contractors, on or about the Property in violation of the foregoing provisions, Agent shall immediately, properly and in compliance with all applicable laws and ordinances, clean up and remove the Hazardous Material from the Property and any other affected property, at Agent's sole cost and expense. Such clean up and removal work shall be subject to the Director's prior written approval, and shall include, without limitation, any testing, investigation and/or preparation and implementation of any remedial action plan required by any governmental body having jurisdiction. If Agent shall fail to comply with the provisions of this Section within five (5) days after written notice by the Director, or such shorter time as may be required by law, the City may terminate this Agreement.

## ARTICLE XIV

### ASSIGNMENT; SUBLETTING; NON-DISTURBANCE

Except with regard to an assignment to a related entity to Agent for which Director approval is obtained, Agent shall not assign this Agreement, or sublet or assign any of the Property, in whole or in part, at any time.

## ARTICLE XV

### SMALL BUSINESS, MINORITY AND WOMEN BUSINESS ENTERPRISES; NON-DISCRIMINATION

**Section 15.01 Business Opportunity.** Agent 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. Agent shall make good faith efforts to award subcontracts or supply agreements in at least 25% of the value of this Agreement to MWBEs. Agent 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.

**Section 15.02 Non-Discrimination.** Agent shall not discriminate in its employment practices, service provision, or in any other manner in the management and/or operation of the Property or in the exercise of the rights and privileges granted by this Agreement because of sex, race, color, ethnicity, national origin, age, familial status, marital status, religion, disability, sexual orientation, genetic information, gender identity, pregnancy, ancestry, handicap, or religion.

**Section 15.03 Minority Hiring Encouragement.** Agent will encourage the hiring of minorities and women employees, and seek contracts with small, minority, and disadvantaged business enterprises.

## ARTICLE XVI

### AGENT'S REPRESENTATIONS AND WARRANTIES

Agent hereby represents and warrants as follows:

(a) Existence. Agent is registered in the State of Texas as a limited liability company.

(b) Authority. Agent has all requisite power and authority to operate its business, enter into this Agreement and consummate the transactions herein contemplated, and by proper action has duly authorized the execution and delivery of this Agreement and the consummation of the transactions herein contemplated.

(c) Binding Obligations. This Agreement is a valid and binding obligation of Agent and is enforceable against Agent in accordance with its terms.

(e) Consents. No permission, approval or consent by third parties or any other governmental authority is required in order for Agent to enter into this Agreement or perform the obligations of Agent hereunder, other than those consents which have been obtained.

(uu) Proceedings. There are no actions, suits or proceedings pending or, to the best knowledge of Agent, threatened or asserted against Agent which could reasonably be expected to affect or impair Agent's ability to enter into this Agreement or to perform its obligations hereunder, at law or in equity or before or by any governmental authority.

## ARTICLE XII

### NOTICES

Any notice or other communications required or permitted hereunder shall be sufficiently given if sent by electronic mail or United States certified or registered mail, postage prepaid, and addressed as follows. Notice shall be deemed to have been given as of the date emailed, or three (3) days from the date mailed:

If to City:                      City of Houston, Texas  
Housing and Community Development Department  
Attn.: Tom McCasland, Director  
c/o Rupa Sen, Real Estate Manager  
2100 Travis Street, 9th Floor  
Houston, Texas 77002  
Telephone: (832) 394-6217  
Email: [rupa.sen@houstontx.gov](mailto:rupa.sen@houstontx.gov)

With a copy to:                City of Houston Legal Department  
Attn.: City Attorney  
900 Bagby Street, 4th Floor  
Houston, Texas 77002  
Email: [ronald.lewis@houstontx.gov](mailto:ronald.lewis@houstontx.gov)

City of Houston Legal Department  
Attn.: Disaster Recovery Section  
900 Bagby Street, 3rd Floor  
Houston, Texas 77002  
Email: [Brnilda.Santiago@houstontx.gov](mailto:Brnilda.Santiago@houstontx.gov)



If to Agent: Mr. Kevin Wood  
Woodbaker Investment Holdings  
2450 Louisiana St., Suite 427  
Houston, Texas 77006  
Telephone: 832-444-9284  
E-mail: kevin@stagecoachequity.com

With a copy to: Kelsey W. Gray  
Telephone: 832-714-9491  
Email: kelseywalkergray@gmail.com

The above addresses may be changed by the appropriate party giving written notice of the change to the other party.

### **ARTICLE XIII**

#### **MISCELLANEOUS**

**Section 18.01 Inspection.** Agent shall permit the City and its agents, at all reasonable times and without interfering with the operation being conducted upon the Property, to enter into and upon the Property during normal business hours for the purpose of inspecting the same, provided that such entry and inspection by the City does not interfere with the quiet enjoyment of the Property by Agent or any Tenant.

**Section 18.02 Special Power of Attorney.** The City authorizes Agent as attorney-in-fact for the City to collect Rents and other funds due the City in Agent's name on the City's behalf, to appear on behalf of the City in proceedings related to tenancy if requested by the City, and to establish and make deposits into and withdrawals from the Operating Account in accordance with the terms of this Agreement.

**Section 18.03 Not a Property Interest; Amendments.** This Agreement is not intended to convey any interest in real property. This Agreement constitutes the entire agreement between Agent and the City, and no alteration, modification, or addition to this Agreement will be valid or enforceable unless expressed in writing and signed by the Director and Agent.

**Section 18.04 Headings.** All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provisions of this Agreement.

**Section 18.05 Waiver.**

(a) Limitations. The waiver of any of the terms and conditions of this Agreement on any occasion or occasions is not to be deemed as waiver of those terms and conditions on any future occasion. No waiver by the City of any breach of this Agreement is to be deemed a waiver of any other or subsequent breach.

(b) Written Documentation. No party shall have or be deemed to have waived any default under this Agreement by the other party unless such waiver is embodied in a document signed by the waiving party that describes specifically the default that is being waived. Further, no party shall be deemed to have waived its rights to pursue any remedies under this Agreement, unless such waiver is embodied in a document signed by such party that describes specifically any such remedy that is being waived.

(c) Governmental Immunity. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement shall constitute a waiver by the City of any provisions of any law relating to governmental immunity or limitations of liability of a governmental entity.

**Section 18.06 Interpretation.** Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partnership, joint venture or any association between the parties hereto, it being understood and agreed that none of the provisions contained herein or any acts of the parties in the performance of their respective obligations hereunder shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

**Section 18.07 Addenda.** The following addenda are attached to this Agreement and incorporated herein:

- (a) **Exhibit "A"** – GLO Agreement
- (b) **Exhibit "B"** – Federal Contract Requirements
- (c) **Exhibit "C"** – Operating Budget

In the event of conflicts or inconsistencies between this Agreement and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: 1) any and all applicable federal and state laws, rules, and regulations; 2) this Agreement; 3) GLO-approved guidelines; and 4) exhibits to this Agreement: **Exhibit "A"**, **Exhibit "B"**, and **Exhibit "C"**.

**Section 18.08 Enforceability.** If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.



**Section 18.09 Exercise of Remedies.** The City's remedies under this Agreement are cumulative, and the exercise of one remedy is not to be deemed an election of remedies or a foreclosure of the exercise of the City's other remedies. The failure of a party to seek redress for violation of this Agreement, or to insist upon the strict performance of this Agreement, shall not constitute a waiver of any covenant, agreement, provision or condition of this Agreement.

**Section 18.10 Successors and Assigns.** This Agreement inures to the benefit of and constitutes a binding obligation on the City and Agent and their respective successors and assigns; provided, however, that Agent may not assign this Agreement or any of its duties hereunder without the prior written consent of the City.

**Section 18.11 Federal Requirements.** The Parties acknowledge that the City may seek reimbursement from the U.S. Department of Housing and Urban Development ("HUD") for costs incurred under this Agreement. Agent shall comply with all Community Development Block Grant – Disaster Recovery ("CDBG-DR") program requirements outlined in **Exhibit "A"** and made a part hereof. Agent shall abide by the Federal requirements outlined in **Exhibit "B"** as may be applicable. Notwithstanding the previous sentence, the parties acknowledge that the Federal Government is not a party to this Agreement and is therefore not obligated to perform any actions under this Agreement. Agent shall comply with and shall perform services in compliance with all GLO/HUD requirements outlined in this Agreement and otherwise applicable to the services performed, any subsequent audit by the GLO, HUD, or any other reviewing agency, and reimbursement, if any, from the GLO, HUD, or any other federal agency for the costs incurred under this Agreement.

**Section 18.12 Flow-Through Provisions.**

(a) The City is a party to the GLO Agreement that contains the provisions set out in **Exhibit "A"** to this Agreement. Agent shall comply with the applicable terms set out in **Exhibit "A"** and any amendments thereto as if it were the City, except to the extent this Agreement specifically addresses a topic also covered in **Exhibit "A"**, in which case the terms of this Agreement shall apply. In the event Agent believes a term or condition of the GLO Agreement is inapplicable, Agent must seek clarification from the Director. The Director, in his sole but reasonable discretion, shall determine which terms are applicable to this Agreement and the services provided thereunder. If the parties fail to reach an agreement, Agent may submit a dispute in accordance with Section 18.13 of this Agreement. Agent may utilize the Section 18.13 dispute resolution process under this Section regardless of whether the dispute involves a question of law.

(b) In the event the City is a recipient or subrecipient of other grant, federal, or state funds or the City otherwise uses restricted funds to pay Agent for services or expenses provided under this Agreement, Agent shall agree, in writing, to be bound by the same contract or grant terms and conditions, laws, and regulations as the City, to the extent relevant to Agent's scope of work ("Additional Flow Down Provisions"). Agent's agreement to the Additional Flow Down Provisions must be in writing, signed by Agent and the Director and approved by the City Attorney. Such written agreement does not require amendment of this Agreement but shall be incorporated into this Agreement as if



fully referenced herein. If within a reasonable time after receipt of a written request from the Director (not to exceed fifteen (15) business days), the parties are unable to reach a written agreement on the relevant Additional Flow Down Provisions following good faith negotiations, the Director, at his or her sole discretion may (i) immediately suspend Agent from any further performance, or (ii) terminate this Agreement. Under no circumstances may Agent's service or construction contracts contain a percentage mark-up provision.

**Section 18.13            Dispute Resolution.** Except as may otherwise be provided by law, a dispute that (1) arises during the performance of this Agreement; and (2) is not resolved between the City and Agent must be handled as described below:

(a)     The property manager shall put his decision in writing and mail or otherwise furnish Agent with a copy. Agent may abide by the decision or may appeal the decision to the Director.

(b)     If Agent desires to appeal a decision of the property manager, Agent must submit a written appeal to the Director. Agent must file its written appeal within seven (7) days following receipt of the property manager's original decision. The Director shall provide Agent with a written response to the appeal within fourteen (14) days following its receipt. The decision of the Director is final.

**Section 18.14            Estoppel Certificates.** Agent and the City shall, at any time and from time to time upon not less than twenty (20) days prior written request by the other party, execute, acknowledge and deliver to the City and Agent, as the case may be, a statement certifying (a) the ownership interest of the City or Agent (as the case may be), (b) that this Agreement is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (c) the dates to which any charges required hereunder have been paid, and (d) that, to the best knowledge of the City or Agent, as the case may be, no default hereunder on the part of the other party exists (except that if any such default does exist, the certifying party shall specify such default).

**Section 18.15            Written Cancellation or Termination.** Upon request of Agent, the City will execute and deliver a written cancellation and termination of this Agreement upon the cancellation or termination of this Agreement.

**Section 18.16            Force Majeure.**

(a)     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 Agent. 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.

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

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

(ii) provides the other party with prompt written notice of the cause and its anticipated effect.

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

(d) 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.

(e) If the Force Majeure continues for more than fifteen (15) days from the date performance is affected, the Director may terminate this Agreement by giving seven (7) days' written notice to Agent. This termination is not a default or breach of this Agreement. **AGENT 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.**

**Section 18.17 City's Right to Perform Agent's Covenants.** If Agent fails to perform any of the covenants, obligations or agreements contained in this Agreement, and such failure shall continue without Agent curing or commencing to cure such failure within all applicable grace and/or notice and cure periods, the City may perform the same on behalf of, and at the expense of Agent, and the amount of any payment made or other reasonable expenses (including reasonable attorneys' fees) incurred by the City in curing such default, together with interest thereon at the rate of ten percent (10%) per annum, shall be payable by Agent to the City within thirty (30) days of request of payment. This provision is not in lieu of, but is in addition to, any other rights or remedies the City may have with respect to Agent's failure to perform.

**Section 18.18 Applicable Law and Venue.** 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.

**Section 18.19 Brokerage Commission.** The City and Agent represent and warrant one to the other that no broker commission, finder's fees or similar compensation is due to any party claiming by, through or under the City or Agent as applicable.

**Section 18.20 Survival.** Covenants in this Agreement providing for performance after termination of this Agreement shall survive the termination of this Agreement.



**Section 18.21      Entire Agreement.** This Agreement and the documents referenced in this Agreement constitute the entire agreement between the City and Agent regarding the subject matter thereof. There are no representations, promises or agreements of either the City or Agent, one to the other, regarding the subject matter of this Agreement not contained in this Agreement or the documents referenced in this Agreement.

**Section 18.22      Covenants Running with the Land.** The parties hereto covenant and agree that all of the conditions, covenants, agreements, rights, privileges, obligations, duties, specifications and recitals contained in this Agreement, except as otherwise expressly stated herein, shall during the Lease Term be construed as covenants running with title to the Property, and the leasehold estate hereunder, respectively, which shall extend to, inure to the benefit of and bind the City, Agent, and their respective permitted successors and assigns to the same extent as if such successors and assigns were named as original parties to this Agreement, such that this Agreement shall during the Lease Term bind the owner and holder of any fee or leasehold interest in or to the Property, or any portion thereof, and shall bind predecessors thereof except as otherwise expressly provided herein.

**Section 18.23      Non-Merger of Estates.** The interests of the City and Agent in the Property shall at all times be separate and apart and shall in no event be merged, notwithstanding the fact that this Agreement or the leasehold estate created hereby, or any interest therein, may be held directly or indirectly by or for the account of the same person who shall own the fee title to the Property or any portion thereof; and no such merger of estates shall occur by operation of law, or otherwise, unless and until all persons at the time having any interest in the Property or under this Agreement join in the execution and recordation of a written instrument effecting such merger of estates.

**Section 18.24      City Council Approvals and Appropriations.** This Agreement is subject to all applicable terms and provisions of the Charter and the Code of Ordinances of the City, and is subject to approval by the City Council, and shall not be effective until signed by the Mayor and countersigned by the City Controller. Notwithstanding anything contained in this Agreement to the contrary, this Agreement does not, nor shall it be construed to, foreclose or waive the application of all lawful requirements under the applicable laws of the State of Texas for (i) the appropriation and payment of funds by the City, or (ii) the approval or issuance of future agreements, permits or licenses by the City. Any provision of this Agreement which contemplates (x) the payment of money by the City, which payment would require the appropriation of funds over and above any sums appropriated prior to the Effective Date in connection with this Agreement or (y) any other future action, decision, agreement, waiver or approval which by its nature must be approved by the City Council, including without limitation, the issuance of permits or licenses, shall be subject to the approval of any subsequent City Council to which such matter is presented and to the appropriation by such City Council of the required funds, in the exercise of its legislative discretion.

**Section 18.25      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. Agent has reviewed Executive Order

1-56, as revised, and shall comply with its terms and conditions as they are set out on the Effective Date. Agent shall notify the City's Chief Procurement Officer, the City Attorney, and the Director of any information regarding possible violation of such Executive Order by the Agent or its subcontractors providing services or goods under this Agreement.

**Section 18.26**      **Anti-Boycott of Israel.** Agent certifies that Agent 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.

[Remainder of page intentionally left blank]



IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

[Remainder of page intentionally left blank]

**EXECUTED IN MULTIPLE ORIGINAL COUNTERPARTS**, each of which shall be an original, which together shall constitute but one and the same instrument, effective as of the date of countersignature by the City Controller of the City of Houston. 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.

**CITY OF HOUSTON, TEXAS**, a municipal corporation

ATTEST:

\_\_\_\_\_  
Pat Jefferson-Daniel  
Interim City Secretary

\_\_\_\_\_  
Sylvester Turner  
Mayor of the City of Houston

APPROVED AND RECOMMENDED:

COUNTERSIGNED

\_\_\_\_\_  
Tom McCasland  
Director, Housing and Community  
Development Department

\_\_\_\_\_  
Chris B. Brown  
City Controller

Countersignature Date:

\_\_\_\_\_  
APPROVED AS TO FORM:  
Assistant City Attorney  
File No. 0292000506001  
  
\_\_\_\_\_



AGENT

**APPIAN WAY OPPORTUNITY FUND, LLC,**  
a Texas limited liability company

By: \_\_\_\_\_  
Kevin Wood, President  
Tax I.D. No. \_\_\_\_\_

**LEASING AGREEMENT**

**EXHIBIT "A"**

**GLO AGREEMENT No. 19-147-001-B489 and Amendment No. 1 of said GLO  
Agreement**



**GLO CONTRACT NO. 19-147-001-B489  
COMMUNITY DEVELOPMENT BLOCK GRANT  
DISASTER RECOVERY PROGRAM PROJECTS  
NON-RESEARCH & DEVELOPMENT  
HARVEY ROUND 1 FUNDING**

The **GENERAL LAND OFFICE** ("the GLO"), a Texas state agency, and **CITY OF HOUSTON**, DUNS No. 832431985 ("Subrecipient"), each a "Party" and collectively "the Parties," enter into this Subrecipient agreement (the "Contract") under the U.S. Department of Housing and Urban Development Community Development Block Grant Disaster Recovery ("CDBG-DR") program to provide financial assistance with funds appropriated under the Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Public Law 115-56), enacted on September 8, 2017, to facilitate disaster recovery, restoration, and economic revitalization and to affirmatively further fair housing, in accordance with Executive Order 12892, in areas affected by the Texas Hurricane Harvey (DR-4332), which are Presidentially-declared major disaster areas under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121, *et seq.*).

Through CDBG-DR Federal Award Number B-17-DM-48-0001, awarded February 9, 2018, as amended August 14, 2018, and as may be further amended from time to time, the GLO administers grant funds as Community Development Block Grants (Catalog of Federal Domestic Assistance Number 14.228, "Community Development Block Grants/State's program and Non-Entitlement Grants in Hawaii"), as approved by the Texas Land Commissioner, and limited to use for facilitating recovery efforts in Presidentially-declared major disaster areas.

**ARTICLE I - GENERAL PROVISIONS**

**1.01 SCOPE OF PROJECT AND SUBAWARD**

**(a) Scope of Project**

The purpose of this Contract is to set forth the terms and conditions of Subrecipient's participation in the CDBG-DR program. In strict conformance with the terms and conditions of this Contract, Subrecipient shall perform, or cause to be performed, the Programs listed in **Attachment A**, as applicable, in the City of Houston (the "Project"). Subrecipient shall conduct the Project in strict accordance with this Contract, including all Contract Documents listed in **SECTION 1.02** below, and any Amendments, Revisions, or Technical Guidance Letters issued by the GLO. The aggregate use of CDBG-DR funds shall benefit low- and moderate-income families in a manner that ensures that at least 70 percent of the Subaward



is expended for Activities that benefit such persons, unless another percentage is permitted by HUD in a published waiver as specified in the Federal Registers.

**(b) Subaward**

Subrecipient submitted a Grant Application under the CDBG-DR program. The GLO enters into this Contract based on Subrecipient's approved Grant Application.

Subject to the terms and conditions of this Contract and Subrecipient's approved Grant Application, the GLO shall issue a subaward to Subrecipient in the amount of **\$1,175,954,338.00**, payable as reimbursement of Subrecipient's allowable expenses, to be used in strict conformance with the terms of this Contract, the Program Budgets listed in **Attachment A**, and the **Performance Statements** for the Programs, attached hereto and incorporated herein for all purposes.

The GLO, in its sole discretion, may reimburse Subrecipient for allowable Project costs incurred from August 25, 2017 until the Effective Date of this Contract, in accordance with federal law, but the GLO is not liable to Subrecipient for any costs incurred prior to August 25, 2017 or after the expiration or termination of this Contract.

All funds obtained by Subrecipient from the GLO and utilized on Subrecipient's CDBG-DR Activities are subject to compliance with all Federal and State regulations governing this Contract.

**1.02 CONTRACT DOCUMENTS**

This Contract and the following Attachments, attached hereto and incorporated herein in their entirety for all purposes, shall govern this Contract:

**ATTACHMENT A:** Program Budgets

**ATTACHMENT B:** Federal Assurances and Certifications

**ATTACHMENT C:** General Affirmations

**ATTACHMENT D:** Nonexclusive List of Applicable Laws, Rules, and Regulations

**ATTACHMENT E:** Special Conditions

**ATTACHMENT F:** GLO Information Security Appendix

**ATTACHMENT G:** Program Completion Report

**PERFORMANCE STATEMENT 1:** Buyout Program

**PERFORMANCE STATEMENT 2:** Economic Revitalization Program

**PERFORMANCE STATEMENT 3:** Homebuyer Assistance Program

**PERFORMANCE STATEMENT 4:** Homeowner Assistance Program

**PERFORMANCE STATEMENT 5:** Housing Administration Program and Planning Program

**PERFORMANCE STATEMENT 6:** Multifamily Rental Program

**PERFORMANCE STATEMENT 7:** Public Services Program

**PERFORMANCE STATEMENT 8:** Single Family Development Program

**PERFORMANCE STATEMENT 9:** Small Rental Program

### 1.03 GUIDANCE DOCUMENTS

Subrecipient is deemed to have read and understood, and shall abide by, all guidance documents applicable to the CDBG-DR program, including, without limitation:

- (1) 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- (2) The Federal Registers;
- (3) The State of Texas Plan for Disaster Recovery: Hurricane Harvey – Round 1, as amended, found at <http://recovery.texas.gov/hud-requirements-reports/hurricane-harvey/index.html>; and
- (4) Federal Register publications and other relevant guidance documents posted at: <http://recovery.texas.gov/hud-requirements-reports/hurricane-harvey/index.html>.

### 1.04 DEFINITIONS

“Act” means Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. § 5301, *et seq.*).

“Activity” or “Activities” means a defined class of works or services eligible to be accomplished using CDBG-DR funds. Activities are specified in a Subrecipient Performance Statement.

“Administrative and Audit Regulations” means all applicable statutes, regulations, and other laws governing administration or audit of this Contract, including Title 2, Part 200, Code of Federal Regulations and Chapters 321 and 2155 of the Texas Government Code.

“Amendment” means a written agreement, signed by the Parties hereto, which documents alterations to the Contract other than those permitted by Technical Guidance Letters or Revisions, as herein defined.

“Application” or “Grant Application” means the information Subrecipient provided to the GLO, which is the basis for the award of funding under this Contract.

“Benchmark” means the reimbursement milestones identified in a Performance Statement required for release of Administrative and Project Delivery funding throughout the life of the Contract.

“Budget” means the budget for the Programs and Activities funded by the Contract, as specified in **Attachment A** and the **Performance Statements**, respectively.

“C.F.R.” means the United States Code of Federal Regulations.

“CDBG-DR” means the U.S. Department of Housing and Urban Development’s Community Development Block Grant Disaster Recovery program.

“Construction Documents” means the engineering specifications, construction plans, and/or architectural plans for the construction of improvements funded under the Contract.

“Contract” means this entire document, along with any Performance Statement or Attachments, both physical and incorporated by reference; and any Amendments, Revisions, or Technical Guidance Letters the GLO may issue, to be incorporated by reference herein for all purposes as they are issued and provided to Subrecipient, if any.



“Contract Documents” means the documents listed in **SECTION 1.02**.

“Equipment” means tangible personal property with a useful life of more than one (1) year and an acquisition cost of Five Thousand Dollars (\$5,000.00) or more per unit, as further defined at 2 CFR § 200.313.

“Event of Default” means the occurrence of any of the events set forth in **SECTION 3.03** herein.

“Federal Assurances” means Standard Form 424B (non-construction projects) or Standard Form 424D (construction projects), as applicable, in **Attachment B**, attached hereto and incorporated herein for all purposes.

“Federal Certifications” means the “Certification Regarding Lobbying – Compliant with Appendix A to 24 C.F.R. Part 87” and Standard Form LLL, Disclosure of Lobbying Activities, also in **Attachment B**, attached hereto and incorporated herein for all purposes.

“Federal Register(s)” means the official journal of the federal government of the United States that contains government agency rules, proposed rules, and public notices including U.S. Department of Housing and Urban Development Federal Register Docket Nos. FR-6066-N-01 and FR-6109-N-01 and any other publication affecting Hurricane Harvey – Round 1 CDBG-DR funding allocations.

“Final Inspection Report” means the document submitted by a housing inspector to a Subrecipient under a CDBG-DR Housing contract, indicating the completed construction of one Housing Unit (as defined herein).

“Fiscal Year” means the period beginning July 1 and ending June 30 each year, which is the annual accounting period for the City of Houston.

“GAAP” means “generally accepted accounting principles.”

“GASB” means accounting principles as defined by the Governmental Accounting Standards Board.

“General Affirmations” means the affirmations in **Attachment C**, which Subrecipient certifies by signing this Contract.

“GLO” means the Texas General Land Office, its officers, employees, and designees.

“Housing” refers to a project involving home repair, home reconstruction, new home construction, down payment assistance, and buyout and acquisition, including housing for single-family and multi-family rental units under a CDBG-DR contract.

“Housing Unit” means one single-family dwelling or one unit in a multi-family residential complex.

“HUD” means the United States Department of Housing and Urban Development.

“Minimum Property Standards” or “MPS” means the Minimum Property Standards (MPS) established in HUD Handbook 4910.1, as amended or superseded. MPS, as read in the context of this Contract, encompasses housing quality standards established by HUD to provide “decent, safe and sanitary” housing.

“Performance Statement” means a statement of work for each Program listed in **Attachment A**, which includes specific Benchmarks and Activities required under the



Program. The Performance Statements for this Contract are listed in Section 1.02 as **Performance Statement 1, Performance Statement 2, Performance Statement 3, Performance Statement 4, Performance Statement 5, Performance Statement 6, Performance Statement 7, Performance Statement 8, and Performance Statement 9** and are substantially the forms attached hereto and incorporated herein.

**"Program"** means each Community Development Block Grant Disaster Recovery program administered by the City of Houston and listed in **Attachment A** (collectively, the "Programs").

**"Program Completion Report"** means a report created by the GLO and included in **Attachment G**, containing an as-built accounting of all Programs completed under a CDBG-DR program, and all information required for final acceptance of deliverables and Contract closeout.

**"Program Guidelines"** means, collectively, the individual sets of guidelines adopted by Subrecipient and approved by the GLO governing the implementation of each Program under this Contract, as applicable.

**"Project"** means the work to be performed under this Contract, as described in Section 1.01(a), above and including all Programs listed in **Attachment A** and further described in the **Performance Statements**.

**"Project Manager"** means a representative of the GLO Community Development and Revitalization ("CDR") Program designated to oversee the Project.

**"Public Information Act" or "PIA"** means Chapter 552 of the Texas Government Code.

**"Revision"** means the GLO's written approval of changes to Benchmarks, movement of funds among budget categories, and other Contract adjustments the Subrecipient's Director of Housing and Community Development and the GLO may approve without a formal Amendment.

**"Setup"** means documentation, submitted by a Subrecipient, necessary for the GLO to determine that housing sites meet minimum eligibility criteria, resulting in approval for the Subrecipient to move forward with the projects.

**"Subrecipient"** means the City of Houston, a recipient of federal CDBG-DR funds through the GLO as the pass-through funding agency. Subrecipient may also be referred to as "Provider" herein.

**"Technical Guidance Letter" or "TGL"** means an instruction, clarification, or interpretation of the requirements of this Contract, issued by the GLO and provided to Subrecipient, applicable to specific subject matter pertaining to this Contract, and to which the addressed Program participants shall be subject as of a specific date.

**"U.S.C."** means the United States Code.

#### **1.05 INTERPRETIVE PROVISIONS**

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms;

- (b) The words "hereof," "herein," "hereunder," and similar words refer to this Contract as a whole and not to any particular provision, section, attachment, work order, or schedule of this Contract, unless otherwise specified;
- (c) The term "including" is not limiting, and means "including, without limitation" and, unless otherwise expressly provided in this Contract,
- (d) References to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications thereto, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract:
- (e) References to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation, as may be amended from time to time;
- (f) The captions and headings of this Contract are for convenience of reference only and shall not affect the interpretation of this Contract;
- (g) All Attachments within this Contract, including those incorporated by reference, and any Amendments, are considered part of the terms of this Contract;
- (h) This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters, which will be clearly identified in the Contract. All such limitations, regulations, and policies are cumulative and each shall be performed in accordance with its terms;
- (i) Unless otherwise expressly provided, reference to any action of the GLO or by the GLO by way of consent, approval, or waiver shall be deemed modified by the phrase "in the sole discretion of the GLO";  
Notwithstanding the preceding sentence, any approval, consent, or waiver required by, or requested of, the GLO shall not be unreasonably withheld or delayed;
- (j) All due dates and/or deadlines referenced in this Contract that occur on a weekend or holiday shall be considered as if occurring on the next business day of Subrecipient;
- (k) All time periods in this Contract shall commence on the day after the date on which the applicable event occurred, report is submitted, or request is received;
- (l) Time is of the essence in this Contract;
- (m) In the event of conflicts or inconsistencies between this contract and its attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: 1) any and all applicable federal and state laws, rules, and regulations; 2) the Contract; 3) GLO-approved Program guidelines; 4) **Performance Statements**; and 5) Attachments to the Contract: **Attachment A, Attachment B, Attachment E, Attachment C, Attachment D, Attachment F, and Attachment G.**



## **ARTICLE II – REIMBURSEMENT, ADVANCE PAYMENT, BUDGET VARIANCE, AND INCOME**

### **2.01 REIMBURSEMENT REQUESTS**

Each invoice submitted by Subrecipient shall be supported by actual receipts, cancelled checks, and/or such other documentation that, in the judgment of the GLO, allows for full substantiation of the costs incurred. The GLO shall issue and provide to Subrecipient a Technical Guidance Letter containing the GLO-established invoice submission procedures required under this Contract. Prior to the issuance of the Technical Guidance Letter, the GLO will provide Subrecipient instructions for interim invoicing processes.

**With the exception of GLO-approved allowable Project costs incurred after August 25, 2017 and before the Effective Date of this Contract, the GLO must acknowledge the successful completion by Subrecipient of a specific Benchmark, which will require the submission by Subrecipient and approval by the GLO of invoices related to said Benchmark, including invoices for expenses incurred by any subcontractor, before Subrecipient may access additional Administrative and Project Delivery funds for reimbursement as outlined in the Performance Statements.**

### **2.02 TIMELY EXPENDITURES**

In accordance with the Federal Register and to ensure timely expenditure of grant funds, Subrecipient shall submit reimbursement requests under this contract, at a minimum, quarterly.

Subrecipient shall make timely payments to its subcontractors in accordance with Chapter 2251, Texas Government Code.

Subrecipient shall submit final reimbursement requests to the GLO no later than ninety (90) days after the Contract expires or is terminated. The GLO, in its sole discretion, may deny payment and deobligate remaining funds from the Contract ninety (90) days after expiration or termination of the Contract. The GLO's ability to deobligate funds under this Section 2.02 notwithstanding, the GLO shall pay all eligible reimbursement requests.

### **2.03 VARIANCE**

Amendments to decrease or increase the subaward amount or to add or delete a Program may be made only by written agreement of the Parties, under the formal Amendment process described in Section 8.15, below. Upon completion of any Program, the GLO shall formally close out the Program by issuing a close-out letter to Subrecipient. The GLO may, in its sole discretion and in conformance with federal law, approve other adjustments required during Project performance through a Revision or Technical Guidance Letter. Such approvals must be in writing, and may be delivered by regular mail, electronic mail, or facsimile transmission.

**SUBRECIPIENT SHALL SUBMIT FINAL BUDGETS AND ACTUAL EXPENDITURES AS PART OF THE PROGRAM COMPLETION REPORTS TO THE GLO NO LATER THAN SIXTY (60) DAYS AFTER THE CONTRACT TERMINATES OR EXPIRES OR AT THE CONCLUSION OF ALL CONTRACT ACTIVITIES, WHICHEVER OCCURS FIRST. THE PROGRAM COMPLETION**



**REPORTS SHALL BE IN A FORMAT PRESCRIBED BY THE GLO AND SHALL CONFIRM COMPLETION OF ALL ACTIVITIES PERFORMED UNDER THIS CONTRACT.**

**2.04 PROGRAM INCOME**

In accordance with 2 C.F.R. § 200.307, Subrecipient shall maintain records of the receipt and accrual of all Program Income, as Program Income is defined at 2 C.F.R. § 200.80. Subrecipient shall report Program Income to the GLO in accordance with **ARTICLE 4** of this Contract. Any GLO-authorized use of Program Income by Subrecipient shall be subject to GLO or HUD restrictions.

**ARTICLE III - DURATION, EXTENSION, AND TERMINATION OF CONTRACT**

**3.01 DURATION OF CONTRACT AND EXTENSION OF TERM**

This Contract shall become effective on the date signed by the last Party ("Effective Date") and shall continue until August 16, 2024 or the Project has been fully completed and closed out, whichever date is earlier ("Contract Period"). **ANY REQUEST FOR EXTENSION MUST BE RECEIVED BY THE GLO AT LEAST SIXTY (60) DAYS BEFORE THE ORIGINAL TERMINATION DATE OF THIS CONTRACT AND, IF APPROVED, SUCH EXTENSION SHALL BE BY FORMAL WRITTEN AMENDMENT.**

**Subrecipient must meet all Program Benchmarks stated in the Performance Statements. Subrecipient's failure to meet any Benchmark may result in suspension of payment or termination under SECTION 3.02, 3.03 or 3.04 below.**

**3.02 EARLY TERMINATION**

In the event the State of Texas or HUD eliminates funding under this Contract or the CDBG-DR Program is assigned to another state agency, the GLO may terminate this Contract by giving written notice specifying a termination date at least thirty (30) days after the date of the notice. Upon receipt of such notice, Subrecipient shall cease work, terminate any subcontracts, and incur no further expense related to this Contract. **Such early termination shall be subject to the equitable settlement of the respective interests of the Parties, accrued up to the date of termination.**

**3.03 EVENTS OF DEFAULT**

Each of the following events shall constitute an Event of Default under this Contract: (i) Subrecipient fails to comply with any term, covenant, or provision contained in this Contract; (ii) Subrecipient makes a general assignment for the benefit of creditors or takes any similar action for the protection or benefit of creditors; (iii) Subrecipient makes a materially incorrect representation or warranty in a Performance Statement, a reimbursement request for payment, or any report submitted to the GLO under the Contract; or (iv) notwithstanding the GLO's option to terminate the Contract early under Section 3.02, the GLO fails to comply with any term, covenant, or provision contained in this Contract. Prior to a determination of an Event of Default, the Parties shall allow a thirty (30) day period to cure any deficiency or potential cause of an Event of Default. The Parties may extend the time allowed to cure any deficiency or potential cause of an Event

of Default. The Parties shall not arbitrarily withhold approval of an extension of the time allowed to cure a deficiency or potential cause of an Event of Default. In no event shall the amount of time allowed to cure a deficiency or potential cause of an Event of Default extend beyond the Contract Period.

### **3.04 REMEDIES; NO WAIVER**

Upon the occurrence of any Event of Default, the Parties may avail themselves of any equitable or legal remedy available to them, including without limitation, the withholding of payment, disallowing all or part of noncompliant Activities, or suspending or terminating the Contract.

The Parties' rights or remedies under this Contract are not intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this Contract, or hereafter legally existing, upon the occurrence of an Event of Default. The failure of either Party to insist upon the strict observance or performance of any of the provisions of this Contract, or to exercise any right or remedy provided in this Contract, shall not impair, waiver, or relinquish any such right or remedy with respect to another Event of Default.

## **ARTICLE IV - CONTRACT ADMINISTRATION**

### **4.01 SUBMISSIONS – GENERALLY**

Except for legal notices that must be sent by specific instructions pursuant to **SECTION 8.10** of the Contract and all other reports and documentation the GLO requires, any report, form, or request required to be submitted to the GLO under this Contract shall be sent in the format prescribed by the GLO.

**If the Subrecipient fails to timely submit documentation to the GLO in the time and manner required by the Contract, the GLO may, in its sole discretion, withhold any payments pending Subrecipient's correction of the deficiency.**

#### **(a) PROGRAM GUIDELINES**

No later than the close of business sixty (60) days subsequent to the Effective Date of this Contract, Subrecipient must submit Program Guidelines to the GLO for approval.

#### **(b) FORMS**

Subrecipient must execute the forms included in **Attachment B** and certifies by the execution of this Contract to all affirmations in **Attachment C**, confirming compliance with required state and federal laws applicable to the Contract.

- (i)** General Affirmations are found in **Attachment C** and Subrecipient certifies by the execution of this Contract to all statements therein.
- (ii)** The Federal Assurances for Construction Programs (Standard Form 424D), as applicable to the Project, is found at Page 1 of **Attachment B** and must be executed by Subrecipient.



- (iii) The "Certification Regarding Lobbying – Compliant with Appendix A to 24 C.F.R. Part 87" is found at Page 3 of **Attachment B** and must be executed by Subrecipient.
- (iv) If any funds granted under this Contract have been used for lobbying purposes, Subrecipient must complete and execute Standard Form LLL, Disclosure of Lobbying Activities, found at Page 4 of **Attachment B**.

#### **4.02 MONTHLY ACTIVITY STATUS REPORTS**

Subrecipient must provide monthly Activity status reporting, in a format to be specified by the GLO for each Program identified in **Attachment A**, on or before on the fifteenth day of the month following the month in which the reported Activities were performed for the duration of the Contract. Any licenses or permits required for the work identified in the Performance Statements shall be included as a part of the monthly Activity status reports for the period during which they are obtained, pursuant to Article 8.01 herein.

### **ARTICLE V - FEDERAL AND STATE FUNDING, RECAPTURE OF FUNDS, AND OVERPAYMENT**

#### **5.01 FEDERAL FUNDING**

- (a) Funding for this Contract is appropriated under the Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Public Law 115-56), enacted on September 8, 2017, to facilitate disaster recovery, restoration, economic revitalization, and to affirmatively further fair housing in accordance with Executive Order 12892, in areas affected by the Texas Hurricane Harvey (DR-4332), which are Presidentially-declared major disaster areas under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121, *et seq.*). The fulfillment of this Contract is based on those funds being made available to the GLO as the lead administrative state agency. All expenditures under this Contract must be made in accordance with this Contract, the rules and regulations promulgated under the CDBG-DR Program and any other applicable laws. **Funds disbursed under each Activity may be subject to recapture and repayment for non-compliance.**
- (b) To participate in the CDBG-DR program, Subrecipient must have a data universal numbering system (DUNS) number, and a Commercial And Government Entity (CAGE) Code.
- (c) Subrecipient must report its DUNS number and CAGE Code to the GLO for use in various reporting documents. A DUNS number and CAGE Code may be obtained by visiting the Central Contractor Registration website at:

<https://www.sam.gov>

Assistance with this web site is available by calling 866-606-8220.

#### **5.02 STATE FUNDING**

- (a) This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or the GLO in violation of Article III, Section 49, of the Texas Constitution.



In compliance with Article VIII, Section 6 of the Texas Constitution, all obligations of the GLO hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the GLO may terminate this Contract. In that event, the Parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests, accrued up to the date of termination.

- (b) Any claim by Subrecipient for damages under this Contract may not exceed the amount due and owing Subrecipient under the Contract or the amount of funds appropriated for payment, but not yet paid to Subrecipient, under the annual budget in effect at the time of the breach. Nothing in this provision shall be construed as a waiver of sovereign immunity.

### **5.03 RECAPTURE OF FUNDS**

**SUBRECIPIENT SHALL CARRY OUT THE ACTIVITIES UNDER THE CONTRACT IN A MANNER THAT COMPLIES WITH THE TERMS AND CONDITIONS OF THE CONTRACT AND ALL APPLICABLE LAWS. THE GLO MAY RECAPTURE AND BE REIMBURSED BY SUBRECIPIENT FOR ANY PAYMENTS MADE BY THE GLO (I) THAT EXCEED THE MAXIMUM ALLOWABLE HUD RATE; (II) THAT ARE NOT ALLOWED UNDER APPLICABLE LAWS, RULES, AND REGULATIONS; OR (III) THAT ARE OTHERWISE INCONSISTENT WITH THIS CONTRACT, INCLUDING ANY UNAPPROVED EXPENDITURES. THIS RECAPTURE PROVISION APPLIES TO ANY FUNDS EXPENDED FOR THE PROJECT OR ANY PROGRAM OR ACTIVITY THAT DOES NOT MEET A CDBG-DR PROGRAM NATIONAL OBJECTIVE AS SPECIFIED IN EACH PERFORMANCE STATEMENT OR THAT IS NOT OTHERWISE ELIGIBLE UNDER CDBG-DR REGULATIONS.**

### **5.04 OVERPAYMENT AND DISALLOWED COSTS**

Subrecipient shall be liable to the GLO for any costs disallowed pursuant to financial and/or compliance audit(s) of funds received under this Contract. Subrecipient shall reimburse disallowed costs from funds which were not provided or otherwise made available to Subrecipient under this Contract.

### **5.05 FINAL BENCHMARKS**

To ensure all programmatic requirements are met for each Program, the GLO shall only release the final five percent (5%) of each Program Budget upon submittal of completion and acceptance by the GLO of all Activities and Benchmarks identified in each Program's Performance Statement. The GLO shall disburse each Program's retained funds within thirty (30) days following approval of each Program Completion Report and all related closeout documentation necessary to determine that Subrecipient has completed all Activities in accordance with the terms and requirements of the Performance Statement, the Contract Documents, and all applicable laws, rules, and regulations.

## **ARTICLE VI - INTELLECTUAL PROPERTY**

### **6.01 OWNERSHIP AND USE**

- (a) Except for City Materials (as defined below in 6.01(c)), and except for any third-party proprietary intellectual property or information for which the City does not have a legal ownership right, the Parties shall jointly own all right, title, and interest in and to all reports, or other material, data, drawings, computer programs, and codes created under this Contract by either Party, and/or any copyright or other intellectual property rights, and any material or information developed and/or required to be delivered under this Contract, with each Party having the right to use, reproduce, or publish any or all of such information and other materials without obtaining permission from the other Party and without expense or charge. For any City or third-party proprietary intellectual property or information for which the City has a license to use or access, the City shall provide the GLO at least one (1) user license.
- (b) Except for City Materials, and except for any third-party proprietary intellectual property or information for which the City and/or the GLO do not have a legal ownership right, Subrecipient grants the GLO and HUD, and GLO and HUD grants to Subrecipient, a royalty free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for governmental purposes, all reports, or other material, data, drawings, computer programs, and codes created under this Contract by either Party, and/or any copyright or other intellectual property rights, and any material or information developed and/or required to be delivered under this Contract by either Party.
- (c) "City Materials" means all works of authorship, materials, information, and other intellectual property created prior to the performance of any City obligation under this Contract, plus any modifications or enhancements thereto and derivative works based thereon, unless any such modifications, enhancements, or derivative works were funded using CDBG-DR funds. For clarity, if modifications, enhancements, or derivative works were funded using CDBG-DR funds, then only the applicable modification, enhancements, or derivative works are not included in the definition of City Materials.

### **6.02 NON-ENDORSEMENT BY STATE AND THE UNITED STATES**

Subrecipient shall not publicize or otherwise circulate promotional material (such as advertisements, sales brochures, press releases, speeches, still or motion pictures, articles, manuscripts, or other publications) that states or implies the GLO, State of Texas, U.S. Government, or any government employee endorses a product, service, or position the Subrecipient represents. Subrecipient may not state or imply that the GLO, the State of Texas, or the U.S. Government approves of Subrecipient's work products or considers Subrecipient's work product to be superior to other products or services.



### 6.03 PUBLICATION DISCLAIMER REQUIRED

Subrecipient shall include a disclaimer on all public information releases issued pursuant to this Contract stating that the funds for this Project or any Program are provided by the City of Houston and the Texas General Land Office through HUD's CDBG Program.

## ARTICLE VII - RECORDS, AUDIT, AND RETENTION

### 7.01 BOOKS AND RECORDS

Subrecipient shall keep and maintain, under GAAP or GASB, as applicable, full, true, and complete records sufficient to allow the GLO, the Texas State Auditor's Office, the United States Government, and/or their authorized representatives to determine Subrecipient's compliance with this Contract and all applicable laws, rules, and regulations, including the applicable laws and regulations provided in Attachment D.

### 7.02 INSPECTION AND AUDIT

- (a) All records related to this Contract, including records of Subrecipient and its Subcontractors, shall be subject to the Administrative and Audit Regulations. Accordingly, such records and work product shall be subject, at any time, to inspection, examination, audit, and copying at the Subrecipient's primary location or any location where such records and work product may be found, with or without notice from the GLO or other government entity with necessary legal authority. Subrecipient shall cooperate fully with any federal or state entity in the conduct of inspection, examination, audit, and copying, including providing all information requested. Subrecipient will ensure that this clause concerning federal and state entities' authority to inspect, examine, audit, and copy records and work product, and the requirement to fully cooperate with the federal and state entities, is included in any subcontract it awards.
- (b) The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. Acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. **The Office of the Comptroller General of the United States, the Government Accountability Office, the Office of Inspector General, or any authorized representative of the U.S. Government shall also have this right of inspection.** Subrecipient shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Subrecipient and the requirement to cooperate is included in any subcontract it awards.



- (c) Subrecipient will be deemed to have read and know of all applicable federal, state, and local laws, regulations, and rules pertaining to the Project, including those identified in **Attachment D**, governing audit requirements.

### **7.03 SUBRECIPIENT SELF-AUDIT AND TARGETED AUDITS**

#### **(a) Subrecipient Self-Audit**

Upon the GLO's or HUD's approval, Subrecipient may conduct an annual financial and compliance audit of funds received and performance rendered under this Contract. Subrecipient may use funds budgeted under this Contract to pay for that portion of the cost of such audit services properly allocable to the Activities funded under this Contract, provided that the GLO shall not pay the cost of such audit services until the GLO has received Subrecipient's satisfactory audit report and invoice, as determined by the GLO. The invoice submitted for reimbursement must clearly show the percentage of cost allocable to the Activities funded under this Contract relative to the total cost of the audit services. Therefore, Subrecipient shall submit an invoice showing the total cost of the audit and the corresponding prorated charge per funding source. If applicable, Subrecipient shall submit an explanation with the reimbursement request, explaining why the percentage of audit fees exceeds the prorated amount allowable.

#### **(b) Targeted Audits & Monitoring Visits**

The GLO may at any time perform, or instruct the performance of, an annual program and/or fiscal audit, or conduct a special or targeted audit of any aspect of the Subrecipient's operation, using an auditor of the GLO's choice. Subrecipient shall maintain financial and other records prescribed by the GLO or by applicable federal or state laws, rules, and regulations.

### **7.04 PERIOD OF RETENTION**

All records relevant to this Contract shall be retained for a period of three (3) years subsequent to the final closeout of the overall Project, in accordance with federal regulations set forth at 2 CFR § 200.333. **The GLO will notify all CDBG-DR program participants of the date upon which local records may be destroyed.**

## **ARTICLE VIII - MISCELLANEOUS PROVISIONS**

### **8.01 LEGAL OBLIGATIONS**

Subrecipient shall procure and maintain for the duration of this Contract any license, authorization, insurance, waiver, permit, qualification, or certification required by federal, state, county, or city statute, ordinance, law, or regulation to be held by Subrecipient to provide the goods or services required by this Contract. Subrecipient shall pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Subrecipient shall pay any such government obligations not paid by its subcontractors during performance of this Contract. **Subrecipient shall include copies of such licenses and permits as a part of the monthly Activity status reports for the period during which they are obtained.**

## 8.02 INDEMNITY

To the extent permitted under the law, except for damages directly or proximately caused by the gross negligence of the GLO, Subrecipient shall indemnify and hold harmless the State of Texas, the GLO, and the officers, representatives, agents, and employees of the State of Texas and the GLO from any losses, claims, suits, actions, damages, or liability (including all costs and expenses of defending against all of the aforementioned) arising in connection with:

- (a) This Contract;
- (b) Any negligence, act, omission, or misconduct in the performance of the services referenced herein; or
- (c) Any claims or amounts arising or recoverable under federal or state workers' compensation laws, the Texas Tort Claims Act, or any other such laws.

Subrecipient shall be responsible for the safety and well-being of its employees, customers, and invitees. These requirements shall survive the term of this Contract until all claims have been settled or resolved and suitable evidence to that effect has been furnished to the GLO. The provisions of this Section shall survive termination of this Contract. Subrecipient has not appropriated any money for payment under this Contract and nothing in this provision requires that funds be assessed or collected or that a sinking fund be created for any Claims arising under this Contract.

## 8.03 INSURANCE AND BOND REQUIREMENTS

- (a) Unless Subrecipient is a self-insured governmental entity pursuant to Chapter 2259 of the Texas Government Code to self-insure, Subrecipient shall carry insurance for the duration of this Contract in types and amounts necessary and appropriate for the Project.
- (b) Subrecipient shall require all contractors, subcontractors, vendors, service providers, or any other person or entity performing work described in **Attachment A** to carry insurance for the duration of the Project in the types and amounts customarily carried by a person or entity providing such goods or services. Subrecipient shall require any person or entity required to obtain insurance under this Section to complete and file the declaration pages from the insurance policies with Subrecipient whenever a previously identified policy period expires during the term of Subrecipient's contract with the person or entity, as proof of continuing coverage. Subrecipient's contract with any such person or entity shall clearly state that acceptance of the insurance policy declaration pages by the Subrecipient shall not relieve or decrease the liability of the person or entity. **Persons or entities shall be required to update all expired policies before Subrecipient's acceptance of an invoice for monthly payment from such parties.**
- (c) Subrecipient shall require performance and payment bonds to the extent they are required under Chapter 2253 of the Texas Government Code.



- (d) Subrecipient shall require, on all construction projects, that any person or entity required to provide Federal Construction Assurances shall complete form SF-424D, entitled "Assurances – Construction Programs," and Subrecipient shall maintain such documentation.

#### **8.04 ASSIGNMENT AND SUBCONTRACTS**

Subrecipient shall not assign, transfer, or delegate any rights, obligations, or duties under this Contract without the GLO's prior written consent. Notwithstanding this provision, Subrecipient may subcontract some or all of the services to be performed under this Contract. In any subcontracts, Subrecipient shall legally bind the subcontractor to perform and make such subcontractor subject to all the duties, requirements, and obligations of Subrecipient as specified in this Contract. Nothing in this Contract shall be construed to relieve Subrecipient of the responsibility for ensuring that the goods delivered, and/or the services rendered by Subrecipient and/or any of its subcontractors, comply with all the terms and provisions of this Contract.

For all construction contracts or subcontracts to which Federal Labor Standards requirements apply, Subrecipient shall submit to the GLO all labor related documentation required to ensure compliance. Subrecipient shall retain five percent (5%) of the payment due under each of Subrecipient's construction or rehabilitation subcontracts until the GLO determines that the Federal Labor Standards requirements applicable to each such contract or subcontract have been satisfied.

#### **8.05 PROCUREMENT**

Subrecipient must comply with the procurement procedures stated at 2 C.F.R. §§ 200.318 through 200.326 and all other applicable federal, state, and local procurement procedures and laws, regulations, and rules. Subrecipient must confirm that its vendors and subcontractors are not debarred from receiving state or federal funds at each of the following web addresses:

Texas Comptroller's Vendor Performance Program at:

[https://comptroller.texas.gov/purchasing/;](https://comptroller.texas.gov/purchasing/)

and the Federal General Services Administration's System for Award Management (SAM):

<https://www.sam.gov>.

#### **8.06 PURCHASES AND EQUIPMENT**

Any purchase of Equipment under this Contract shall be made in accordance with all applicable laws, regulations, and rules including those listed in **Attachment D**. Subrecipient shall retain title to and possession of any Equipment unless and until transferred to the GLO or disposed of in accordance with federal regulations. Subrecipient shall furnish, with its final request for reimbursement, a list of all Equipment purchased with Program funds under the Contract, including the name of the manufacturer, the model



number, and the serial number, if applicable. The disposition of any Equipment shall be in accordance with all applicable laws, regulations, and rules, including those listed in **Attachment D**.

#### **8.07 COMMUNICATION WITH THIRD PARTIES**

The GLO and the authorities named in **ARTICLE 7**, above, may initiate, in accordance with any legal authority granted by statute, regulation, or rule, communications with any subcontractor, and may request access to any books, documents, personnel, papers, and records of a subcontractor which are pertinent to this Contract. Such communications may be required to conduct audits, examinations, Davis-Bacon Labor Standards interviews, and gather additional information as provided in **ARTICLE 7** herein. The results of such communication will be shared with Subrecipient, in writing, prior to any publication.

#### **8.08 RELATIONSHIP OF THE PARTIES**

The Parties to this Contract are associated only for the purposes and to the extent specified in this Contract. Subrecipient is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract creates a partnership or joint venture, employer-employee or principal-agent relationships, or any liability whatsoever with respect to the indebtedness, liabilities, or obligations of Subrecipient or any other party. If applicable, Subrecipient shall be solely responsible for and the GLO shall have no obligation with respect to: withholding of income taxes, FICA, or any other taxes or fees; industrial or workers' compensation insurance coverage; accumulation of vacation leave or sick leave; or unemployment compensation coverage provided by the State.

#### **8.09 COMPLIANCE WITH OTHER LAWS**

In the performance of this Contract, Subrecipient shall comply with all applicable federal, state, and local laws, ordinances, and regulations, including those listed in **Attachments B, C, and D**. Subrecipient is deemed to know and understand all applicable laws, statutes, ordinances, and regulations affecting its performance under this Contract.

#### **8.10 NOTICES**

Any notices required under this Contract shall be deemed delivered when deposited either in the United States mail, postage paid, certified, return receipt requested; or with a common carrier, overnight, signature required, to the appropriate address below:

**GLO**

Texas General Land Office  
1700 N. Congress Avenue, 7<sup>th</sup> Floor  
Austin, TX 78701  
Attention: Contracts Management Division

**Subrecipient**

City of Houston

900 Bagby St., 4<sup>th</sup> Floor

Houston, TX 77002

Attention: Director of Housing and Community Development Department

Notice given in any other manner shall be deemed effective only if and when received by the Party to be notified. Either Party may change its address for notice by written notice to the other Party as herein provided.

**8.11 GOVERNING LAW AND VENUE**

This Contract and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Subrecipient irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of *forum non conveniens*, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction with respect to this Contract or any document related hereto. **NOTHING IN THIS CONTRACT SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO OR A WAIVER OF GOVERNMENTAL IMMUNITY BY SUBRECIPIENT.**

**8.12 SEVERABILITY**

If a court of competent jurisdiction determines any provision of this Contract is invalid, void, or unenforceable, the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

**8.13 DISPUTE RESOLUTION**

Subrecipient shall use the dispute resolution process established in Chapter 2260 of the Texas Government Code and related rules to attempt to resolve any dispute under this Contract, including a claim for breach of contract by the GLO, that the Parties cannot resolve in the ordinary course of business. Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of such a claim constitute grounds for Subrecipient to suspend performance under this Contract of Programs unaffected by the claim(s) at issue. Notwithstanding this provision, the GLO and Subrecipient reserves all legal and equitable rights and remedies available to it.

**8.14 PUBLIC RECORDS**

Information related to the performance of this Contract may be subject to the Public Information Act ("PIA") and will be withheld from public disclosure or released only in accordance therewith. Subrecipient shall make any information created or exchanged with the state pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state/the GLO. Subrecipient shall make any information required



under the PIA available to the GLO in portable document file (".pdf") format or any other format agreed between the Parties. Subrecipient's failure to mark as "confidential" or a "trade secret" any information it believes to be excepted from disclosure waives all claims Subrecipient may make against the GLO for releasing such information without prior notice to Subrecipient.

**Subrecipient shall release the following information upon receipt of an open records request:**

- The amount of CDBG-DR funds expected to be made available;
- The range of Programs or Activities that may be undertaken with CDBG-DR funds;
- The estimated amount of CDBG-DR funds proposed to be used for Activities that will meet the national objective of benefit to low- and moderate-income persons; and
- The proposed CDBG-DR Activities likely to result in displacement and the Subrecipient's anti-displacement and relocation plan.

#### **8.15 AMENDMENTS TO THE CONTRACT**

Amendments to decrease or increase the subaward, to add or delete a Program, to extend the term of the Contract, and/or to make other substantial amendments to the Contract may be made only by written agreement of the Parties, under the formal amendment process except that, upon completion of a Program, the GLO shall issue a close-out letter pursuant to **SECTION 2.03**. The formal amendment process requires submission by the GLO Project Manager of the proposed amended language or amount to the GLO Contract Management Division for the preparation of a formal Amendment and circulation for necessary GLO and Subrecipient signatures. In the sole discretion of the GLO, and in conformance with federal law, the GLO may approve other adjustments required during Project performance by the GLO by way of a Revision or Technical Guidance Letter unilaterally issued by the GLO and acknowledged by the Subrecipient. Such approvals must be in writing and may be delivered by U.S. mail or electronic mail.

Pursuant to **SECTION 2.03** hereof, final **Program Completion Reports** for all Programs performed under this Contract shall be submitted to the GLO and shall include all such informal revisions agreed to by the Subrecipient and GLO over the life of the Contract.

#### **8.16 REVISIONS TO PERFORMANCE STATEMENTS**

Performance Statements may be revised by the Subrecipient quarterly and submitted to the GLO for approval. A proposed Revision to any Performance Statement does not require application of the formal Amendment process established in Section 8.15, above, but must be approved by the GLO, in writing, in order to take effect.

#### **8.17 ENTIRE CONTRACT AND MODIFICATIONS**

This Contract, its Attachment(s), any Amendment(s) Technical Guidance Letter(s), and/or Revision(s) issued in conjunction with this Contract, if any, constitute the entire agreement of the Parties and are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements made in connection with the



subject matter hereof. Any additional or conflicting terms in Attachment(s), Technical Guidance Letter(s), and/or Revision(s) shall be harmonized with this Contract to the extent possible. Unless an Attachment, Technical Guidance Letter, or Revision specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language shall be construed consistently with the Contract.

#### **8.18 PROPER AUTHORITY**

Each Party hereto represents and warrants that the person executing this Contract on its behalf has full power and authority to legally bind its respective entity. Subrecipient acknowledges that this Contract is effective for the period of time specified in the Contract. Any work performed by Subrecipient after the Contract terminates is performed at the sole risk of Subrecipient.

#### **8.19 COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which shall be an original, and all such counterparts shall together constitute but one and the same Contract.

#### **8.20 SURVIVAL**

The provisions of **ARTICLES 5, 6, AND 7; AND SECTIONS 1.01, 1.03, 2.05, 3.02, 3.04, 8.02, 8.03, 8.07, 8.08, 8.09, 8.10, 8.11, 8.13, 8.14, 8.15** of this Contract, and any other continuing obligations of Subrecipient shall survive the termination or expiration of this Contract.

#### **8.21 CONTRACT CLOSEOUT**

Upon completion of all Programs and Activities required for the Contract, and pursuant to **SECTION 2.03** hereof, Subrecipient shall prepare final **Program Completion Reports** confirming final performance measures, budgets, and expenses and the GLO will close the Contract in accordance with 2 C.F.R. §§ 200.343 through 200.345 and GLO CDBG-DR guidelines consistent therewith. The GLO will notify Subrecipient via official closeout letter upon review of the final Program Completion Report.

#### **8.22 INDIRECT COST RATES**

Unless Subrecipient has negotiated or does negotiate an indirect cost rate with the federal government, subject to periodic renegotiations of the rate during the Contract Period, Subrecipient's indirect cost rate shall be set by 2 C.F.R. § 200.414(f), i.e., ten percent (10%).

#### **8.23 CONFLICT OF INTEREST**

- (a) Subrecipient shall abide by the provisions of this Section and include the provisions in all subcontracts. Subrecipient shall comply with all conflict of interest laws and regulations applicable to the Program.
- (b) Subrecipient shall maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts, which standards may be located in various

Subrecipient governing documents, including but not limited to, the Subrecipient's Charter, Code of Ordinances, Administrative Procedures, Executive Orders, and Policies and Procedures.

#### **8.24 ENVIRONMENTAL CLEARANCE REQUIREMENTS**

- (a) Subrecipient is responsible for conducting environmental reviews and for obtaining any environmental clearance necessary for successful completion of the Project. Subrecipient shall prepare environmental review or assessment of each Activity in accordance with applicable laws, regulations, rules, and guidance. Subrecipient shall maintain a written Environmental Review Record ("ERR") for each Activity, including all supporting source documentation and documentation to support any project mitigation. Subrecipient shall provide a copy of the ERR and all related source documentation to the GLO.
- (b) Subrecipient shall address inquiries and complaints and shall provide appropriate redress related to environmental Activities. Subrecipient shall document each communication issued or received hereunder in the related ERR.
- (c) The GLO may, in its sole discretion, reimburse Subrecipient for certain exempt environmental Activities, as defined in federal regulations. Reimbursement requests for exempt environmental Activities must be supported by the proper HUD-prescribed form.
- (d) The Parties acknowledge and understand that the GLO may enter into Interagency agreements with the Texas Historical Commission, including GLO Contract No. 19-127-000-B465, and other entities in order to facilitate any necessary environmental or historic review. The GLO may incorporate one or more Interagency agreement into this contract via a Technical Guidance Letter.

#### **8.25 CITIZEN PARTICIPATION AND ALTERNATIVE REQUIREMENTS**

- (a) Subrecipient must ensure that all citizens have equal and ongoing access to information about the Programs, including ensuring that Program information is available in the appropriate languages for the geographical area served by the Subrecipient. Information furnished to citizens shall include, without limitation:
  - 1. The amount of CDBG-DR funds expected to be made available;
  - 2. The range of Activities that may be undertaken with the CDBG-DR funds;
  - 3. The estimated amount of the CDBG-DR funds proposed to be used for Activities meeting the national objective of benefiting low-to-moderate income persons; and
  - 4. A clear statement if any proposed CDBG-DR Activities are likely to result in displacement and the entity's anti-displacement and relocation plan.



- (b) Complaint Procedures: Subrecipient must have written citizen complaint procedures that provide a timely written response (within fifteen (15) working days) to complaints and grievances. Subrecipient shall notify citizens of the location and the days and hours when the location is open for business, so they may obtain a copy of these written procedures.
- (c) Technical Assistance: Subrecipient shall provide technical assistance to all Program participants, regardless of income, abilities, or LMI status, and shall make reasonable accommodations for any potential Program participant who requires assistance to access any Program. For example, Subrecipient shall provide an alternative means for completing a Program application for any applicant who is unable to access an online application.
- (d) Subrecipient shall maintain a citizen participation file which includes a copy of the Subrecipient's complaint procedures, documentation and evidence of opportunities provided for citizen participation (e.g., public notices, advertisements, flyers, etc.), documentation of citizen participation events (e.g., meeting minutes, attendance lists, sign-in sheets, news reports, etc.), and documentation of any technical assistance requested and/or provided.

#### **8.26 SIGNAGE REQUIREMENTS**

On any public building or public facility funded under this Contract, Subrecipient shall place permanent signage. Signs shall be placed in a prominent, visible public location. Subrecipient shall format each sign to best fit the architectural design of the building or facility but should be legible from at least three (3) feet distance.

For other construction projects (e.g., water transmission lines, sewer collection lines, drainage, roadways, housing rehabilitation) funded under this Contract, Subrecipient shall place temporary signage erected in a prominent location at the construction project site or along a major thoroughfare within the locality.

All signage required under this Section 8.25 shall contain the following:

"This project is funded by the City of Houston, the Texas General Land Office of the State of Texas, and the United States Department of Housing and Urban Development through the Community Development Block Grant Program to provide for disaster recovery and restoration of infrastructure for communities impacted by Hurricane Harvey."

#### **8.27 PROCUREMENT OF RECOVERED MATERIALS**

(a) To the extent applicable, the Provider shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. That meet contract performance requirements; or
- iii. At a reasonable price.

(b) To ensure maximum use of recovered/recycled materials per 2 CFR § 200.322,

information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>, along with the list of EPA-designated items.

**8.28 INFORMATION AND DATA SECURITY STANDARDS**

Subrecipient shall comply with all terms specified in the **GLO Information Security Appendix**, incorporated herein for all purposes as **Attachment F**.

**8.29 STATEMENTS OR ENTRIES**

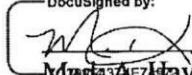
Except as otherwise provided under federal law, any person who knowingly and willfully falsifies, conceals, or covers up a material fact by any trick, scheme or device or who makes any materially false, fictitious, or fraudulent statement or representation or who makes or uses any false writing or document knowing the writing or document to contain any materially false, fictitious, or fraudulent statement or entry shall be prosecuted under Title 18, United States Code, § 1001. Under penalties of 18 U.S.C. § 1001, the undersigned Provider representative hereby declares that he/she has examined this Contract and Attachments, including without limitation, the Solicitation and Solicitation Response, and to the best of his/her knowledge and belief any statements, entries, or claims made by Provider are, correct, accurate and complete.

**SIGNATURE PAGES FOLLOW**








**GLO SIGNATURE PAGE FOR GLO CONTRACT NO. 19-147-001-B489**  
**SUBRECIPIENT AGREEMENT – HURRICANE HARVEY – ROUND 1**

**GENERAL LAND OFFICE**

DocuSigned by:  
  
Mark A. Havens, Chief Clerk/  
Deputy Land Commissioner

Date of execution: 1/5/2019

OGC   
DD   
SDD   
DGC   
GC 

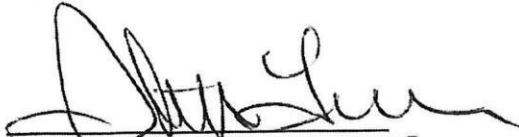
**ATTACHED TO THIS CONTRACT:**

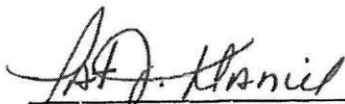
- ATTACHMENT A:** Program Budgets
- ATTACHMENT B:** Federal Assurances and Certifications
- ATTACHMENT C:** General Affirmations
- ATTACHMENT D:** Nonexclusive List of Applicable Laws, Rules, and Regulations
- ATTACHMENT E:** Special Conditions
- ATTACHMENT F:** GLO Information Security Appendix
- ATTACHMENT G:** Program Completion Report
- PERFORMANCE STATEMENT 1: Buyout Program**
- PERFORMANCE STATEMENT 2: Economic Revitalization Program**
- PERFORMANCE STATEMENT 3: Homebuyer Assistance Program**
- PERFORMANCE STATEMENT 4: Homeowner Assistance Program**
- PERFORMANCE STATEMENT 5: Housing Administration Program and Planning Program**
- PERFORMANCE STATEMENT 6: Multifamily Rental Program**
- PERFORMANCE STATEMENT 7: Public Services Program**
- PERFORMANCE STATEMENT 8: Single Family Development Program**
- PERFORMANCE STATEMENT 9: Small Rental Program**

**CITY OF HOUSTON SIGNATURE PAGE FOLLOWS**

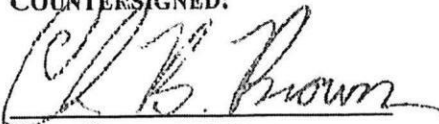
**CITY OF HOUSTON SIGNATURE PAGE FOR GLO CONTRACT NO. 19-147-001-B489  
SUBRECIPIENT AGREEMENT – HURRICANE HARVEY – ROUND 1**

**CITY OF HOUSTON**

  
MAYOR 1-4-19

  
CITY SECRETARY Assistant

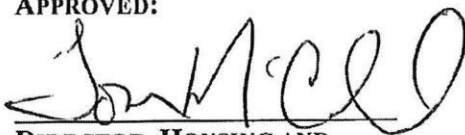
**COUNTERSIGNED:**

  
CITY CONTROLLER  
Jenell Bell

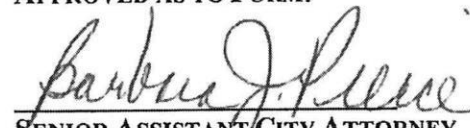
**DATE OF COUNTERSIGNATURE:**

1-4-19

**APPROVED:**

  
DIRECTOR, HOUSING AND  
COMMUNITY DEVELOPMENT  
DEPARTMENT

**APPROVED AS TO FORM:**

  
SENIOR ASSISTANT CITY ATTORNEY

**ATTACHMENTS FOLLOW**



**CITY OF HOUSTON SIGNATURE PAGE FOR GLO CONTRACT NO. 19-147-001-B489  
SUBRECIPIENT AGREEMENT – HURRICANE HARVEY – ROUND 1**

**CITY OF HOUSTON**

\_\_\_\_\_  
**MAYOR**

\_\_\_\_\_  
**CITY SECRETARY**

**COUNTERSIGNED:**

**DATE OF COUNTERSIGNATURE:**

\_\_\_\_\_  
**CITY CONTROLLER**

**APPROVED:**

**APPROVED AS TO FORM:**

DocuSigned by:

*Tom McLasland*

\_\_\_\_\_  
**DIRECTOR, HOUSING AND  
COMMUNITY DEVELOPMENT  
DEPARTMENT**

\_\_\_\_\_  
**SENIOR ASSISTANT CITY ATTORNEY**

**ATTACHMENTS FOLLOW**

**CITY OF HOUSTON PROGRAM BUDGETS**

Activity No.	HUD Activity Type	Other Funds	Total
	Homeowner Assistance Program		\$ 392,729,436
	Single Family Development Program		\$ 204,000,000
	Multifamily Rental Program		\$ 321,278,580
	Small Rental Program		\$ 61,205,100
	Homebuyer Assistance Program		\$ 21,741,300
	Buyout Program		\$ 40,800,000
	Public Services		\$ 60,000,000
	Economic Revitalization Program		\$ 30,264,834
	Houston Planning		\$ 23,100,000
	Houston Housing Administration		\$ 20,835,088
	<b>Total</b>		<b>\$ 1,175,954,338</b>

Draft – For review/discussion purposes only. Final Programs and Budgets to be approved by the U.S. Department of Housing and Urban Development.



**ASSURANCES - CONSTRUCTION PROGRAMS**OMB Approval No. 4040-0009  
Expiration Date: 01/31/2019

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET.  
SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**


**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681- 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other non-discrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.



11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
20. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		TITLE
 DocuSigned by: Tom McLasland		Director
APPLICANT ORGANIZATION		DATE SUBMITTED
City of Houston, Housing and Community Development		1/4/2019

1 24 C.F.R. 87 App. A, available at <https://www.gpo.gov/fdsys/granule/CFR-2011-title24-vol1/CFR-2011-title24-vol1-part87-appA>. Published Apr. 1, 2011. Accessed Aug. 1, 2018.



### Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
 (See reverse for public burden disclosure)

<b>1. Type of Federal Action:</b> a. contract _____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	<b>2. Status of Federal Action:</b> a. bid/offer/application _____ b. initial award c. post-award	<b>3. Report Type:</b> a. initial filing _____ b. material change  <b>For material change only:</b> Year _____ quarter _____ Date of last report _____
<b>4. Name and Address of Reporting Entity:</b> _____ Prime _____ Subawardee Tier _____, if Known:  Congressional District, if known:		<b>5. If Reporting Entity in No. 4 is Subawardee,</b> Enter Name and Address of Prime:  Congressional District, if known:
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i>	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
<b>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>		Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
<b>Federal Use Only</b>		Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)

**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 4040-0013. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (4040-0013), Washington, DC 20503.



### **General Affirmations**

To the extent they apply, Subrecipient affirms and agrees to the following, without exception:

1. Subrecipient represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Subrecipient nor the firm, corporation, partnership, or institution represented by Subrecipient, or anyone acting for such a firm, corporation, partnership, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Contract or any solicitation response upon which this Contract is based to any competitor or any other person engaged in the same line of business as Subrecipient.
2. If the Contract is for services, Subrecipient shall comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.
3. Under Section 231.006 of the Family Code, the Subrecipient certifies that Provider's legal entity named in this Contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
4. A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application. Subrecipient certifies it has submitted this information to the GLO.
5. If the Contract is for the purchase or lease of computer equipment, as defined by Texas Health and Safety Code Section 361.952(2), Subrecipient certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code, related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in Title 30 Texas Administrative Code Chapter 328.
6. Pursuant to Section 2155.003 of the Texas Government Code, Subrecipient represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract.
7. Payments due under the Contract shall be directly applied towards eliminating any debt or delinquency Subrecipient owes to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.
8. Upon request of the GLO, Subrecipient shall provide copies of its most recent business continuity and disaster recovery plans.

9. If the Contract is for consulting services governed by Texas Government Code Chapter 2254, Subchapter B, in accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Subrecipient certifies that it does not employ an individual who has been employed by The GLO or another agency at any time during the two years preceding the Subrecipient's submission of its offer to provide consulting services to the GLO or, in the alternative, Subrecipient, in its offer to provide consulting services to the GLO, disclosed the following: (i) the nature of the previous employment with the GLO or other state agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.
10. If the Contract is not for architecture, engineering, or construction services, Subrecipient must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve any dispute arising under the Contract.
11. If the Contract is for architecture, engineering, or construction services, subject to Texas Government Code, Section 2260.002 and Texas Civil Practice and Remedies Code Chapter 114, Subrecipient shall use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve all disputes arising under this Contract. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005, claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code Section 114.002 shall be governed by the dispute resolution process set forth below in subsections (a)-(d).
  - a. Notwithstanding Texas Government Code, Chapter 2260.002(3) and Chapter 114.012 and any other statute or applicable law, if the Subrecipient's claim for breach of contract cannot be resolved by the parties in the ordinary course of business, Subrecipient may make a claim against the GLO for breach of contract and the GLO may assert a counterclaim against the Subrecipient as is contemplated by Texas Government Code, Chapter 2260, Subchapter B. In such event, Subrecipient must provide written notice to the GLO of a claim for breach of the Contract not later than the 180th day after the date of the event giving rise to the claim. The notice must state with particularity: (1) the nature of the alleged breach; (2) the amount the Subrecipient seeks as damages; and (3) the legal theory of recovery.
  - b. The chief administrative officer, or if designated in the Contract, another officer of the GLO, shall examine the claim and any counterclaim and negotiate with the Subrecipient in an effort to resolve them. The negotiation must begin no later than the 120th day after the date the claim is received, as is contemplated by Texas Government Code, Chapter 2260, Section 2260.052.
  - c. If the negotiation under paragraph (b) above results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the agreement or settlement to writing and each party shall sign the agreement or settlement. A partial settlement or resolution of a claim does not waive a party's rights under this Contract as to the parts of the claim that are not resolved.



- d. If a claim is not entirely resolved under paragraph (b) above, on or before the 270th day after the date the claim is filed with the GLO, unless the parties agree in writing to an extension of time, the parties may agree to mediate a claim made under this dispute resolution procedure. This dispute resolution procedure is the Subrecipient's sole and exclusive process for seeking a remedy for an alleged breach of contract by the GLO if the parties are unable to resolve their disputes as described in this section.
  - e. Nothing in the Contract shall be construed as a waiver of the state's or the GLO's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies or immunities or be considered as a basis for estoppel. The GLO does not waive any privileges, rights, defenses, or immunities available to it by entering into this Contract or by its conduct, or by the conduct of any representative of the GLO, prior to or subsequent to entering into this Contract.
  - f. Compliance with the dispute resolution process provided for in Texas Government Code, Chapter 2260, subchapter B and incorporated by reference in subsection (a)-(d) above is a condition precedent to the Subrecipient: (1) filing suit pursuant to Chapter 114 of the Civil Practices and Remedies Code; or (2) initiating a contested case hearing pursuant to Subchapter C of Chapter 2260 of the Texas Government Code.
12. Subrecipient represents and warrants that, pursuant to Section 2270.002 of the Texas Government Code, Subrecipient does not boycott Israel and will not boycott Israel during the term of the Contract.
13. This Contract is contingent upon the continued availability of lawful appropriations by the Texas Legislature. Subrecipient understands that all obligations of the GLO under this Contract are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the GLO may terminate the Contract. The Contract shall not be construed as creating a debt on behalf of the GLO in violation of Article III, Section 49a of the Texas Constitution.
14. Subrecipient certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
15. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Subrecipient certifies that it is not (1) the executive head of the GLO, (2) a person who at any time during the four years before the effective date of the Contract was the executive head of the GLO, or (3) a person who employs a current or former executive head of the GLO.

16. Subrecipient represents and warrants that all statements and information prepared and submitted in connection with this Contract are current, complete, true, and accurate. Submitting a false statement or making a material misrepresentation during the performance of this Contract is a material breach of contract and may void the Contract or be grounds for its termination.
17. Pursuant to Section 2155.004(a) of the Texas Government Code, Subrecipient certifies that neither Subrecipient nor any person or entity represented by Subrecipient has received compensation from the GLO to participate in the preparation of the specifications or solicitation on which this Contract is based. Under Section 2155.004(b) of the Texas Government Code, Subrecipient certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate. This Section does not prohibit Subrecipient from providing free technical assistance.
18. Subrecipient represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
19. If the Contract is for professional or consulting services governed by Texas Government Code Chapter 2254, Subrecipient represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the Contract, were former employees of the GLO during the twelve (12) month period immediately prior to the date of execution of the Contract.
20. The Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the GLO.
21. IF THE CONTRACT IS NOT FOR ARCHITECTURE OR ENGINEERING SERVICES GOVERNED BY TEXAS GOVERNMENT CODE CHAPTER 2254, SUBRECIPIENT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE GLO, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF SUBRECIPIENT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY SUBRECIPIENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN Texas STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND



SUBRECIPIENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. SUBRECIPIENT AND THE GLO SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

22. IF THE CONTRACT IS FOR ARCHITECTURE OR ENGINEERING SERVICES GOVERNED BY TEXAS GOVERNMENT CODE CHAPTER 2254, SUBRECIPIENT SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE GLO, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES TO THE EXTENT CAUSED BY, ARISING OUT OF, OR RESULTING FROM ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILLFUL MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY, AND/OR OTHERWISE RELATED TO SUBRECIPIENT'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE SUBRECIPIENT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, CONSULTANTS UNDER CONTRACT TO SUBRECIPIENT, OR ANY OTHER ENTITY OVER WHICH THE CONTRACTOR EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY SUBRECIPIENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN Texas STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND SUBRECIPIENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. SUBRECIPIENT AND THE GLO SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM
23. SUBRECIPIENT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE GLO AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF SUBRECIPIENT PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) THE GLO'S AND/OR SUBRECIPIENT'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO THE GLO BY SUBRECIPIENT OR OTHERWISE TO WHICH THE GLO HAS ACCESS AS A RESULT OF SUBRECIPIENT'S PERFORMANCE UNDER THE CONTRACT. SUBRECIPIENT AND THE GLO shall FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. SUBRECIPIENT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY SUBRECIPIENT WITH THE

OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND SUBRECIPIENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, SUBRECIPIENT WILL REIMBURSE THE GLO AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF THE GLO DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF SUBRECIPIENT OR IF THE GLO IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, THE GLO WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND SUBRECIPIENT WILL PAY ALL REASONABLE COSTS OF THE GLO'S COUNSEL.

24. Subrecipient has disclosed in writing to the GLO all existing or potential conflicts of interest relative to the performance of the Contract.
25. Sections 2155.006 and 2261.053 of the Texas Government Code prohibit state agencies from accepting a solicitation response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Subrecipient certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
26. Subrecipient understands that the GLO will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material related to this Contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Subrecipient shall make any information created or exchanged with the State/GLO pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State or the GLO.
27. The person executing this Contract certifies that he/she is duly authorized to execute this Contract on his/her own behalf or on behalf of Subrecipient and legally empowered to contractually bind Subrecipient to the terms and conditions of the Contract and related documents.
28. If the Contract is for architectural or engineering services, pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code, Subrecipient shall perform services (1) with professional skill and care ordinarily provided by competent engineers or architects



practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

29. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Subrecipient shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the Contract and the requirement to cooperate is included in any subcontract it awards. The GLO may unilaterally amend the Contract to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.
30. Subrecipient certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in the Contract by any state or federal agency.
31. Subrecipient expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Subrecipient represents and warrants to the GLO that any technology provided to the GLO for purchase pursuant to this Contract is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: providing equivalent access for effective use by both visual and non-visual means; presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this Section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.
32. If the Contract is for the purchase or lease of covered television equipment, as defined by Section 361.971(3) of the Texas Health and Safety Code, Subrecipient certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.

33. Pursuant to Section 572.069 of the Texas Government Code, Subrecipient certifies it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for the GLO involving Subrecipient within two (2) years after the date that the contract is signed, or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.



### **NONEXCLUSIVE LIST OF APPLICABLE LAWS, RULES, AND REGULATIONS**

If applicable to a Program or Activity, Provider must be in compliance with the following laws, rules, and regulations; and any other state, federal, or local laws, rules, and regulations as may become applicable throughout the term of the Contract, and Provider acknowledges that this list may not include all such applicable laws, rules, and regulations.

**Provider and is deemed to have read and understands the requirements of each of the following, if applicable to the Project under this Contract:**

#### **GENERALLY**

The Acts and Regulations specified in this Contract;

Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Public Law 115-56);

The Housing and Community Development Act of 1974 (12 U.S.C. § 5301 *et seq.*);

The United States Housing Act of 1937, as amended, 42 U.S.C. § 1437f(o)(13) (2016) and related provisions governing Public Housing Authority project-based assistance, and implementing regulations at 24 C.F.R. Part 983 (2016);

Cash Management Improvement Act regulations (31 C.F.R. Part 205);

Community Development Block Grants (24 C.F.R. Part 570);

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Disaster Recovery Implementation Manual;

GLO Housing Guidelines; and

State of Texas Plan for Disaster Recovery: Hurricane Harvey – Round 1, dated April 6, 2018, as amended.

#### **CIVIL RIGHTS**

Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d *et seq.*); 24 C.F.R. Part I, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e, *et seq.*);

Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. § 3601, *et seq.*), as amended;

Executive Order 11063, as amended by Executive Order 12259, and 24 C.F.R. Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063"; The failure or refusal of Provider to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;

The Age Discrimination Act of 1975 (42 U.S.C. § 6101, *et seq.*); and

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794.) and "Nondiscrimination

Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development", 24 C.F.R. Part 8. By signing this Contract, Provider understands and agrees that the activities funded shall be performed in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, *et seq.*), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system.

#### **LABOR STANDARDS**

The Davis-Bacon Act, as amended (originally, 40 U.S.C. §§ 276a-276a-5 and re-codified at 40 U.S.C. §§ 3141-3148); 29 C.F.R. Part 5;

The Copeland "Anti-Kickback" Act (originally, 18 U.S.C. § 874 and re-codified at 40 U.S.C. § 3145); 29 C.F.R. Part 3;

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (originally, 40 U.S.C. §§ 327A and 330 and re-codified at 40 U.S.C. §§ 3701-3708);

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act) (29 C.F.R. Part 5); and

Federal Executive Order 11246, as amended.

#### **EMPLOYMENT OPPORTUNITIES**

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u); 24 C.F.R. §§ 135.3(a)(2) and (a)(3);

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. § 4212);

Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1688); and

Federal Executive Order 11246, as amended.

#### **GRANT AND AUDIT STANDARDS**

Single Audit Act Amendments of 1996, 31 U.S.C. § 7501;

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Uniform Grant and Contract Management Act (Texas Government Code Chapter 783) and the Uniform Grant Management Standards, issued by Governor's Office of Budget and Planning; and

Title 1 Texas Administrative Code § 5.167(c).

#### **LEAD-BASED PAINT**

Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831(b)).

#### **HISTORIC PROPERTIES**

The National Historic Preservation Act of 1966 as amended (16 U.S.C. § 470, *et seq.*), particularly sections 106 and 110 (16 U.S.C. §§ 470 and 470h-2), except as provided in §58.17 for Section 17 projects;



Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 C.F.R., 1971-1975 Comp., p. 559, particularly section 2(c);

Federal historic preservation regulations as follows: 36 C.F.R. Part 800 with respect to HUD programs; and

The Reservoir Salvage Act of 1960, as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. § 469, *et seq.*), particularly section 3 (16 U.S.C. § 469a-1).

#### **ENVIRONMENTAL LAW AND AUTHORITIES**

Environmental Review Procedures for Recipients assuming HUD Environmental Responsibilities (24 C.F.R. Part 58, as amended);

National Environmental Policy Act of 1969, as amended (42 U.S.C. §§ 4321-4347); and

Council for Environmental Quality Regulations for Implementing NEPA (40 C.F.R. Parts 1500-1508).

#### **FLOODPLAIN MANAGEMENT AND WETLAND PROTECTION**

Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 C.F.R., 1977 Comp., p. 117, as interpreted in HUD regulations at 24 C.F.R. Part 55, particularly Section 2(a) of the Order (For an explanation of the relationship between the decision-making process in 24 C.F.R. Part 55 and this part, see § 55.10.); and

Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 C.F.R., 1977 Comp., p. 121 particularly Sections 2 and 5.

#### **COASTAL ZONE MANAGEMENT**

The Coastal Zone Management Act of 1972 (16 U.S.C. § 1451, *et seq.*), as amended, particularly sections 307(c) and (d) (16 U.S.C. § 1456(c) and (d)).

#### **SOLE SOURCE AQUIFERS**

The Safe Drinking Water Act of 1974 (42 U.S.C. §§ 201, 300(f), *et seq.*, and 21 U.S.C. § 349) as amended; particularly section 1424(e)(42 U.S.C. § 300h-3(e)); and

Sole Source Aquifers (Environmental Protection Agency-40 C.F.R. part 149.).

#### **ENDANGERED SPECIES**

The Endangered Species Act of 1973 (16 U.S.C. § 1531, *et seq.*) as amended, particularly section 7 (16 U.S.C. § 1536).

#### **WILD AND SCENIC RIVERS**

The Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271, *et seq.*) as amended, particularly sections 7(b) and (c) (16 U.S.C. § 1278(b) and (c)).

#### **AIR QUALITY**

The Clean Air Act (42 U.S.C. § 7401, *et seq.*) as amended, particularly sections 176(c) and (d) (42 U.S.C. § 7506(c) and (d)).

Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency-40 C.F.R. Parts 6, 51, and 93).

**FARMLAND PROTECTION**

Farmland Protection Policy Act of 1981 (7 U.S.C. § 4201, *et seq.*) particularly sections 1540(b) and 1541 (7 U.S.C. §§ 4201(b) and 4202); and

Farmland Protection Policy (Department of Agriculture-7 C.F.R. part 658).

**HUD ENVIRONMENTAL STANDARDS**

Applicable criteria and standards specified in HUD environmental regulations (24 C.F.R. Part 51)(other than the runway clear zone and clear zone notification requirement in 24 C.F.R. § 51.303(a)(3); and

HUD Notice 79-33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979.

**ENVIRONMENTAL JUSTICE**

Executive Order 12898 of February 11, 1994—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (59 FR 7629), 3 C.F.R., 1994 Comp. p. 859.

**SUSPENSION AND DEBARMENT**

Use of debarred, suspended, or ineligible contractors or subrecipients (24 C.F.R. § 570.609);

General HUD Program Requirements; Waivers (24 C.F.R. Part 5); and

Nonprocurement Suspension and Debarment (2 C.F.R. Part 2424).

**OTHER REQUIREMENTS**

Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58).

**ACQUISITION / RELOCATION**

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601, *et seq.*), 24 C.F.R. Part 42, and 24 C.F.R. § 570.606.

**FAITH-BASED ACTIVITIES**

Executive Order 13279 of December 12, 2002 - Equal Protection of the Laws for Faith-Based and Community Organizations, (67 FR 77141).

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**



### **SPECIAL CONDITIONS**

If applicable to a Program or Activity, Subrecipient must be in compliance with the following Special Conditions and any other State, Federal, or local laws, rules, and regulations as may be applicable, throughout the term of the Contract, prior to the release of any grant funds for the Programs or Activities anticipated.

Subrecipient is deemed to have read and to understand the requirements of each of the following, if applicable to the Program or Activity under this Contract:

#### **A. REIMBURSEMENT, GENERALLY**

As provided for in Public Law 115-56, the Contract funds may not be used for activities that are eligible to be reimbursed by, or for which funds are made available by, (a) the Federal Emergency Management Agency (FEMA); (b) the Army Corps of Engineers (Corps); (c) any other federal funding source; or (d) covered by insurance, and Subrecipient shall ensure compliance with all such requirements.

#### **B. NATIONAL FLOOD INSURANCE PROGRAM COMPLIANCE**

- (1) Subrecipient must provide documentation which indicates they have received approval from the Texas Water Development Board (TWDB), the National Flood Insurance Program (NFIP) State Coordinating Agency, that appropriate ordinances or orders necessary for Subrecipient to be eligible to participate in the NFIP have been adopted.
- (2) Where Activities specified in a Performance Statement, involve structures that are located in Special Flood Hazard Areas (SFHA), flood insurance may be required, and Subrecipient shall obtain such insurance, and shall maintain documentation evidencing compliance with such requirements.
- (3) Subrecipient acknowledges and agrees that if any property that is the subject of an Activity under this Contract located within a floodplain, that the following terms and conditions shall apply:
  - a. Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001- 4128), Federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:
    - i. The community in which the area is situated is participating in the National Flood Insurance Program ("NFIP") (44 CFR parts 59 through 79), or less than one (1) year has passed since the FEMA notification regarding such hazards; and
    - ii. The community is participating in the NFIP, or that flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.
  - b. Where the community is participating in the NFIP and the recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, Subrecipient is responsible for ensuring that flood insurance under the NFIP is obtained and maintained.
  - c. Under Section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 515a, HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for flood damage to any personal, residential, or commercial property if:
    - i. The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and

- ii. The person failed to obtain and maintain flood insurance.
- d. Subrecipient understands and agrees that it has a responsibility to inform homeowners receiving disaster assistance that triggers the flood insurance purchase requirement of their statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so.

**C. PROJECT MAPPING/DESIGN INFORMATION**

For construction projects, Subrecipient shall require and maintain copies, in written and/or digital format, of final Project record drawing(s) and engineering schematics, as constructed.

**D. WATER SYSTEM IMPROVEMENTS**

- (1) Prior to the GLO's release of funds for the construction of any water system improvements, Subrecipient shall provide certification to the GLO that plans, specifications, and related documents for the specified water system improvements have been prepared by the engineer selected for such activities, or the engineer's duly authorized representative, and that the review of such plans, specifications, and related documents meet the applicable Texas Commission on Environmental Quality (TCEQ) review requirements described in Title 30 of the Texas Administrative Code.
- (2) Prior to construction, Subrecipient shall provide documentation to the GLO that an approved new or amended Certificate of Convenience and Necessity (CCN), or the equivalent permit or authority for the area to be served, has been issued by the TCEQ.
- (3) Prior to Subrecipient submission of the Project Completion Report for any water system improvements described in Attachment A, Subrecipient shall provide a letter from the TCEQ that the constructed well is approved for interim use and may be temporarily placed into service pursuant to 30 Texas Administrative Code, Chapter 290—Rules and Regulations for Public Water Systems.

**E. SEWER SYSTEM IMPROVEMENTS**

Prior to the construction of any sewer system improvements described, Subrecipient shall provide certification that plans, specifications, and related documents for the specified sewer system improvements have been prepared by the engineer selected for such activities, or the engineer's duly authorized representative, and that the review of such plans, specifications, and related documents meet the Texas Commission on Environmental Quality (TCEQ) review requirements described in 30 Texas Administrative Code, Chapter 217, Subchapter D.

Further, prior to the construction of any sewer lines or additional service connections described in Attachment A, Subrecipient shall provide notification of the start of construction on any sewer treatment plant or other system-related improvements included in this Contract.

**F. WASTEWATER TREATMENT CONSTRUCTION**

Prior to incurring costs for any wastewater treatment construction in Attachment A, Subrecipient shall provide documentation of an approved permit or amendment(s) to an existing permit for such activities from the TCEQ's Water Quality Division.

In addition, Subrecipient shall provide documentation to the GLO that an approved new or amended Certificate of Convenience and Necessity (CCN), or equivalent permit or authority for the area to be served has been issued by the TCEQ.



#### **G. SEPTIC SYSTEM IMPROVEMENTS**

- (1) Subrecipient shall provide documentation that final plans, specifications, and installation of its septic system improvements have been reviewed and approved by the City or County Health Department through authority granted by the TCEQ.
- (2) Subrecipient shall mitigate all existing septic systems in accordance with 30 Texas Administrative Code Chapter 285, Subchapter D, §285.36(b), which states, "All tanks, boreholes, cesspools, seepage pits, holding tanks, and pump tanks shall have the wastewater removed by a waste transporter, holding a current registration with the executive director. All tanks, boreholes, cesspools, seepage pits, holding tanks, and pump tanks shall be filled to ground level with fill material (less than three inches in diameter), which is free of organic and construction debris."
- (3) Prior to the selection of program recipients for proposed On-Site Sewer Facilities (OSSF), Subrecipient shall provide a copy of its proposed program guidelines to for GLO review. All proposed OSSF programs must meet or exceed guidelines set forth in 30 Texas Administrative Code Chapter 285 Subchapter D.

#### **H. BUILDING CONSTRUCTION**

Subrecipient shall provide documentation that the construction of a new building and facilities are in compliance with the Texas Accessibility Standards (TAS) of the Architectural Barriers Act, Chapter 469, Texas Government Code, and the Texas Department of Licensing and Regulation (TDLR) Architectural Barriers Administrative Rules, 16 Texas Administrative Code, Part 4, Chapter 68. If estimated construction costs exceed Fifty Thousand Dollars (\$50,000.00), Construction Documents must be submitted to the Texas Department of Licensing and Regulation (TDLR) for an accessibility plan review.

#### **I. BRIDGE CONSTRUCTION/REHABILITATION**

Subrecipient shall use the minimum design requirements of the Texas Department of Transportation (TxDOT) for bridge construction/rehabilitation. Final plans and specifications must be submitted to TxDOT for review and approval prior to the start of construction, and documentation of such approval must be provided to the GLO.

#### **J. DISASTER SHELTERS**

Subrecipient shall ensure that the primary purpose of a facility designated a "disaster shelter" is to serve as a disaster shelter, and shall ensure the facility is operated at all times in a manner that ensures that the priority use is to serve as a disaster shelter regardless of any other scheduled uses or commitments that existed at the time of the disaster or emergency situation. In addition, Subrecipient shall prepare or be incorporated into an approved emergency management plan, as prescribed by the Texas Division of Emergency Management, identifying the shelter as a facility that provides short-term lodging for evacuees during and immediately after an emergency situation. Subrecipient shall submit a copy of Subrecipient's Emergency Management Plan Annex for Shelter and Mass Care to the GLO.

#### **K. DEBRIS REMOVAL**

Subrecipient shall ensure that any debris to be removed consists primarily of vegetation, construction and demolition materials from damaged or destroyed structures, and personal property. Only debris identified as the responsibility of the local jurisdiction will be eligible for the reimbursement of cost of removal.

Prior to beginning debris collection operations, Subrecipient shall address all pertinent environmental concerns, adhere to all applicable regulations, and obtain all required permits. Further, Subrecipient

shall adhere to the methods described herein for the collection and storage of debris prior to proper disposal.

While construction and demolition debris may be collected and disposed of at an appropriately rated landfill, woody and/or vegetative debris must be stored prior to disposal by use of temporary debris storage and reduction sites (TDSR). Subrecipient will prepare and operate the TDSR sites, or local jurisdictions choosing to conduct their own debris operations may review Chapter 7 of the FEMA Debris Management Guide regarding the use of TDSR sites. This document may be obtained at <https://www.fema.gov/pdf/government/grant/pa/demagde.pdf>.

In order to maintain the life expectancy of landfills, Subrecipients disposing of woody and/or vegetative debris must choose burning, chipping, or grinding as the method of disposal. Any project disposing of woody and/or vegetative debris must be approved in writing by the GLO.

#### **L. USE OF BONDS**

Subrecipient must notify the GLO of its issuance and sale of bonds for completion of the Project funded under this Contract.

#### **M. PROGRAM GUIDELINES**

Prior to the selection of Program beneficiaries for each Program, Subrecipient shall provide to the GLO, for GLO review and approval, a copy of its proposed guidelines for the Program. The guidelines must meet or exceed the requirements in the Federal Registers. The guidelines must include provisions for compliance with the Federal Fire Prevention and Control Act of 1974 (which requires that any housing unit rehabilitated with grant funds be protected by a hard-wired or battery-operated smoke detector) and provisions for compliance with 24 CFR 35 (HUD lead-based paint regulation), as applicable.

#### **N. COMPLIANCE PERIODS FOR PROGRAMS**

Subrecipient shall adopt appropriate compliance periods for each Program or Activity, as applicable, in accordance with Federal Register regulations. The specific compliance period and loan term requirements will be recorded in the Program Guidelines, subject to GLO approval.

#### **O. COASTAL MANAGEMENT**

Subrecipient acknowledges and agrees that any Project that may impact a Coastal Natural Resource Area must be consistent with the goals and policies of the Texas Coastal Management Program as described in 31 Texas Administrative Code, Part 16, Chapter 501.

#### **P. INELIGIBLE HOUSING ACTIVITIES**

The following are ineligible housing activities:

- (1) Forced mortgage payoff
- (2) Incentive payments to households that move to disaster-impacted floodplains
- (3) Properties that served as second homes at the time of the disaster, or following the disaster, are not eligible for rehabilitation assistance or housing incentives
- (4) Rehabilitation/reconstruction of homes located in the floodway
- (5) Rehabilitation/reconstruction of a home where:
  - i. the combined household income is greater than 120 percent AMI or the national median, and
  - ii. the property was as located in a floodplain at the time of the disaster, and



- iii. the property owner did not maintain flood insurance on the damaged property, even when the property owner was not required to obtain and maintain such insurance.
- (6) Assistance for the repair, replacement, or restoration of a property to a person who has failed to meet Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a), which states that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for "repair, replacement, or restoration" for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property.

## **GLO Information Security Appendix**

### **1. Definitions**

"Breach of Security" or "Breach" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information including data that is encrypted if the person accessing the data has the key required to decrypt the data.

"Personal Identifying Information" or "PII" means information that alone or in conjunction with other information identifies an individual, as defined at Tex. Bus. & Com. Code § 521.002(1) as of the Effective Date of this Contract.

"Sensitive Personal Information" or "SPI" means the information categories listed at Tex. Bus. & Com. Code § 521.002(2), which as of the Effective Date of this Contract, reads as follows: (A) an individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted: (i) social security number; (ii) driver's license number or government-issued identification number; or (iii) account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or (B) information that identifies an individual and relates to: (i) the physical or mental health or condition of the individual; (ii) the provision of health care to the individual; or (iii) payment for the provision of health care to the individual. "Sensitive Personal Information" does not include publicly available information that is lawfully made available to the public from the federal government or a state or local government.

### **2. Security and Privacy Compliance**

- 2.1. Subrecipient shall keep all PII and SPI received or generated under the Contract and any documents containing PII or SPI strictly confidential.
- 2.2. Subrecipient shall comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations and directives.
- 2.3. Subrecipient shall implement administrative, physical, and technical safeguards to protect PII and SPI that are consistent with the guidelines in the National Institute of Standards and Technology ("NIST") Cybersecurity Framework Version 1.1. All such safeguards shall comply with applicable data protection and privacy laws.
- 2.4. Subrecipient will legally bind any contractors and their subcontractors to the same requirements stated herein and obligations stipulated in the Contract and documents related thereto. Subrecipient shall ensure that the requirements stated herein are imposed on any subcontractor of Provider's subcontractor(s).
- 2.5. Subrecipient will not share PII or SPI with any third parties, except as necessary for Subrecipient's performance under the Contract.



2.6. Subrecipient will ensure that initial privacy and security training, and annual training thereafter, is completed by its employees and contractors, including any subcontractor, that have access to PII or SPI or who create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise personally handle PII or SPI on behalf of Subrecipient. Subrecipient agrees to maintain and, upon request, provide documentation of training completion. The requirement for initial privacy and security training may be satisfied by verifiable existing security awareness training.

2.7. Any PII or SPI maintained or stored by Subrecipient or any contractor, including any subcontractor, must be stored on servers or other hardware located within the physical borders of the United States and shall not be accessed outside of the United States.

### **3. Data Ownership**

3.1. The GLO shall retain full ownership of all data, including PII and SPI, provided to Subrecipient by the GLO.

3.2. Upon termination of the Contract, Subrecipient shall promptly return to the GLO all GLO-owned data possessed by Subrecipient and its employees, agents, or contractors, including any subcontractor. Subrecipient shall retain no copies or back-up records of GLO-owned data. If such return is infeasible or causes undue business hardship, as mutually determined by the GLO and Subrecipient, the obligations set forth in this **Attachment G**, with respect to GLO-owned data, shall survive termination of the Contract and Subrecipient shall limit any further use and disclosure of GLO Data to the purposes that make the return of or GLO-owned data infeasible or causes undue business hardship. However, no provision in this Section 3.2 in no event shall circumvent the record-keeping and access requirements of 24 C.F.R. Part 570. In lieu of the requirements in this Section 3.2, the GLO may direct Subrecipient to destroy any GLO-owned data in Subrecipient's possession. Any such destruction shall be certified by Subrecipient.

### **4. Data Mining**

4.1. Subrecipient agrees not to use PII or SPI for unrelated purposes, advertising or advertising-related services, or for any other purpose not explicitly authorized by the GLO in the Contract or any document related thereto.

4.2. Subrecipient agrees to take all reasonably feasible physical, technical, administrative, and procedural measures to ensure that no unauthorized use of PII or SPI occurs.

### **5. Breach of Security**

5.1. Subrecipient agrees to provide the GLO with the name and contact information for a Subrecipient employee which shall serve as the GLO's primary data security contact.

- 5.2. Upon discovery of a Breach of Security or suspected Breach of Security by the Subrecipient, Subrecipient agrees to use commercially reasonable efforts to notify the GLO as soon as possible upon discovery of the Breach of Security or suspected Breach of Security, but in no event shall notification occur later than twenty-four (24) hours after discovery. Notification of a Breach of Security or suspected Breach of Security shall be provided by telephone to one of the following GLO Information Security team members: Brandon Rogers, GLO Information Security Officer, at (512) 463-5763; Larissa Cameron, GLO Privacy Officer, at (512) 475-1438; Arturo Montalvo, Director of Information Security, at (512) 463-5316; and the GLO Office of Information Security (OIS) Monitoring Desk at (512) 839-7021. Within five (5) business days, Subrecipient agrees to provide, at minimum, a written preliminary report regarding the Breach or suspected Breach to the GLO with root cause analysis including a log detailing the data affected.
- 5.3. The initial notification and preliminary report shall be submitted to the GLO Information Security Officer at [brandon.rogers@glo.texas.gov](mailto:brandon.rogers@glo.texas.gov).
- 5.4. Subrecipient agrees to take all reasonable steps to promptly mitigate a Breach of Security and reduce the risk of any further Breach of Security.
- 5.5. If the Breach of Security includes SPI, including Social Security Numbers, payment card information, or health information, Subrecipient agrees to provide affected individuals complimentary access for one (1) year of credit monitoring services.

## 6. Right to Audit

- 6.1. At the GLO's request, Subrecipient agrees to promptly and accurately complete a NIST based information security questionnaire provided by the GLO regarding Subrecipient's business practices and information technology environment. Subrecipient would also agree to provide any external IT service provider's (that they use) SSAE16 SOC Type II, Cloud Security Alliance Cloud Controls Matrix, or similar certification.
- 6.2. In conducting any audit under this section GLO shall keep Subrecipient's business practices and information technology environment ("City Security Information") strictly confidential and shall not use the City Security Information for any other purpose not expressly authorized by the City under this Contract and shall not disclose City Security Information to third parties. GLO shall destroy and certify to such destruction of all City Security Information and any other documents and materials related thereto within five business days of the expiration or termination of this Contract or when the need to know no longer exists, whichever is earlier.
- 6.3. In the event of a breach of system security, subject to applicable laws, Subrecipient shall use reasonable efforts to provide full access and cooperation for all activities determined by HUD and the GLO to be required to ensure an effective incident response, including providing all requested images, log files, and event information to facilitate rapid



resolution of data breaches. All information disclosed, gathered, or accessible to the GLO, or other agency of the State of Texas, the State of Texas or HUD pursuant to this Contract, is considered City Security Information and, subject to applicable laws, is subject to the confidentiality obligations set forth in this Section 6.



**Texas General Land Office**  
**Community Development & Revitalization Program**  
**HOUSING**  
**Program Completion Report**

Subrecipient/Grant Administrator: GLO Contract Number: DUNS No. Contract Start Date: Contract End Date: ☐ HOUSING**Part I. General Reports****Certificate of Expenditures:**

Activity	GLO-CDR Budget	GLO-CDR Funds Drawn To-Date	GLO-CDR Funds not Received (including pending draws)		Local Contribution	Percent Matched
			GLO-CDR Reserved Funds	Unutilized Funds (Deob)		
Total						0 %

**Civil Rights & Citizen Participation:**Requirements met and forms attached: ☐ Equal Employment Opportunity ☐ Section 3 ☐ Excessive Force Policy and Resolution ☐ Section 504Fair Housing Activity (describe): Work Completed Date: **Certifications:**

As Executive Director, I certify that:

- All activities undertaken with funds provided under the contract identified in this report, have, to the best of my knowledge, been carried out in accordance with the contract agreement;
- The information contained in this Project Completion Report is accurate to the best of my knowledge;
- All records related to contractor activities are available for review;
- GLO-DR funds were not used to reduce the level of local financial support for housing and community development activities;
- The persons to benefit from the activities described in Exhibit A, Performance Statement, of this contract are receiving service or a benefit from the use of the new or improved facilities and activities;
- For all activities undertaken with funds provided under the contract identified in this report, promotion of MBE participation has been undertaken;
- All requirements to Affirmatively Further Fair Housing have been met; and
- Proper provision has been made for the payment of all unpaid costs and unsettled third-party claims and the State of Texas is under no obligation to make any further payment to the recipient under the contract agreement in excess of the amount identified in the Certificate of Expenditures table as "GLO-CDR Reserved Funds".

<input type="text"/>	<input type="text"/>	<input type="text"/>
Name and Title (Print)	Signature	Date

**Attachments:** The following documents support this report.



☐ Original Submittal,  
also submitted via email☐ Revision Date revised: **Part II. Performance Report**

Report work performed, performance measures and beneficiary data for each contract budget activity.

**Actual Accomplishments:**

Activity/Project:	<input type="text"/>		
Project Description/Location:	<input type="text"/>		
Project Accomplishments:	<input type="text"/>	Total #:	<input type="text"/>

**HUD Performance Measures:**

Activity	Objective	Outcome
<input type="text"/>	<input type="text"/>	<input type="text"/>
Benefit Indicator	<input type="text"/>	
Special Category	<input type="text"/>	

**Beneficiary Detail - Activities**

Identify all activities that benefit the persons reported on this sheet; report beneficiary details for those persons and households.

**Activity:** **Beneficiaries by Demographic:**

	No. of Persons			No. of Households (demographics of the Head of Household)		
	Male	Female	Total	Male	Female	Total
Gender	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Race	Non-Hispanic	Hispanic	Sub-Total	Non-Hispanic	Hispanic	Sub-Total
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Grand Total:	<input type="text"/>			<input type="text"/>		

**Beneficiaries by Income:**

Income Level	No. of Persons	No. of Owner Occupied Households	No. of Renter Occupied Households
Very Low (at or below 30% of the AMFI)	<input type="text"/>	<input type="text"/>	<input type="text"/>
Low (31-50% of the AMFI)	<input type="text"/>	<input type="text"/>	<input type="text"/>
Moderate (51-80% of the AMFI)	<input type="text"/>	<input type="text"/>	<input type="text"/>
Non-Low/Moderate (above 80% of the AMFI)	<input type="text"/>	<input type="text"/>	<input type="text"/>
Total	<input type="text"/>	<input type="text"/>	<input type="text"/>

Subtotal - All Low/Mod

Percent Low/Mod

0.00%

0

**Click "+" button to include another Activity/Project.****Part III Final Financial Interest Report**

Report all contracts executed under this CDBG-DR contract that are valued at or above \$2,000.

**Contracts with no subcontractors**

Type of Services	Business Name	Contract Amount			Qtr Executed
		CDBG-DR Funds	Other Funds	Total Dollars	

☐ At least one contract executed under this CDBG-DR contract includes subcontracts valued at or above \$10,000.☐ No contracts executed under this CDBG-DR contract include subcontracts valued at or above \$10,000.



**CITY OF HOUSTON****BUYOUT PROGRAM PERFORMANCE STATEMENT**

Subrecipient shall carry out the following housing activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Buyout Program Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

**Project Description**

The Subrecipient will provide a Buyout Program to remove homes from the housing stock that are in areas with a high risk of flooding or in areas at a high risk of flooding for Low- to Moderate-Income ("LMI") individual households affected by Hurricane Harvey. The Subrecipient may offer buyouts to Low- to Moderate Income individual households under the Low- to Moderate Buyout (LMB) or Low- to Moderate Income Housing Incentive (LMHI) or urgent need (UN), thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery and Administration costs, as defined in the State of Texas Plan for Disaster Recovery, enacted May 1, 2018, as amended, will not exceed ten percent (10%) and two percent (2%), respectively, of the total grant allocation. An environmental review must be conducted at all locations prior to the execution and commencement of work.

Eligible activities for the funds are as listed in HCDA section 105(a)(1), 105(a)(7-9) 105(a)(24-25), 5305(a)(8), 24 CFR 570.20(b)(4), and; 24 CFR 570.201(g) including but are not limited to Buyouts; Demolition; Relocation Assistance; Payment of Non-Federal Share; Housing incentives. A waiver eligible under FR-6066-N-01 permits housing incentives and other requirements for one-for one replacement housing, relocation, and Real property acquisition requirements.

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
Buyout Program	LMHI	100
Buyout Program	UN	100

**Buyout Program**

The Subrecipient will offer a Buyout Program that will remove approximately two hundred (200) single family or multifamily homes from areas with high flood risk. The maximum assistance provided to each property will be two hundred fifty thousand dollars (\$250,000) for buyout assistance including incentives/moving and settlement costs and other eligible project costs. The

Subrecipient will purchase residential structures that have flooded and demolish them to create park amenities, open space, or detention areas. The program is voluntary and is intended to assist residents to move out of areas that have been impacted by multiple disasters or are at high risk of flooding from future disasters. The program is also intended to reduce the impact of future disasters, while encouraging targeted revitalization efforts and the creation of open space.

The Subrecipient may work with subrecipients, such as the Harris County Flood Control District or other City Departments to implement this program. If a designee of the Subrecipient is selected, the Subrecipient will work with the designee to choose buyout project locations. Buyouts under this program may be part of a larger City or County buyout strategy, in accordance with a long-term plan for the property to become future open space or detention, to avoid removing a viable property from the housing market. It may include the buyout of impacted single and multifamily housing. Buyout property will be maintained in perpetuity as greenspace, as applicable to buyouts.

To be eligible for Assistance the Residential Structure Homeowner Properties must be Owner-occupied at the time of the storm; served as homeowner's primary residence; sustained damage from Hurricane Harvey; the property is environmentally cleared; and the property is located in a Disaster Risk Reduction Area (DRRA), repetitive flood risk area or Floodplain. The Homeowner applicants and co-applicants must be current on payments for child support; furnish evidence that property taxes are current, under an approved payment plan, or that they have an exemption under current laws and Homeowner applicants must agree to a limited subrogation of any future awards related to Hurricane Harvey, to ensure duplication of benefits compliance.

To be eligible for assistance, the Rental Property must be Renter-occupied at the time of the storm; sustained damage from Hurricane Harvey; the property is environmentally cleared; and the property is located in DRRA, repetitive flood risk area or Floodplain. The Rental Property owners must furnish evidence that property taxes are current, they are under an approved payment plan, or that they have an exemption under current laws.

Buyout Program guidelines will detail applicant or project eligibility requirements, application process, compliance with Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) regulations, and other information.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**



**City of Houston**  
**Buyout Program Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Housing Guidelines	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**City of Houston**  
**Buyout Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_MI_BP-LMI_CityofHouston	Buyout Program – LMHI	\$18,360,000	\$0	\$18,360,000
18-###-###_MI_BP-UN_CityofHouston	Buyout Program - UN	\$18,360,000	\$0	\$18,360,000
18-###-###_MI_BP-LMI_CityofHouston	Project Delivery- BP-LMHI	\$2,040,000	\$0	\$2,040,000
18-###-###_MI_BP-UN_CityofHouston	BP-Project Delivery - UN	\$2,080,000	\$0	\$2,080,000
	<b>TOTAL</b>	<b>\$40,800,000</b>	<b>\$0</b>	<b>\$40,800,000</b>

**CITY OF HOUSTON****ECONOMIC REVITALIZATION PROGRAM PERFORMANCE STATEMENT**

Subrecipient shall carry out the following economic revitalization activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Program Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

**Project Description**

The Subrecipient will provide an Economic Revitalization Program to help create job for Low to Moderate Income ("LMI") individuals and to improve the economic viability of areas affected by Hurricane Harvey in order to meet the National Objective of benefiting low- to moderate-income persons, thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery costs will be not exceed six percent (6%).

Economic Revitalization activities that are eligible for funding are listed in HCDA section 105(a)(17), 105(a)(19), 105(a)(22). Economic revitalization activities must contribute to the long-term recovery and restoration of housing. A waiver eligible under FR-6066-N-01 permits other national objective documentation and public benefit standards.

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
Economic Revitalization Program	LMI	813 jobs created/ retained

**Economic Revitalization Program**

The Subrecipient will offer an Economic Revitalization Program, which will support a comprehensive recovery by creating or retaining eight hundred thirteen (813) jobs at or below fifty thousand (\$50,000) per job created or retained for low and moderate-income persons through the provision of capital, credit and technical assistance to businesses, including microenterprises. Assistance may be provided through loans or grants, and assistance may be part of a revolving loan fund. It is intended that this program will support small businesses that include, but is not limited to, those providing housing construction services, to work with and complement the housing programs funded with Community Development Block Grant-Disaster Recovery funds. Economic revitalization activities must contribute to the long-term recovery and restoration of housing. The Subrecipient may utilize public and private nonprofit agencies, authorities, or



organizations and for-profit organizations to carry out the program. The application or Notice of Funding Availability/ Request for Proposal (NOFA/ RFP) process will clearly establish the process and acceptance period, threshold criteria, and the award process. Selection criteria will likely include: the need for program, cost reasonableness and effectiveness, activity management and implementation, and experience/past performance. Eligible subrecipients include public or private nonprofit agencies, authorities, or organizations and for-profit organizations.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**City of Houston**  
**Economic Revitalization Program Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Project Delivery Funds	Cumulative Billing Cap by Benchmark for Project Delivery Funds
Approval of Notice Housing Guidelines, or NOFA/RFP.	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**City of Houston**  
**Economic Revitalization Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_MI_ER-LMI_CityofHouston	Economic Revitalization - LMI	\$28,448,944	\$0	\$28,448,944
18-###-###_MI_ER-LMI_CityofHouston	ER-Project Delivery-LMI	\$1,815,890	\$0	\$1,815,890
	<b>TOTAL</b>	<b>\$30,264,834</b>	<b>\$0</b>	<b>\$30,264,834</b>



## CITY OF HOUSTON

## HOMEBUYER ASSISTANCE PROGRAM PERFORMANCE STATEMENT

Subrecipient shall carry out the following housing activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Homebuyer Assistance Program Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

Project Description

The Subrecipient will provide a Homebuyer Assistance Program to provide funds for down payment, closing cost, principal buydown, and other direct financial assistance for Low- to Moderate-Income ("LMI") individual households and households earning between eighty percent (80%) and one hundred twenty percent (120%) Area Median Income (AMI), in order to meet the dual National Objectives of benefiting low- to moderate-income persons and meeting an urgent need, thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery and Administration costs, as defined in the State of Texas Plan for Disaster Recovery, enacted May 1, 2018, as amended, will not exceed ten percent (10%) and two percent (2%), respectively, of the total grant allocation for both Non-Rental and Rental Activities. An environmental review must be conducted at all locations prior to the execution and commencement of work.

This activity is eligible for Community Development Block Grant – Disaster Recovery funds as listed in 24 CFR 570.201(n) and HCDA section 105(a)(24). A waiver eligible under FR-6066-N-01 permits Homeownership assistance for households earning up to one hundred twenty percent (120%) Area Median Income and down payment assistance for up to one hundred percent (100%) of the down payment.

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
Homebuyer Assistance Program	LMI	200
Homebuyer Assistance Program	UN	452

Homebuyer Assistance Program

The Subrecipient will provide a Homebuyer Assistance Program, which will assist eligible applicant households earning up to one hundred twenty percent (120%) of the area median income (AMI) to purchase a home. The program will assist approximately six hundred fifty-two (652) eligible households, of which it is estimated two hundred (200) will be low to moderate income households. The Homebuyer Assistance Program will prioritize households that were impacted by Hurricane Harvey, to facilitate the movement of low to moderate income households into new homes after their homes were damaged by Hurricane Harvey. Assistance may include down payment assistance, closing cost assistance, principal buydown, and other direct financial assistance to homebuyers to finance the purchase of a home. Direct homeownership assistance under 570.201(n) allows the Subrecipient to pay up to one hundred percent (100%) of the down payment amount required by the lender. The City may also utilize other forms of direct homebuyer assistance such as subsidizing interest rates and mortgage principal amounts, including making grants to reduce the effective interest rate on the amount needed by the eligible household to achieve an affordable mortgage payment level. The maximum amount per unit is thirty thousand dollars (\$30,000). Refer to the Homebuyer Assistance Program Guidelines for additional technical guidance.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**



**City of Houston**  
**Homebuyer Assistance Program Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Homebuyer Assistance Guidelines	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**City of Houston**  
**Homebuyer Assistance Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_MI_HBA-LMI_CityOfHouston	Homebuyer Assistance Program - LMI	\$6,000,000	\$0	\$6,000,000
18-###-###_MI_HBA-UN_CityOfHouston	Homebuyer Assistance Program - UN	\$13,567,170	\$0	\$13,567,170
18-###-###_MI_HBA-UN_CityOfHouston	HBA-Project Delivery-LMI	\$666,667	\$0	\$666,667
18-###-###_MI_HBA-UN_CityOfHouston	HBA-Project Delivery-UN	\$1,507,463	\$0	\$1,507,463
	<b>TOTAL</b>	<b>\$21,741,300</b>	<b>\$0</b>	<b>\$21,741,300</b>

## CITY OF HOUSTON

### HOMEOWNER ASSISTANCE PROGRAM PERFORMANCE STATEMENT

Subrecipient shall carry out the following housing activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Homeowner Assistance Program Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

#### Homeowner Assistance Program (HoAP)

The Subrecipient will provide City Managed Rehabilitation, Elevation and Reconstruction, Reimbursement, Acquisition, Homeowner Managed Rehabilitation, and Interim Mortgage Assistance. Activities are for Low to Moderate Income ("LMI") individual households and non-Low to Moderate Income individuals that were affected by Hurricane Harvey in order to meet the dual National Objectives of benefiting low-to moderate-income persons and meeting an Urgent Need, thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery and Administration costs, as defined in the State of Texas Plan for Disaster Recovery, enacted May 1, 2018, as amended, will not exceed ten (10%) and two percent (2%), respectively, of the total grant allocation. An environmental review must be conducted at all locations prior to the execution and commencement of work.

Eligible housing activities allowed under CDBG-DR; HCDA Section 105(a)(1), 105(a)(3-4), 105(a)(8) 105(a)(11), 105(a)(18), and 105(a)(25), 24 CFR 570.201(g) include but are not limited to single family owner-occupied rehabilitation and reconstruction; Hazard mitigation; Relocation assistance; demolition only; other activities associated with the recovery of impacted single family housing stock; payment of non-federal share. A waiver eligible under FR-6066-N-01 permits housing incentives and other requirements for one-for-one replacement housing, relocation, and Real property acquisition requirements. A modification to the limitation on emergency grant payments for interim mortgage assistance will also be used as stated in the same Federal Register.

The following estimated activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
City Managed Rehabilitation	LMI	1,348
City Managed Rehabilitation	UN	67
Reimbursement	LMI	177
Reimbursement	UN	1,519



Acquisition	LMI	35
Homeowner Managed Rehabilitation	LMI	221
Homeowner Managed Rehabilitation	UN	259
Interim Mortgage Assistance	LMI	353
Interim Mortgage Assistance	UN	88
Total		4,067

The City of Houston will be performing the following housing activities as part of the Homeowner Assistance Program (HoAP) within the city limits of Houston. Refer to the Homeowner Assistance Program Guidelines for further technical guidance regarding each program. Guidelines must be posted on the Subrecipient's website.

City Managed, Elevation, Rehabilitation and Reconstruction

The Subrecipient will provide homeowner rehabilitation and reconstruction assistance activities for an estimated one thousand four hundred fifteen (1,415) households of which it is anticipated that one thousand three hundred forty-eight (1,348) will be Low to Moderate Income households. The City will manage and complete the construction process for the rehabilitation or reconstruction of damaged homes on behalf of homeowners. The City anticipates contracting with a firm(s) to provide design and construction services for the rehabilitation or reconstruction of damaged properties.

Subrecipient must ensure that, upon completion, the rehabilitated, repaired, or reconstructed portion of each property complies with local building codes, and that the entire structure complies with local health and safety codes and standards and all applicable federal, state, and local building codes, the City's Minimum Property Standards (MPS), and compliance with one of the Green Building Standards as required by the Harvey Federal Register.

All reconstructed and newly constructed housing units must comply with the universal design features in new construction, as established by the GLO's Construction Standards, RESCHECK Certification, the International Residential Codes, as required by Subchapter G, Chapter 214, Local Government Code and one of the following Specifications, such as Energy Standards verified by a U.S. Department of Energy Building Energy Codes Program. All replacement housing, including manufactured housing units or modular homes, must comply with Housing and Urban

Development (HUD), program guidelines, construction standards and state, local, or regional building codes, as applicable.

Subrecipient shall conduct at a minimum a 50% inspection and final inspection as required by the GLO rehabilitation and reconstruction standards to meet the International Residential Code 2012, or the Local, County, State, or Federal Code, whichever is most stringent. If any Housing Units are located within a Catastrophe Area, as defined in Section 2210.005 of the Texas Insurance Code and suffer damage due to windstorms and/or hail, Subrecipient obtain certificates of completion from the Texas Department of Insurance pursuant to the requirements of Section 2210.2515 of the Texas Insurance Code and City's permitting office.

#### Reimbursement

The Subrecipient will offer a reimbursement option to an estimated one thousand six hundred ninety-six (1,696) households of which it is estimated that one hundred seventy-seven (177) will be Low to Moderate Income households. The assisted households will have completed partial or full repairs on their home before applying to the program. Households may be eligible for reimbursement of eligible expenses incurred, prior to application to the program, for work performed to minimum program standards, following an environmental clearance. Xactimate or a similar industry standard tool will be used to ensure cost reasonableness and the work will be verified through an on-site inspection by subrecipient or subrecipient's designee.

Subrecipient must ensure that, upon completion, the rehabilitated, repaired, or reconstructed portion of each property complies with local building codes, and that the entire structure complies with local health and safety codes and standards and all applicable federal, state, and local building codes, including the City's Minimum Property Standards (MPS).

Subrecipient shall conduct a final inspection (site inspection verifying completion of repairs).

#### Homeowner Managed Rehabilitation, Elevation and Reconstruction

The Subrecipient will provide a Homeowner Managed Rehabilitation option for four hundred eighty (480) households of which it is estimated that two hundred twenty-one (221) will be Low to Moderate Income households. The Subrecipient will assist homeowners to manage their own rehabilitation process and will provide construction advisory services for homeowners. The program will allow homeowners who have started the process and are under contract with a contractor at the time of application but need financial assistance to complete repairs. Homeowners will select their own licensed and insured contractor(s) and contract verifications, subject to approval and verification by the Subrecipient. Xactimate® or similar industry standard tools will be used to ensure cost reasonableness and the work will be validated through an on-site inspection. Homeowner managed rehabilitation, elevation, and reconstruction will only be available to homeowners who have initiated the repair process and are under contract with a contractor at the time of application.



Subrecipient must ensure that, upon completion, the rehabilitated, repaired, or reconstructed portion of each property complies with local building codes, and that the entire structure complies with local health and safety codes and standards and all applicable federal, state, and local building codes, including the City's Minimum Property Standards (MPS)

Subrecipient shall conduct progress inspections to verify repairs are completed and requirements are satisfied.

#### Acquisition

The Subrecipient may elect to voluntarily acquire single family homes for rehabilitation or reconstruction. The home acquired may then be reconstructed through the Single-Family Development Program or rehabilitated or reconstructed by partners. These homes would then be offered for sale to Low to Moderate homebuyers or to another homeowner with a damaged home. It is estimated that the Acquisition option may acquire an estimated thirty-five (35) homes. Assistance will be provided to homeowners located in a floodplain or residing in a repetitive flood area that agree to relocate outside of the floodplain. The Relocation incentive assistance will be offered. Applicant may receive post-disaster fair market value, which may include incentives. However, incentives may not be given to applicants that move into disaster-impacted floodplains.

#### Interim Mortgage Assistance

The Subrecipient will offer interim mortgage assistance for an estimated four hundred forty-one (441) households of which it is estimated that three hundred fifty-three (353) will be Low to Moderate Income households. Assistance will be provided to homeowners being served under the Homeowner Assistance Program who are making both a mortgage payment on their storm-damaged home and making a rental payment for their temporary home. These homeowners may be eligible to receive up to twenty (20) months of assistance based on the lesser of their monthly mortgage and temporary rental housing payments. This option may be considered when the rehabilitation or reconstruction of a home extends beyond three (3) months, during which mortgage payments may be due, but the home remains uninhabitable. Determination of reasonable and necessary award amounts, including duplication of benefits calculation, retroactive eligibility, and specific performance milestones for the rehabilitation/reconstruction of homes, will be established in the program guidelines.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**City of Houston**  
**Homeowner Assistance Program Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Housing Guidelines	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**



**City of Houston**  
**Homeowner Assistance Program Budget**

<b>Activity No</b>	<b>HUD Activity Type</b>	<b>Grant Award</b>	<b>Other Funds</b>	<b>Total</b>
City Managed Rehabilitation	Rehabilitation & Reconstruction - LMI	\$156,382,597	\$0	\$156,382,597
City Managed Rehabilitation	Rehabilitation & Reconstruction - UN	\$5,345,649	\$0	\$5,345,649
Reimbursement	Reimbursement -LMI	\$14,138,260	\$0	\$14,138,260
Reimbursement	Reimbursement -UN	\$121,553,039	\$0	\$121,553,039
Acquisition	Acquisition - LMI	\$7,069,130	\$0	\$7,069,130
Homeowner Managed Rehabilitation	Homeowner Managed Rehabilitation - LMI	\$17,672,825	\$0	\$17,672,825
Homeowner Managed Rehabilitation Option	Homeowner Managed Rehabilitation - UN	\$20,691,298	\$0	\$20,691,298
Interim Mortgage Assistance	Interim Mortgage Assistance Option - LMI	\$8,482,956	\$0	\$8,482,956
Interim Mortgage Assistance	Interim Mortgage Assistance Option - UN	\$2,120,739	\$0	\$2,120,739
Project Delivery	HoAP - Project Delivery - LMI	\$22,778,307	\$0	\$22,778,307
Project Delivery	HoAP - Project Delivery - UN	\$16,494,636		\$16,494,636
	<b>TOTAL</b>	<b>\$392,729,436</b>	<b>\$0</b>	<b>\$392,729,436</b>

**City of Houston**  
**Administration and Planning Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_ MI_Admin- CityOfHouston	Administration Program	\$20,835,088	\$0	\$20,835,088
18-###-###_ MI- Plan- CityofHouston	Planning Program	\$23,100,000	\$0	\$23,100,000
	<b>TOTAL</b>	<b>\$43,935,088</b>	<b>\$0</b>	<b>\$43,935,088</b>



**CITY OF HOUSTON****MULTIFAMILY RENTAL PROGRAM PERFORMANCE STATEMENT**

Subrecipient shall carry out the following housing activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Multifamily Rental Program Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

**Project Description**

The Subrecipient will repair multifamily properties and build new multifamily developments for Low- to Moderate Income ("LMI") individual households affected by Hurricane Harvey, in order to meet the National Objective of benefiting low- to moderate income persons, thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery and Administration costs, as defined in the State of Texas Plan for Disaster Recovery, enacted May 1, 2018, as amended, will not exceed ten percent (10%) and two percent (2%), respectively, of the total grant allocation. An environmental review must be conducted at all locations prior to the execution and commencement of work.

Eligible activities include rehabilitation, reconstruction, new construction, and acquisition. HCDA Section 105 (a)(1), 105(a)(3-4), 105(a)(7-8), 105(a)(11), and 105(a)(14-15). A waiver eligible under FR-6066-N-01 permits new housing construction.

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
Multifamily Rental Program	LMI	1,530

**Multifamily Rental Program**

The Subrecipient will offer a Multifamily Rental Housing program to provide an additional one thousand five hundred thirty (1,530) affordable units for low- to moderate-income households within the City of Houston. The program will include new construction, the acquisition and/or rehabilitation of multifamily rental housing, and strategic land acquisition for multifamily developments. The program will address the affordable housing shortage and meet the needs of disaster impacted rental households, including those in public housing. This program will also provide housing designed to meet the needs of special populations. Subrecipient will prioritize transactions leveraged with housing tax credits, conventional equity, conventional debt, tax exempt debt, deferred developer fees, seller notes, in-kind equity and other potential funding sources. The maximum award is forty million dollars (\$40,000,000) per development. The eligibility criteria include the following:

- i. Project must meet Community Development Block Grant-Disaster Recovery eligibility requirements

- ii. Development must be located within the city limits of Houston, except in certain cases where the City and County partner on projects that provide housing
- iii. At a minimum, fifty-one percent (51%) of the units rehabilitated or developed will be reserved for a lien period for low to moderate income households earning eighty percent (80%) or less of the Area Median Family Income (AMFI) at affordable rents. For rehabilitation or reconstruction, the lien period will be a minimum of fifteen (15) years, and for new construction, the lien period will be a minimum of twenty (20) years.
- iv. Any substantial rehabilitation, as defined by 24 CFR 5.100, or new construction of a building with more than four rental units will include installation of broadband infrastructure, as required.
- v. Property owners receiving disaster assistance that triggers the flood insurance purchase requirement have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance in writing and to maintain such written notification in the documents evidencing the transfer of the property, and the transferring owner may be liable if he or she fails to do so.
- vi. Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for "repair, replacement, or restoration" for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. No disaster assistance may be provided for the repair, replacement, or restoration of a property to a person who has failed to meet this requirement.

Refer to the approved Multifamily Rental Program Guidelines for further technical guidance.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**



**City of Houston**  
**Multifamily Rental Program Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Multifamily Rental Program Guidelines	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**City of Houston**  
**Multifamily Rental Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_MI_R-Multi-LMI_CityOfHouston	Multifamily Rental Program - LMI	\$289,150,722	\$0	\$289,150,722
18-###-###_MI_R-CityOfHouston	Multi-Project Delivery-LMI	\$32,127,858	\$0	\$32,127,858
	<b>TOTAL</b>	<b>\$321,278,580</b>	<b>\$0</b>	<b>\$321,278,580</b>

**CITY OF HOUSTON****PUBLIC SERVICES PERFORMANCE STATEMENT**

Subrecipient shall carry out the following public services activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Public Services Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

**Project Description**

The Subrecipient will provide public services to approximately three hundred thousand (300,000) low- and moderate-income ("LMI") persons affected by Hurricane Harvey to support residents to find housing, remedy housing issues, or to become more resilient in future disasters in order to meet the National Objective of benefiting low- to moderate-income persons, thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery and Administration costs, as defined in the State of Texas Plan for Disaster Recovery, enacted May 1, 2018, as amended, will not exceed ten percent (10%) for housing activities and 6% for non-housing activities and two percent (2%), respectively, of the total grant allocation for both Non-Rental and Rental Activities. An environmental review must be conducted on all projects prior to the execution and commencement of work. Eligible activities include the provision of public services as listed in HCDA Sec. 105(a)(8).

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
Public Services	LMI	300,000

**Public Services Program**

The Subrecipient will provide public services to approximately three hundred thousand (300,000) low to moderate income persons. The program will provide a comprehensive approach to recovery for Houstonians. These services will support residents to find housing, remedy housing issues, and/or become more resilient in future disasters, creating a stronger, more prepared community. Services will be made accessible to individuals with wide-ranging barriers through varying outreach strategies, partnerships with organizations serving people with disabilities, and making accommodations, as needed.

Services may include housing counseling, legal assistance, transportation services, fair housing services, health/mental health services, employment training, workforce development, and other services to address the needs of those impacted by Hurricane Harvey. To address the needs of those impacted who have become homeless or are at risk of becoming homeless. Housing



counseling and legal assistance services will assist in furthering fair housing by addressing housing barriers and allowing residents greater choice to move to neighborhoods with higher opportunity. Employment training and workforce development programs, including those that support housing recovery and housing construction, will address the need for job skills to support recovery. In addition, workforce development will help boost long-term recovery by supplying residents of impacted communities with the necessary skills and opportunities to increase household income. To address the needs of those impacted who have become homeless or are at risk of becoming homeless, services may include subsistence payments, rental housing subsidies, security deposits, and other services to assist in housing and/or rehousing this population.

The provision of public services is also intended to assist residents in preparing and qualifying for housing programs offered by the Subrecipient. Remedying title or tax issues through legal services and providing housing counseling for low to moderate income communities may prepare more residents to become eligible for programs such as the Subrecipients Homeowner Assistance and Homebuyer Assistance Programs.

Refer to the approved Public Services Guidelines for further technical guidance.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**City of Houston**  
**Public Services Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Public Services Guidelines	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**City of Houston**  
**Public Services Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_MI_Public-LMI_CityofHouston	Public Service - LMI	\$56,760,000	\$0	\$56,760,000
18-###-###_MI_Public-LMI_CityofHouston	Public-Project Delivery-LMI	\$3,240,000	\$0	\$3,240,000
	<b>TOTAL</b>	\$60,000,000	\$0	\$60,000,000



**CITY OF HOUSTON****SINGLE FAMILY DEVELOPMENT PROGRAM PERFORMANCE STATEMENT**

Subrecipient shall carry out the following housing activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Single Family Development Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

**Project Description**

The Subrecipient will provide new affordable single family homes for Low- to Moderate-Income ("LMI") individual households affected by Hurricane Harvey, in order to meet the National Objective of benefiting low- to moderate-income persons, thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery and Administration costs, as defined in the State of Texas Plan for Disaster Recovery, enacted May 1, 2018, as amended, will not exceed ten (10%) and two percent (2%), respectively, of the total grant allocation for both Non-Rental and Rental Activities. An environmental review must be conducted at all locations prior to the execution and commencement of work.

New construction is eligible based on information provided in the Federal Register waiving the requirements of 42 U.S.C.(a) HCDA Section 105 (a)(1), 105(a)(4), 105(a)(7-8), 105(a)(11), 105(a)(14-15); A waiver eligible under FR-6066-N-01 permits new housing construction.

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
Single Family Development	LMI	1,020

**Single Family Development Program**

The Subrecipient will offer a Single Family Development Program to provide one thousand twenty (1,020) new affordable single family homes for low and moderate income homebuyers. This program will work in conjunction with other recovery programs to provide housing options for those directly impacted by Hurricane Harvey and those indirectly impacted due to the resulting shortage of available housing.

The construction cost is limited to two hundred thousand dollars (\$200,000) per home, however additional allocations, above the two hundred thousand dollars (\$200,000) threshold may be provided to address certain site-specific conditions including accessibility needs environmental

issues, resiliency/mitigation measures, municipal ordinances, and neighborhood requirements. Additional allocations may be allowed based on the submitted application, onsite inspection and additional requirements that will be outlined in the Standard Operating Procedure. The City will work with applicants who require American with Disabilities (ADA) accommodations to select properties that satisfy their ADA needs; and/or will incorporate ADA construction for new homes built on empty lots. The maximum award of assistance was estimated utilizing information from existing repair and reconstruction programs. The maximum amount of assistance for each unit constructed and inclusive of site-specific conditions shall not exceed two hundred seventy-two thousand dollars (\$272,000). Refer to the approved Single-Family Development Guidelines for further technical guidance.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**City of Houston**  
**Single Family Development Program Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Housing Guidelines	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**City of Houston**  
**Single Family Development Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_MI_SF-LMI_CityofHouston	Single Family Development Program - LMI	\$183,600,000	\$0	\$183,600,000
18-###-###_MI_SF-LMI_CityofHouston	SF Project Delivery -LMI	\$20,400,000	\$0	\$20,400,000
	<b>TOTAL</b>	<b>\$204,000,000</b>	<b>\$0</b>	<b>\$204,000,000</b>



**CITY OF HOUSTON****SMALL RENTAL PROGRAM PERFORMANCE STATEMENT**

Subrecipient shall carry out the following housing activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Small Rental Program Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

**Project Description**

The Subrecipient will rehabilitate small rental properties (one (1) to seven (7) units) for Low- to Moderate-Income ("LMI") individual households affected by Hurricane Harvey in order to meet the National Objective of benefiting low- to moderate-income persons, thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery and Administration costs, as defined in the State of Texas Plan for Disaster Recovery, enacted May 1, 2018, as amended, will not exceed ten (10%) and two percent (2%), respectively, of the total grant allocation for both Non-Rental and Rental Activities. An environmental review must be conducted at all locations prior to the execution and commencement of work.

Eligible Program activities include Rehabilitation, Reconstruction, New Construction, and Acquisition. HCDA Section 105 (a)(1), 105(a)(3-4), 105(a)(7-8), 105(a)(11), and 105(a)(14-15). A waiver eligible under FR-6066-N-01 permits new housing construction

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
Small Rental Program	LMI	600

**Small Rental Program**

The Subrecipient will provide a Small Rental Program to rebuild the affordable rental housing stock damaged by Hurricane Harvey by rehabilitating small rental properties (defined in this program as individual buildings with no more than seven (7) residential units) and create new housing stock through infill development of new small rental properties. This program, along with the Multifamily Rental Program, intends to meet the increased demand for affordable rental housing in Houston by rehabilitating or building approximately six hundred (600) units of rental housing, which will be available to low-and moderate-income households. It will provide financial assistance, through forgivable loans, to landlord applicants who serve a low- to moderate-income market. Refer to the approved Small Rental Program Guidelines for further technical guidance.

Property owner applicants must provide proof that the property taxes are current, have an approved payment plan, or have an approved property tax exemption in place. Applicants must agree to a limited subrogation of any future awards related to Hurricane Harvey according to duplication of benefits requirements and agree to lien period and lien requirements.

Properties must not be in a floodway and have an environmental clearance.

Developments must meet Community Development Block Grant- Disaster Recovery eligibility requirements and be located within the city limits of Houston (except in certain cases where the City and County partner on projects that provide housing).

If a single-family unit is rehabilitated or developed, it must be reserved for low to moderate income households. At least two (2) units in a duplex or triplex must be reserved for low to moderate income households. Any substantial rehabilitation, as defined by 24 CFR 5.100, or new construction of a building with more than four (4) rental units will include installation of broadband infrastructure, as required. Developments may include more than one (1) property, such as with a scattered site rental development.

Property owners receiving disaster assistance that triggers the flood insurance purchase requirement have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance in writing and to maintain such written notification in the documents evidencing the transfer of the property, and the transferring owner may be liable if he or she fails to do so. Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for "repair, replacement, or restoration" for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. No disaster assistance may be provided for the repair, replacement, or restoration of a property to a person who has failed to meet this requirement.

Applicable elevation requirements will apply to development and rehabilitation.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**



**City of Houston**  
**Small Rental Program Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Small Rental Program Guidelines	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**City of Houston**  
**Small Rental Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_MI_R-Small-LMI_CityofHouston	Small Rental Program - LMI	\$55,084,590	\$0	\$55,084,590
18-###-###_MI_R-Small-LMI_CityofHouston	Small - Project Delivery- LMI	\$6,120,510	\$0	\$6,120,510
	<b>TOTAL</b>	\$61,205,100	\$0	\$61,205,100





**AMENDMENT No. 1 TO  
GLO CONTRACT No. 19-076-008-B357**

THE GENERAL LAND OFFICE (the "GLO") and CITY OF HOUSTON ("Subrecipient"), each a "Party" and collectively "the Parties" to GLO Contract No. 19-076-008-B357 (the "Contract"), desire to amend the Contract.

WHEREAS, the Parties desire to replace Subrecipient's DUNS Number with its Texas Identification Number (TIN); and

WHEREAS, the Parties desire to revise or replace certain language in the Contract to correct certain administrative errors; and

WHEREAS, the Parties desire to revise the Performance Statement, Budget, and Benchmarks for Infrastructure Projects;

NOW, THEREFORE, the Parties agree as follows:

1. Subrecipient's DUNS Number **145057811** is deleted from the Contract and replaced with the Texas Identification Number (TIN) **17460011640**.
2. ATTACHMENT A to the Contract, **Performance Statements, Budget, and Benchmarks for Housing Projects**, is deleted in its entirety and replaced with the **Revised Performance Statement, Budget, and Benchmarks for Housing Projects**, attached hereto and incorporated herein in its entirety for all purposes as **ATTACHMENT A-1**.
3. SECTION 8.28 of the Contract is deleted in its entirety and replaced with the following:

**"8.28 STATEMENTS OR ENTRIES**

**WARNING: ANY PERSON WHO KNOWINGLY MAKES A FALSE CLAIM OR STATEMENT TO HUD MAY BE SUBJECT TO CIVIL OR CRIMINAL PENALTIES UNDER 18 U.S.C. § 287, 18 U.S.C. § 1001, AND 31 U.S.C. § 3729.**

Except as otherwise provided under federal law, any person who knowingly and willfully falsifies, conceals, or covers up a material fact by any trick, scheme, or device; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document despite knowing the writing or document to contain any materially false, fictitious, or fraudulent statement

or entry shall be prosecuted under Title 18, United States Code, § 1001.

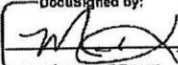
**Under penalties of 18 U.S.C. § 287, 18 U.S.C. § 1001, and 31 U.S.C. § 3729, the undersigned Subrecipient representative hereby declares that he/she has examined this Contract and Attachments and, to the best of his/her knowledge and belief, any statements, entries, or claims made by Subrecipient are true, accurate, and complete."**






4. This Amendment shall be effective upon the date of the last signature.
5. The terms and conditions of the Contract not amended herein shall remain in force and effect.

**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE FOR AMENDMENT No. 1 TO  
GLO CONTRACT No. 19-076-008-B357**

**GENERAL LAND OFFICE**

DocuSigned by:  
  
Mark A. Havens, Chief Clerk/  
Deputy Land Commissioner  
Date of execution: 4/29/2020

OGC   
PM   
SDD   
DGC   
GC 

**ATTACHED TO THIS AMENDMENT:**

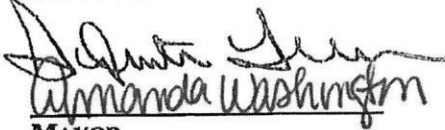
**ATTACHMENT A-1** Revised Performance Statement, Budget, and Benchmarks for Housing Projects

**CITY OF HOUSTON SIGNATURE PAGE FOLLOWS**



**CITY OF HOUSTON SIGNATURE PAGE FOR AMENDMENT NO. 1 TO  
GLO CONTRACT NO. 19-076-008-B357**

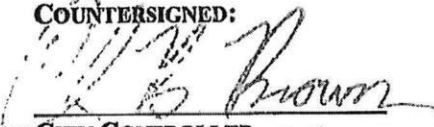
**CITY OF HOUSTON**

  
**MAYOR**

4-8-2020  
**DATE**

  
**CITY SECRETARY Assistant**

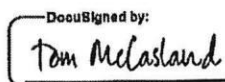
**COUNTERSIGNED:**

  
**CITY CONTROLLER**

**DATE OF COUNTERSIGNATURE:**

4-14-2020

**APPROVED:**

DocuSigned by:  
  
4/7/2020  
**DIRECTOR, HOUSING AND  
COMMUNITY DEVELOPMENT  
DEPARTMENT**

**APPROVED AS TO FORM:**

DocuSigned by:  
  
4/8/2020  
**SENIOR ASSISTANT CITY ATTORNEY**

**SUBRECIPIENT NAME: CITY OF HOUSTON**

**HOUSING PERFORMANCE STATEMENT**

Subrecipient shall carry out the following housing activities in the City of Houston area in strict accordance with the terms of Subrecipient's or GLO's approved Housing Guidelines (where applicable), Contract, and all Attachments, whether attached physically or incorporated by reference.

Project Description

Subrecipient will fund the purchase of multifamily properties, assist with the relocation of residents, and demolish structures to reduce density in vulnerable areas. The proposed Activities will remove housing from the floodplain and prevent residential flooding in the future. This is a voluntary program and eminent domain will not be used. The City and/or a subrecipient, such as the Harris County Flood Control District, will carry out the program. Properties will be returned to green space to help absorb water and mitigate street and residential flooding in the future. Only properties impacted by a 2016 flood event are eligible. Properties will be dedicated and maintained in perpetuity for use that is compatible with open space. Subrecipient will remove approximately 3 properties from the floodplain and/or high flood risk areas. The City of Houston will utilize assessments provided with Harris County MOD and FEMA data to identify areas or homes that are at risk of flooding again and were impacted by the 2016 flood events. The program will benefit an area where at least 51% of residents are low- and moderate-income (LMI) households, as well as arrange for the demolition of dilapidated structures and conversion of property to open space. An environmental review must be conducted at all locations prior to the execution and commencement of work.

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Properties
Buyout	LMI	3

Buyout Program (BP-LMI)

Subrecipient will remove approximately 3 of properties from high flood risk areas.

Subrecipient must ensure that, upon completion, the acquired (buyout) property will be dedicated and maintained in perpetuity for use that is compatible with open space. The locations of these properties have not been determined at this time.

Subrecipient will offer relocation assistance for up to an estimated 3 properties. Assistance will be provided to residents located in a floodplain that agree to relocate outside of the floodplain. The properties acquired with funds provided under this Contract may be used for green space or as recreational area.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**



**CITY OF HOUSTON**  
**HOUSING BENCHMARKS**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Housing Guidelines (where applicable)	15%	15%
15% of Project Funds drawn by subrecipient	15%	30%
25% of Project Funds drawn by subrecipient	15%	45%
50% of Project Funds drawn by subrecipient	15%	60%
75% of Project Funds drawn by subrecipient	15%	75%
100% of Project Funds drawn or Activities closed by subrecipient	20%	95%
Closeout of grant accepted	5%	100%

**CITY OF HOUSTON**  
**HOUSING BUDGET**

HUD Activity Type	Program Activity Type	Grant Award	Other Funds	Total
Acquisition - buyout of residential properties	Buyout Program – LMI	\$22,178,653	\$0	\$22,178,653
Acquisition - buyout of residential properties	Buyout Program – Project Delivery– LMI	\$838,312	\$0	\$838,312
Administration	Buyout Program - Admin- LMI	\$469,733	\$0	\$469,733
<b>TOTAL</b>		<b>\$23,486,698</b>	<b>\$0</b>	<b>\$23,486,698</b>

**LEASING AGREEMENT**  
**EXHIBIT "B"**  
**FEDERAL REQUIREMENTS**

## **FEDERAL REQUIREMENTS**

### **NONEXCLUSIVE LIST OF APPLICABLE LAWS, RULES, AND REGULATIONS**

If applicable to a Program or Activity, Provider must be in compliance with the following laws, rules, and regulations; and any other state, federal, or local laws, rules, and regulations as may become applicable throughout the term of the Contract, and Provider acknowledges that this list may not include all such applicable laws, rules, and regulations.

**Provider and is deemed to have read and understands the requirements of each of the following, if applicable to the Project under this Contract:**

#### **GENERALLY**

The Acts and Regulations specified in this Contract;

Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Public Law 115-56);

The Housing and Community Development Act of 1974 (12 U.S.C. § 5301 *et seq.*);

The United States Housing Act of 1937, as amended, 42 U.S.C. § 1437f(o)(13) (2016) and related provisions governing Public Housing Authority project-based assistance, and implementing regulations at 24 C.F.R. Part 983 (2016);

Cash Management Improvement Act regulations (31 C.F.R. Part 205);

Community Development Block Grants (24 C.F.R. Part 570);

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Disaster Recovery Implementation Manual;

GLO Housing Guidelines; and

State of Texas Plan for Disaster Recovery: Hurricane Harvey – Round 1, dated April 6, 2018, as amended.

#### **CIVIL RIGHTS**

Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d *et seq.*); 24 C.F.R. Part 1, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e, *et seq.*);

Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. § 3601, *et seq.*), as amended;

Executive Order 11063, as amended by Executive Order 12259, and 24 C.F.R. Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063"; The failure or



refusal of Provider to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;

The Age Discrimination Act of 1975 (42 U.S.C. § 6101, *et seq.*); and

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794.) and "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development", 24 C.F.R. Part 8. By signing this Contract, Provider understands and agrees that the activities funded shall be performed in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, *et seq.*), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system.

#### **LABOR STANDARDS**

The Davis-Bacon Act, as amended (originally, 40 U.S.C. §§ 276a-276a-5 and re-codified at 40 U.S.C. §§ 3141-3148); 29 C.F.R. Part 5;

The Copeland "Anti-Kickback" Act (originally, 18 U.S.C. § 874 and re-codified at 40 U.S.C. § 3145); 29 C.F.R. Part 3;

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (originally, 40 U.S.C. §§ 327A and 330 and re-codified at 40 U.S.C. §§ 3701-3708);

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act) (29 C.F.R. Part 5); and

Federal Executive Order 11246, as amended.

#### **EMPLOYMENT OPPORTUNITIES**

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u); 24 C.F.R. §§ 135.3(a)(2) and (a)(3);

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. § 4212);

Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1688); and

Federal Executive Order 11246, as amended.

#### **GRANT AND AUDIT STANDARDS**

Single Audit Act Amendments of 1996, 31 U.S.C. § 7501;

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Uniform Grant and Contract Management Act (Texas Government Code Chapter 783) and the Uniform Grant Management Standards, issued by Governor's Office of Budget and Planning; and

Title 1 Texas Administrative Code § 5.167(c).

#### **LEAD-BASED PAINT**

Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831(b)).

#### **HISTORIC PROPERTIES**

The National Historic Preservation Act of 1966 as amended (16 U.S.C. § 470, *et seq.*), particularly sections 106 and 110 (16 U.S.C. §§ 470 and 470h-2), except as provided in §58.17 for Section 17 projects;

Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 C.F.R., 1971-1975 Comp., p. 559, particularly section 2(c);

Federal historic preservation regulations as follows: 36 C.F.R. Part 800 with respect to HUD programs; and

The Reservoir Salvage Act of 1960, as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. § 469, *et seq.*), particularly section 3 (16 U.S.C. § 469a-1).

#### **ENVIRONMENTAL LAW AND AUTHORITIES**

Environmental Review Procedures for Recipients assuming HUD Environmental Responsibilities (24 C.F.R. Part 58, as amended);

National Environmental Policy Act of 1969, as amended (42 U.S.C. §§ 4321-4347); and

Council for Environmental Quality Regulations for Implementing NEPA (40 C.F.R. Parts 1500-1508).

#### **FLOODPLAIN MANAGEMENT AND WETLAND PROTECTION**

Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 C.F.R., 1977 Comp., p. 117, as interpreted in HUD regulations at 24 C.F.R. Part 55, particularly Section 2(a) of the Order (For an explanation of the relationship between the decision-making process in 24 C.F.R. Part 55 and this part, see § 55.10.); and

Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 C.F.R., 1977 Comp., p. 121 particularly Sections 2 and 5.

#### **COASTAL ZONE MANAGEMENT**

The Coastal Zone Management Act of 1972 (16 U.S.C. § 1451, *et seq.*), as amended, particularly sections 307(c) and (d) (16 U.S.C. § 1456(c) and (d)).

#### **SOLE SOURCE AQUIFERS**

The Safe Drinking Water Act of 1974 (42 U.S.C. §§ 201, 300(f), *et seq.*, and 21 U.S.C. § 349) as amended; particularly section 1424(e)(42 U.S.C. § 300h-3(e)); and

Sole Source Aquifers (Environmental Protection Agency-40 C.F.R. part 149.).

#### **ENDANGERED SPECIES**

The Endangered Species Act of 1973 (16 U.S.C. § 1531, *et seq.*) as amended, particularly section 7 (16 U.S.C. § 1536).

#### **WILD AND SCENIC RIVERS**

The Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271, *et seq.*) as amended, particularly sections 7(b) and (c) (16 U.S.C. § 1278(b) and (c)).

#### **AIR QUALITY**

The Clean Air Act (42 U.S.C. § 7401, *et seq.*) as amended, particularly sections 176(c) and (d) (42 U.S.C. §7506(c) and (d)).

Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency-40 C.F.R. Parts 6, 51, and 93).

**FARMLAND PROTECTION**

Farmland Protection Policy Act of 1981 (7 U.S.C. § 4201, *et seq.*) particularly sections 1540(b) and 1541 (7 U.S.C. §§ 4201(b) and 4202); and

Farmland Protection Policy (Department of Agriculture-7 C.F.R. part 658).

**HUD ENVIRONMENTAL STANDARDS**

Applicable criteria and standards specified in HUD environmental regulations (24 C.F.R. Part 51)(other than the runway clear zone and clear zone notification requirement in 24 C.F.R. § 51.303(a)(3); and

HUD Notice 79-33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979.

**ENVIRONMENTAL JUSTICE**

Executive Order 12898 of February 11, 1994—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (59 FR 7629), 3 C.F.R., 1994 Comp. p. 859.

**SUSPENSION AND DEBARMENT**

Use of debarred, suspended, or ineligible contractors or subrecipients (24 C.F.R. § 570.609);

General HUD Program Requirements; Waivers (24 C.F.R. Part 5); and

Nonprocurement Suspension and Debarment (2 C.F.R. Part 2424).

**OTHER REQUIREMENTS**

Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58).

**ACQUISITION / RELOCATION**

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601, *et seq.*), 24 C.F.R. Part 42, and 24 C.F.R. § 570.606.

**FAITH-BASED ACTIVITIES**

Executive Order 13279 of December 12, 2002 - Equal Protection of the Laws for Faith-Based and Community Organizations, (67 FR 77141).



**EXHIBIT "C-1"**  
**OPERATING BUDGET**

Applon Way - 3200 N MacGregor  
Pro Forma Budget\*

	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21
Revenue	\$45,190	\$45,190	\$45,190	\$45,190	\$45,190	\$45,190	\$45,190	\$40,671	\$31,633	\$18,076	\$9,038	\$4,519	\$0
Expenses													
Utilities	\$6,977	\$6,977	\$6,977	\$6,977	\$6,977	\$6,977	\$6,977	\$6,279	\$4,884	\$2,791	\$1,395	\$698	\$0
Insurance	\$2,170	\$2,170	\$2,170	\$2,170	\$2,170	\$2,170	\$2,170	\$0	\$0	\$0	\$0	\$0	\$0
Property Management Fees	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900
Office Salary	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700
Office Rent	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400
Trash	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350
Office Internet and Phone	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300
Advertising and Promotion	\$220	\$220	\$220	\$220	\$220	\$220	\$220	\$0	\$0	\$0	\$0	\$0	\$0
Software Costs	\$150	\$150	\$150	\$150	\$150	\$150	\$150	\$150	\$150	\$150	\$150	\$150	\$150
Pest Control	\$90	\$90	\$90	\$90	\$90	\$90	\$90	\$81	\$63	\$36	\$18	\$9	\$0
Maintenance	\$2,260	\$2,260	\$2,260	\$2,260	\$2,260	\$2,260	\$2,260	\$2,034	\$1,862	\$904	\$452	\$226	\$0
Net Operating Income	\$28,674	\$28,674	\$28,674	\$28,674	\$28,674	\$28,674	\$28,674	\$27,477	\$20,304	\$9,545	\$2,373	(\$1,214)	(\$4,800)

\*Estimate based on Effective Date of November 2020 with Feasibility of 90 Days with two 30 Day Extensions. Estimated closing in May 2021. Wind down period from June 2021 to November 2021

## SCHEDULE 1

### VOLUNTARY ACQUISITION – INFORMATIONAL NOTICE

**[EXECUTED TO BE INSERTED]**

VOLUNTARY ACQUISITION – - Informational Notice - (Agencies with Eminent Domain Authority)

Grantee or Agency Letterhead

### NOTICE OF INTEREST

January 8, 2020

Dear Mr. Wood:

City of Houston, is interested in acquiring property you own at 3200 North MacGregor Way, Houston Texas 77004 for a proposed project which may receive funding assistance from the U.S. Department of Housing and Urban Development (HUD) under the Multi Family Buyout Program. Federal funds are administered by the City's Housing and Community Development Department.

Please be advised that the City of Houston possess eminent domain authority to acquire property, however, in the event you are not interested in selling your property, or if we cannot reach an amicable agreement for the purchase of your property, we will not pursue its acquisition under eminent domain. Your property is not a necessary part of the proposed project and is not part of an intended, planned, or designed project area where substantially all of the property within the area is to be acquired.

The fair market value is estimated to be \$5,580,000.00 to purchase your property. However, since this transaction is voluntary; current or future negotiations may result in a different price that may be the same, or higher or lower than this amount. Please contact us at your convenience if you are interested in selling your property.

The property must be evaluated in accordance with the environmental regulations at 24 C.F.R. Part 58 and the National Environmental Policy Act (NEPA) at 40 C.F.R. Parts 1500-1508, as applicable. If the information found indicates that the property is not compliant with an applicable law or authority, the Seller(s) and Buyer(s) must be provided the opportunity to withdraw from the agreement without penalty.

In accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), owner-occupants who move as a result of a voluntary acquisition are not eligible for relocation assistance. However, tenant-occupants displaced as a result of voluntary acquisition may be entitled to URA relocation assistance and must be informed in writing as soon as feasible.

If you have any questions about this notice or the proposed project, please contact

Rupa Sen, Real Estate Manager  
2100 Travis Street, 9<sup>th</sup> FL | Houston, Texas 77002  
832-394-6217 | [rupa.sen@houstontx.gov](mailto:rupa.sen@houstontx.gov)

Very truly yours,



DocuSigned by:  
*Tom McCasland*  
B0424304870F48F...

Tom McCasland, Director

**SELLER'S RECEIPT AND ACKNOWLEDGMENT OF NOTICE OF INTEREST**

DocuSigned by:  
*Kevin Wood*  
1D92200FE04E4DA...

11/2/2020

Name:  
Title: Managing Member

Date

Name:  
Title:

Date

## SCHEDULE 2

### TEXAS DISCLOSURES

1.1 **Notice Required by Chapter 49, Water Code.** If all or any part of the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services pursuant to Chapter 49 of the Texas Water Code, then Seller shall deliver to Purchaser, and Purchaser shall execute, the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district prior to or concurrently with the execution and delivery of this Agreement.

1.2 **Notice Required by § 13.257, Water Code.** Pursuant to Section 13.257 of the Texas Water Code, please be advised as follows: "The real property, described above, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property." Purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of this Agreement for the purchase of the Land and improvements described herein.

1.3 **Annexation Notice.** To the extent Section 5.011 of the Texas Property Code is applicable to all or any portion of the Property or this transaction, Purchaser hereby acknowledges and agrees that Seller delivered the following notice to Purchaser prior to execution of this Agreement:

#### "NOTICE REGARDING POSSIBLE ANNEXATION

If the property that is the subject of this Agreement is located outside the limits of a municipality, the property may now or later be included in the extraterritorial jurisdiction. To determine if the property is located within a municipality's extraterritorial jurisdiction or is likely to be located with a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the property for further information. The foregoing notice has been given solely in order to comply with Section 5.011 of the Texas Property Code and Seller makes no representation whether and to what extent the property may already be located within the limits of a municipality."

#### 1.4 **STATUTORY NOTICE REGARDING POSSIBLE LIABILITY FOR ADDITIONAL TAXES.**

**"STATUTORY NOTICE REGARDING POSSIBLE LIABILITY FOR ADDITIONAL TAXES.** If for the current ad valorem tax year the taxable value of the land that is the subject of this Agreement is determined by a

special appraisal method that allows for appraisal of the land at less than its market value, the person to whom the land is transferred may not be allowed to qualify the land for that special appraisal in a subsequent tax year and the land may then be appraised at its full market value. In addition, the transfer of the land or a subsequent change in the use of the land may result in the imposition of an additional tax plus interest as a penalty for the transfer or the change in the use of the land. The taxable value of the land and the applicable method of appraisal for the current tax year is public information and may be obtained from the tax appraisal district established for the County in which the land is located."

1.5 **Intentionally Deleted.**

1.6 **Additional Texas Statutory Notices.**

1.6.1 **. INTENTIONALLY DELETED**

1.6.2 **Notice of Property Located in an Agricultural Development District.** If the Property is located in an agricultural development district, then in accordance with § 60.063 of the Texas Agricultural Code: (1) Seller shall give to Purchaser a written notice that the Property is located in such a district at least one (1) business day prior to the expiration of the Option Period; (2) Purchaser agrees to acknowledge receipt of the notice in writing once received; and (3) at the Closing, a separate copy of the notice with current information about the district will be executed by Seller and Purchaser and recorded in the deed records of the county in which the Property is located.

1.6.3 **Public Improvement Districts.** If the Property is in a public improvement district, §5.014 of the Texas Property Code, requires Seller to notify Purchaser as follows: As a Purchaser of this Property, Purchaser is obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372 of the Texas Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Purchaser's failure to pay the assessments could result in a lien on and the foreclosure of the Property.

1.6.4 **Propane Gas System Service Area.** If the Property is located in a propane gas system service area owned by a distribution system retailer, Seller must give Purchaser written notice as required by § 141.010 of the Texas Utilities Code, which notice shall be given at least one (1) business day prior to the expiration of the Option Period.



4600016319  
2021-0066

## AGREEMENT FOR OPTION TO PURCHASE REAL PROPERTY

This Agreement for Option to Purchase Real Property (this "Agreement") is made and entered into by and between **APPIAN WAY OPPORTUNITY FUND, LLC**, a Texas limited liability company ("Seller"), and the **CITY OF HOUSTON, TEXAS**, a municipal corporation situated in Harris, Fort Bend and Montgomery Counties, Texas ("Purchaser"). Seller and Purchaser shall sometimes hereinafter collectively be referred to as the "**parties**" and each as a "**party**". This Agreement shall be effective on the date that it is countersigned by the City Controller of the City of Houston, Texas (the "Effective Date").

**WHEREAS**, Purchaser is a subrecipient of Hurricane Harvey Community Development Block Grant – Disaster Recovery ("CDBG-DR") funds administered by the U.S. Department of Housing and Urban Development ("HUD") through the Texas General Land Office ("GLO"); and

**WHEREAS**, Purchaser desires to utilize CDBG-DR funds to purchase that certain Property, as defined in Section 1 of this Agreement, and to fund certain related CDBG-DR-eligible expenses related to the purchase thereof, for the purpose of meeting the CDBG-DR National Objective of benefitting low- and moderate-income ("LMI") persons by creating an LMI Area benefit through the expansion of greenspace and/or detention, which will benefit at least 51% of the LMI residential service area; and

**WHEREAS**, in consideration of the Option Fee (as defined herein), Seller desires to grant to Purchaser the exclusive option to purchase the Property on the terms and conditions outlined herein;

**NOW, THEREFORE**, Seller and Purchaser hereby agree as follows:

1. **Option to Purchase**. Purchaser has the exclusive option and right (the "Option") to purchase and accept from Seller, for the Purchase Price (as hereinafter defined) and subject to the terms and conditions of this Agreement, the following tract or parcel of land generally known as 3200 N. MacGregor Way, Houston, Texas, 77004:

A tract or parcel of land containing approximately 1.092 acres (47,890 square feet) of land conveyed to Appian Way Opportunity Fund LLC, a Texas limited liability company, by deed dated June 18, 2019, recorded June 19, 2019, under Clerk's File No. RP-2019-259594, Official Public Records, Harris County, Texas,

being more particularly described in **Exhibit "A"** and being made a part of this Agreement (the "Land"), together with all improvements thereon (including approximately 37,138 square feet of multi-family residential improvements) and all fixtures permanently attached thereto, including but not limited to plumbing and wiring (but excluding Chattels, as that term is defined in Section 10 of this Agreement), all rights and interests appurtenant to the above-described Land, including all of Seller's rights, title and interest, if any, in and to adjacent streets, alleys, rights-of-way, easements, any adjacent strips or gores of land (collectively, the "Improvements"). The Land and Improvements are collectively referred to in this Agreement as the "Property". Notwithstanding the legal description for the Land contained in this Agreement, the parties agree that for purposes of conveyance of the Land, the final location, acreage, and metes and bounds description of the Land shall be determined by the New/Updated Survey described in Section 6.d. of this Agreement, which will be attached as the legal description to include in the Deed referred to in Section 8.b. of this Agreement. The Property shall be conveyed to Purchaser at Closing (as defined in Section 8.b. of this

Agreement), in its entirety, free and clear of all liens, claims, easements and encumbrances whatsoever, except for the Permitted Encumbrances (as defined in Section 6.g.ii. of this Agreement).

2. **Purchase Price.** The price for which Seller agrees to sell and convey the Property to Purchaser, and which Purchaser agrees to pay to Seller, subject to the terms of this Agreement, is in the amount of **SIX MILLION FIFTY THOUSAND DOLLARS AND 00/100 (\$6,050,000.00)**. Purchaser shall pay the Purchase Price to Seller by wire of such amount in immediately available funds to an account designated by the Title Company (as defined in Section 5.a. of this Agreement) on the Closing Date (as defined in Section 8.b. of this Agreement), subject to any adjustments provided for in this Agreement.

3. **Seller's Representations, Warranties and Covenants.** Seller hereby represents and warrants to, and covenants with Purchaser that:

a. Seller will have, as of the Closing Date, good and indefeasible title in fee simple to the Property, subject only to the Permitted Encumbrances, and free and clear of all liens;

b. As of the Closing Date, there will be no leases, franchises, licenses, occupancy agreements, or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to the Property, or any prepaid rents or deposits, security or otherwise, made by tenants, other than as has been disclosed in writing to Purchaser;

c. There are no, and, as of the Closing Date, there will be no actions, suits, claims, assessments that are past due, or proceedings pending or, to the actual knowledge of Seller, threatened that could materially adversely affect the ownership, operation, or maintenance of the Property or Seller's ability to perform under this Agreement, other than as has been disclosed in writing to Purchaser;

d. The Property is located: within the city limits of the City of Houston, Texas; in a targeted buyout area under the City's Hurricane Harvey CDBG-DR Multi-family Voluntary Buyout Program (the "Program"); and in the 100-year floodplain; and the Property was substantially damaged by Hurricane Harvey;

e. From the Effective Date of this Agreement until the Closing Date, Seller shall use good faith efforts to promptly notify, in writing, Purchaser of any material change with respect to the Property or with respect to any information respecting the Property and obtained by seller prior to or after the Effective Date;

f. From the Effective Date of this Agreement until the Closing Date, Seller shall:

(i) maintain and operate the Property in a good and business-like manner in accordance with good and prudent business practices, and not commit or consent to be committed any waste to the Property;

(ii) not enter into any agreement, instrument, or covenant or take any action that would constitute an encumbrance of the Property, that would bind Purchaser or the Property, or that would be



outside the normal scope of maintaining and operating the Property, without the prior written consent of Purchaser; and

(iii) afford Purchaser and its representatives the continuing right to enter, inspect, and perform tests on the Property at reasonable hours and upon reasonable notice, and provide for inspection to Purchaser any and all books, records, contracts, and other documents or data pertaining to the ownership, insurance, operation, or maintenance of the Property.

g. All bills, property taxes, and other payments due from Seller with respect to the ownership, operation, and maintenance of the Property through the Closing Date have been (or by the Closing Date will be) paid by Seller and no liens, delinquent property taxes, or other claims for the same have been (or by the Closing Date will be) filed or asserted against any part of the Property;

h. Seller has full right, power and authority to execute, deliver, and perform this Agreement without obtaining any consents or approvals from, or the taking of any other actions with respect to, any third parties (or if any such consents, approvals, or other actions are required, the same will be accomplished prior to the Seller's execution of this Agreement and Purchaser's submission of this Agreement to the City Council of the City of Houston, Texas for its approval), and this Agreement, when executed and delivered by Seller and Purchaser, in the manner and subject to the approvals described herein, will constitute the valid and binding agreement of Seller, enforceable against Seller in accordance with its terms;

i. Seller is not a "foreign person" (as defined in Internal Revenue Code Section 1445(f)(3) and its appurtenant regulations);

j. Seller (i) is not in receivership or dissolution, (ii) has not made any assignment for the benefit of creditors, (iii) has not admitted in writing their inability to pay their debts as they mature, (iv) has not been adjudicated a bankrupt, (v) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law, or any other similar law or statute of the United States or any state, or (vi) does not have any such petition described in (v) filed against Seller;

k. Seller is not "debarred" as cited on federal and state debarment lists in accordance with 24 C.F.R. Section 570.609 or other applicable law;

l. Seller is not indebted to the City nor in default of, or the subject of any negative collection actions relating to, any financial obligation to the City of Houston, Texas, any other public agency, or private lender;

m. Seller does not discriminate based on ethnicity, race, color, creed, religion, gender, national origin, age, disability, marital status, sexual orientation, gender identity, or Veteran's discharge status; and

n. Seller is aware that Purchaser is relying on the representations and warranties contained in this Agreement, and that but for such representations and warranties by Seller, Purchaser would not enter into this Agreement.

**4. Purchaser's Representations, Warranties, and Covenants.**  
Purchaser hereby represents and warrants to, and covenants with, Seller that:



a. Purchaser has full right, power, and authority to execute, deliver, and perform this Agreement, subject to approval of this Agreement by the City Council of the City of Houston, Texas, the signature of the Mayor of the City of Houston, Texas and the countersignature of the City Controller of the City of Houston, Texas, but otherwise without obtaining any consents or approvals from, or the taking of any other actions with respect to, any third parties, except for such consents, approvals and actions outlined herein, which consents, approvals, or other actions must be accomplished prior to the expiration of the Option Period (as defined in Section 8.a. of this Agreement).

b. The Purchaser's ability to proceed to Closing is subject to the availability and approval of federal funds, including CDBG-DR funds, to purchase the Property, prior to the expiration of the Option Period.

c. The Purchaser's exercise of the Option is subject to the Purchaser's determination during the Option Period on the desirability of the Property as a result of the Purchaser's completion of due diligence investigations regarding the Property, including environmental review of the Property in accordance with the applicable law and the terms of this Agreement.

d. This Agreement, when executed and delivered by Seller and Purchaser, in the manner and subject to the approvals described in this Section 4, will constitute the valid and binding agreement of Purchaser, enforceable against Purchaser in accordance with its terms. Purchaser is aware that Seller is relying on the representations and warranties contained in this Agreement, and that but for such representations and warranties by Purchaser, Seller would not enter into this Agreement.

5. **Option Fee.**

a. The option fee for this Agreement is **SIXTY THOUSAND AND 00/100 DOLLARS (\$60,000)** (the "Option Fee"). The Option Fee shall be deposited in escrow with Chicago Title Insurance Company (the "Title Company") within fifteen (15) days following the Effective Date. The Title Company shall acknowledge receipt of the Option Fee and shall hold the Option Fee in an interest-bearing account.

Escrow Officer:

Mr. Rudy Ruiz  
Chicago Title Company  
3700 Buffalo Speedway Suite 1100  
Houston, TX 77098  
Telephone: (713)-418-7032  
E-mail: rudy.ruiz@ctt.com

b. A portion of the Option Fee in the initial amount of **THIRTY THOUSAND AND 00/100 DOLLARS (\$30,000)** shall be non-refundable and forfeited to Seller as earnest money if Purchaser terminates the Agreement during the initial ninety (90) days of the Option Period due to inability to obtain HUD or GLO environmental clearance for the Property or any other reason, provided that the amount of the Option Fee that is non-refundable (the "Non-Refundable Option Deposit") will increase in the event of an extension of the Option Period, as detailed in Section 5.c., and the Title Company shall release the Non-Refundable Option Deposit to Seller within five (5) business days after the Agreement is terminated. At Closing (as defined in Section 8.b. of this Agreement), the Non-Refundable Option Deposit shall be applied to the Purchase Price.

c. Purchaser shall have the right to elect to extend the initial ninety (90)-day Option Period (as defined below) by exercising up to three (3) extension rights of thirty (30) days each by delivering written notice of such election to exercise an extension right (each, an "Extension Notice") to Seller and the Title Company not later than by 5:00 p.m. Central Time on the date which is three (3) business days prior to the expiration of the then-current Option Period.

(i) For the first extension of the Option Period, the Non-Refundable Option Deposit shall be increased by **TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00)** for a total Non-Refundable Option Deposit of **FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000.00)**.

(ii) For the second extension of the Option Period, the Non-Refundable Option Deposit shall be increased by **FIVE THOUSAND AND 00/100 DOLLARS (\$5,000.00)** for a total Non-Refundable Option Deposit of **FIFTY-FIVE THOUSAND AND 00/100 DOLLARS (\$55,000.00)**.

(iii) For the third extension of the Option Period, the Non-Refundable Option Deposit shall be increased by **FIVE THOUSAND AND 00/100 DOLLARS (\$5,000.00)** for a total Non-Refundable Option Deposit of **SIXTY THOUSAND AND 00/100 DOLLARS (\$60,000.00)**.

The Option Fee shall be applied to the Purchase Price if Purchaser elects to exercise the Option and proceed to Closing. If Purchaser fails to issue an Extension Notice to extend the Option Period, this Agreement shall automatically terminate, in which event the Title Company shall release the Non-Refundable Option Deposit to Seller, and neither party hereto shall have any further rights, duties, obligations or liabilities hereunder except those provisions hereof that expressly survive such termination.

## **6. Option Period.**

a. Within ten (10) days following the Effective Date, Seller shall provide to Purchaser the following items in Seller's possession or in the possession of a third party who is controlled by Seller or who had or is under a contract with Seller with respect to the Property: (i) copies of all tax bills and government assessments relating to the Property for the past three (3) years, if any; (ii) copies of all documents, if any, indicating compliance or noncompliance with all governmental entities with jurisdiction of any sort over the Property; (iii) copies of all soil, engineering and environmental reports and environmental testing, inspection or remediation services with respect to the Property, if any.; (iv) a copy of any existing survey (the "Existing Survey") of the Property; (v) copies of any contracts not cancelable in thirty (30) days; (vi) copies of all current leases, licenses, and other agreements granting any third party any rights to possess or use any portion of the Property, and any other agreements affecting the Property that would survive Closing; and (vii) any income statements and balance sheets.

b. Commencing on the Effective Date and ending at the expiration of ninety (90) days, plus any extension period authorized under Section 5.d. of this



Agreement (collectively, the "Option Period"), in accordance with Section 8.a. of this Agreement, by Purchaser exercising the Option, Purchaser shall have the right to enter the property during the Option Period to conduct a due diligence investigation of the Property at Seller's sole cost and expense (but subject to reimbursement at Closing as provided in Section 8.c.(i).(5)), including but not limited to analyzing any land use or regulatory issues affecting the Purchaser's proposed development of the Property, reviewing Seller's environmental reports, if any, conducting tests and surveys, and undertaking such other reviews and activities as Purchaser, in its sole but reasonable discretion, may deem necessary, and to obtain required third party approvals necessary to proceed with the purchase of the Property, including, but not limited to, conducting and completing an environmental review, as required by the CDBG-DR regulations, which environmental review may not exceed the scope of what is required under applicable federal regulations without Seller's consent, which shall not be unreasonably withheld. All environmental activities and reports must conform with the CDBG-DR regulations including, without limitation, the regulations at 24 C.F.R. Parts 50, 58, and 570, as applicable. Prior to the expiration of the Option Period, should Seller withhold consent to complete any environmental review or additional testing that exceeds the scope of what is required under applicable federal laws and regulations, Purchaser may provide Seller with written notice of its election to terminate this Agreement, in which event the Title Company shall release the Non-Refundable Option Deposit to Seller, and neither Purchaser nor Seller shall have any further right, obligations or liabilities under this Agreement except those provisions hereof that expressly survive such termination.

c. In the event that Purchaser's environmental testing reveals the presence of any environmental contamination in levels requiring remediation under state, federal or local statutes, laws, regulations, rules or ordinances, Purchaser shall immediately provide Seller written notice with a copy of all environmental assessments and reports evidencing the environmental conditions of the Property that require remediation. Upon issuance of the written notice, Purchaser may provide Seller with written notice of its election to terminate this Agreement, in which event the Title Company shall release the Non-Refundable Option Deposit to Seller and neither party to this Agreement shall have any further rights, duties, obligations or liabilities under this Agreement except those provisions hereof that expressly survive such termination. Alternatively, Seller and Purchaser may enter into good faith negotiations to mutually agree on how to address matters relating to environmental remediation of the Property, which may include the timing for remediation, the party responsible for remediation, and adjustments to the Purchase Price relating to the remediation. In the event Seller and Purchaser enter into good faith negotiations to mutually agree on how to address matters relating to environmental remediation of the Property, the terms of the remediation will be evidenced in writing and any deadline in this Agreement may be extended by up to thirty (30) calendar days to allow Seller and Purchaser to finalize the transaction contemplated hereunder. Purchaser shall bear no liability for the environmental testing, except that Purchaser shall be responsible for repairing any damage to the Property for which Seller can produce objective documentation evidencing that Purchaser's testing activities caused the damage.

d. During the Option Period, Seller, at its sole cost and expense (but subject to reimbursement at Closing as provided in Section 8.c.(i).(5)), will obtain a new survey or an update to the Existing Survey (the "New/Updated Survey"), prepared by a Registered Professional Land Surveyor licensed by the State of Texas and acceptable to the Title Company and approved by Houston Public Works – Construction Branch – Survey/ROW/Mapping. The New/Updated Survey shall comply with the current requirements of the Texas Society of Professional Surveyors Standards and



Specifications for a Category 1A Condition II Land Title Survey and contain such other information as Purchaser may reasonably request.

e. During the Option Period, Seller, at its sole cost and expense, shall cause the Title Company to issue a commitment to issue title insurance (the "Title Commitment") accompanied by copies of all recorded documents relating to easements, rights-of-way, and all other matters of record affecting the Property together with Owner's Policy of Title Insurance at Closing. Seller shall pay the basic premium of the Owner's Policy of Title Insurance, but Purchaser shall pay the additional premium for the area and boundary deletion and any other endorsements requested by Purchaser.

f. Following the receipt of the New/Updated Survey and the Title Commitment, Purchaser shall have thirty (30) days to examine and specify to Seller those items affecting the Property that Purchaser finds objectionable (each an "Encumbrance" and collectively, "Encumbrances"). Seller shall have ten (10) days to cure such objections. Items shown in the Title Commitment or New/Updated Survey and not objected to by Purchaser in its written objections within such period shall be deemed items that Purchaser will accept title subject to (the "Permitted Encumbrances"). The Title Company shall deliver an amended Title Commitment reflecting the cure of the Encumbrances at or prior to the Closing Date. Any liens affecting the Property shall be Encumbrances, whether so specified in any notice by Purchaser, and Seller shall cause the same to be released at or prior to Closing.

g. If Seller fails or is unwilling to cause all of the Encumbrances to be removed or cured by the Closing Date, or if the Title Commitment or New/Updated Survey indicates that Seller does not own indefeasible fee simple title to the Property, Purchaser shall have the following rights, as its sole and exclusive remedies:

(i) to terminate this Agreement by giving Seller written notice of termination, in which event the Title Company shall release the Non-Refundable Option Deposit to Seller and neither party hereto shall have any further rights, duties, obligations or liabilities under this Agreement except those provisions hereof that expressly survive such termination; or

(ii) to elect to waive the Encumbrances not so removed or cured and close the purchase and sale contemplated by this Agreement without any reduction in the Purchase Price in accordance with the remaining terms and provisions, whereupon the Encumbrances not so removed or cured shall become a "Permitted Encumbrance", to be treated in the manner provided herein for Permitted Encumbrances.

h. On or prior to the expiration of the Option Period, Purchaser may notify Seller in writing of Purchaser's desires to terminate this Agreement if: (i) Purchaser, in its sole discretion, determines that the Property is not suitable for purchase by Purchaser for Purchaser's purposes; (ii) Purchaser is unable to obtain the approval from HUD, GLO or Houston City Council to use CDBG-DR funds to purchase the Property or such other approvals to use United States Department of Housing and Urban Development ("HUD") funds as may be required to purchase the Property; or (iii) Purchaser is unable to obtain approval from the GLO of the *City of Houston Harvey Buyout Program Guidelines*. The Option Period may be further extended for up to twelve (12) months thereafter, by written agreement between Purchaser and Seller, if Purchaser has not obtained the requisite HUD or GLO approvals for the purchase of the Property described in this subsection. If Purchaser and Seller do not agree on an extension of the Option Period, then this Agreement shall automatically terminate at the

end of the Option Period. In the event of termination under this subsection, the Title Company shall release the Non-Refundable Option Deposit to Seller, and neither party hereto shall have any further rights, duties, obligations or liabilities hereunder, except for those provisions hereof that expressly survive such termination.

7. **As-Is, Where-Is.** Purchaser and its representatives, prior to the date of Closing, will have been afforded the opportunity to make such inspections of the Property and matters related thereto as Purchaser and its representatives desire. Purchaser acknowledges and agrees that the Property is to be sold and accepted by Purchaser in an "as-is" condition, with all faults except for (a) Seller's representations, warranties and covenants set forth in Section 3, and (b) the warranty of title in the Deed referred to in Section 8.b.

8. **Option Period and Closing.**

a. The Option under this Agreement shall be exclusively available to and exercisable by Purchaser from the Effective Date until the expiration of the Option Period, as may be extended in accordance with Section 5 of this Agreement. Unless otherwise terminated or expired in accordance with the terms of Section 7 of this Agreement, the Option Period shall terminate on the date on which Purchaser exercises the Option.

b. The consummation and closing of the sale by Seller to Purchaser of the Property contemplated by this Agreement (the "Closing") shall take place on or before the thirtieth (30<sup>th</sup>) day after expiration of the Option Period (the "Closing Date"), with the exact time, date and location of Closing to be specified in a written notice from Purchaser to Seller at least seven (7) days in advance of such Closing Date. The time, date or location of Closing may be modified by agreement of the parties.

c. At the Closing, the following (which are mutually concurrent conditions) shall occur:

(i). Purchaser, at its sole cost and expense, shall deliver or cause to be delivered to Seller, through the Title Company:

(1) The balance due for the Purchase Price such amount to be paid in immediately available funds;

(2) Evidence satisfactory to Seller and the Title Company that the person executing the Closing documents on behalf of Purchaser has full right, power, and authority to do so;

(3) Such other instruments duly executed by Purchaser as are customarily executed in Harris County, Texas to effectuate the conveyance of property similar to the Property, as may be reasonably required by the Title Company.

(4) Purchaser shall pay, in addition to any other costs to be paid by Purchaser as provided elsewhere in this Agreement: (a) the additional premium for area and boundary deletion and any endorsements to the Owner's Policy of Title Insurance requested by Purchaser; (b) if applicable, any costs of Purchaser's remediation of the Property; (c) incidental expenses described in 49 C.F.R. 24.106; (d) the cost to record the Deed; and (e) Purchaser's attorneys' fees. The Purchaser will reimburse the Seller the full amount of the cost of the New/Updated Survey and the full amount of the Seller's costs incurred for any environmental reports and activities



conducted on Purchaser's behalf pursuant to Section 6.b.-c. and evidenced by reasonable supporting documentation, at Closing.

(ii). Seller, at its sole cost and expense, shall deliver or cause to be delivered to Purchaser, through the Title Company, the following:

(1) A Special Warranty Deed in form and substance substantially equivalent to the form shown on **Exhibit "B"** attached hereto and incorporated herein, fully executed and acknowledged by Seller, conveying to Purchaser good and indefeasible fee simple title in and to the Property, subject only to the Permitted Encumbrances, which shall be set forth in an exhibit thereto and attached prior to recordation of such instrument;

(2) Evidence satisfactory to Purchaser and the Title Company that the person executing the Closing documents on behalf of Seller has full right, power, and authority to do so;

(3) An executed and acknowledged affidavit that Seller is not a "foreign person" as described in Section 3.i.;

(4) A certificate, executed and sworn to by Seller, confirming that there are no unpaid bills, claims, debts, or liens relating to the Property arising through or under Seller as of the Closing Date, except with respect to specified bills, claims, debts, or liens;

(5) The Chattel Inventory; and

(6) Such other instruments duly executed by Seller as are customarily executed in Harris County, Texas to effectuate the conveyance of property similar to the Property, as may be reasonably required by the Title Company with the effect that, after the Closing, Purchaser will have succeeded to all of the rights, titles and interests of Seller related to the Property and Seller will no longer have any rights, titles or interests in and to the Property.

(7) Seller shall pay, in addition to any other costs to be paid by Seller as provided elsewhere in this Agreement: (a) the cost to record any releases of Encumbrances that will be filed in the real property records of Harris County, Texas at Closing; (b) if applicable, any costs of remediation of the Property; (c) Seller's own attorneys' fees; and, (d) the basic premium of the Owner's Policy of Title Insurance.

d. Any escrow fees and delivery fees charged by the Title Company, and any other routine closing fees, shall be allocated equally between Seller and Purchaser (except for amounts paid by Purchaser as incidental expenses in accordance with Section 6.j.). Except as provided above, all normal and customarily pro-ratable items, including but not limited to real estate and personal property taxes, rents, and utility bills, if any, shall be prorated as of the Closing Date, Seller being charged and credited for all of the same up to such date and Purchaser being charged and credited for all of same on and after such date. If the actual amounts to be prorated are not known at the Closing Date, the prorations shall be made on the basis of the best evidence available, and thereafter, when actual figures are received, a cash settlement will be made between Seller and Purchaser. Seller hereby acknowledges that Purchaser is not subject to ad valorem taxes.

**9. Lease-back to Seller.** In the event the Property is not vacant on the Closing Date, the Seller and Purchaser shall execute a lease agreement substantially



in the form attached hereto as **Exhibit "C"** ("Lease Agreement") providing for the Seller's continued occupancy and management of the Property for a period commencing on the effective date of the Lease Agreement and expiring on the date that is thirty (30) days after the date the last tenant vacates the Property ("Lease Term"), which Lease Term may not extend beyond the date that is twelve (12) months from the Closing Date, unless extended in accordance with the terms and conditions of the Lease Agreement. The Lease Agreement shall not operate to assign to Purchaser any tenant leases existing on the Closing Date. The Seller shall retain the contractual obligations and responsibilities provided in all said leases at the commencement and throughout the Lease Term.

**10. Chattels.** "Chattels" means all personal property owned by Seller located upon the Property on the Closing Date and included in the inventory list provided by Seller to Purchaser at Closing ("Chattel Inventory"), including but not limited to appliances. Seller shall retain ownership of Chattels and shall remove all Chattels within thirty (30) days from the later of (i) the Closing Date, or (ii) the date on which the Post-Closing Period Expires. **The provisions of this paragraph will survive the Closing.**

**11. Notices.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same with the United States Postal Service, addressed to the party to be notified, postage prepaid and in registered or certified form, with return receipt requested, or by deposit with Federal Express for overnight delivery, or other reputable overnight courier, facsimile (with retained receipt) or email (with retained receipt). Notice given as prescribed in this Section 9 shall be effective on the date actually received at the address to which such notice was sent, or if delivery is refused or not accepted, such notice shall be effective on the date of such refusal or failure to accept delivery. Notice given in any other manner shall be effective only upon receipt by the party to whom it is addressed. For purposes of notice, the addresses of the parties shall be as follows:

If to Seller, to: Mr. Kevin Wood  
Woodbaker Investment Holdings  
2450 Louisiana St., Suite 427  
Houston, Texas 77006  
Telephone: 832-444-9284  
E-mail: kevin@stagecoachequity.com

With copy to: Kelsey W. Gray  
Telephone: 832-7414-9491  
Email: kelseywalkergray@gmail.com

If to Purchaser, to: City of Houston, Texas  
Housing and Community Development Department  
Attention: Rupa Sen  
2100 Travis Street, 9<sup>th</sup> Floor  
Houston, Texas 77002  
Telephone: (832) 393-6217  
E-mail: [rupa.sen@houstontx.gov](mailto:rupa.sen@houstontx.gov)

With copy to: City of Houston Legal Department  
900 Bagby Street, 4th Floor  
Houston, Texas 77002

Either party may change its address to another location in the continental United States, upon five (5) days' prior written notice to the other given in the manner provided above.

**12. Brokerage.** Purchaser has not engaged a broker or agent in connection with the negotiation or execution of this Agreement. In the event any agent or broker shall make a claim against Seller and Purchaser for a commission or fee, the party allegedly engaging, hiring or retaining such broker or agent shall be responsible for payment thereof.

**13. Assignment.** Except for an assignment by Purchaser to a qualified governmental entity (including a local government corporation) after giving written notice to Seller, neither Seller nor Purchaser may assign this Agreement or any right or interest under this Agreement without the prior written consent of the other party, which will not be unreasonably withheld. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding on the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

**14. Governing Law; Enforcement.**

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

b. Should any provision of this Agreement require judicial interpretation, Seller and Purchaser hereby agree and stipulate that the court interpreting or considering the same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of any rule or conclusion that a document should be construed more strictly against the party who prepared the same, it being agreed that all parties to this Agreement have participated in the preparation of this Agreement and that each party had full opportunity to consult legal counsel of its choice before the execution of this Agreement.

c. Purchaser's city attorney or its designee (the "City Attorney") shall have the right to enforce all legal rights and obligations under this Agreement without further authorization from other City of Houston officials, and Seller covenants to use commercially reasonable efforts to provide the City Attorney with all documents and records that the City Attorney reasonably deems necessary to assist in determining Seller's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

**15. Remedies.**

a. If Purchaser fails or is unable to perform its obligations pursuant to this Agreement for any reason other than Purchaser's termination hereof pursuant to a right granted to Purchaser in this Agreement to do so, or breach by Seller of its promises, representations, warranties under this Agreement, then Seller shall give Purchaser written notice of the default. If Purchaser fails to cure its default within thirty (30) days after receipt of such notice, Seller, as its sole and exclusive remedy, shall have the right to terminate this Agreement by giving Purchaser written notice thereof, in which event neither party hereto shall have any further rights, duties, obligations or liabilities hereunder except those provisions hereof that expressly survive such termination, and the Title Company shall release the Non-Refundable Option Deposit,



and any interest thereon, to Seller and shall release the remaining portion of the Option Fee, if any, and any interest thereon, to Purchaser.

b. If Seller fails or is unable to perform any of its obligations pursuant to this Agreement for any reason other than Seller's right of termination of this Agreement pursuant to a right granted to Seller in this Agreement to do so, or breach by Purchaser of its promises, representations, or warranties under this Agreement, then Purchaser shall give Seller written notice of the default. If Seller fails to cure its default within thirty (30) days after receipt of such notice, or if any of Seller's promises, representations or warranties made under this Agreement, or any of the information furnished by Seller pursuant hereto, should be either false or misleading in any material respect, then Purchaser shall have the right and option, as its sole and exclusive remedies, to:

(i) terminate this Agreement by giving Seller written notice of termination, in which event neither party to this Agreement shall have any further rights, duties, obligations or liabilities under this Agreement except those provisions that expressly survive such termination, and the Title Company shall release the Option Fee and interest thereon, save and except the Non-Refundable Option Deposit to be released to Seller, to Purchaser; or

(ii) enforce specific performance of the obligations of Seller to convey the Property to Purchaser pursuant to the terms hereof and to perform its other obligations under this Agreement, provided that, in the event that Purchaser seeks specific performance, an action seeking such remedy must be filed within six (6) months of Seller's default or alleged default, or the same shall be deemed barred and Purchaser's sole remedy shall be as set forth in (i) above.

**16. Damage or Taking Prior to Closing.** Prior to Closing, risk of loss with regard to the Property shall be borne by Seller. If, prior to Closing, the Property, or any portion of the Property, is materially damaged or becomes subject to a taking (other than by the Purchaser) by virtue of eminent domain, Purchaser shall have the option, which must be exercised by it within fifteen (15) business days (and the Closing will be automatically extended, if necessary, to provide Purchaser with such fifteen (15) business day period) after its receipt of written notice from Seller advising of such damage or taking (which Seller hereby agrees to give), to terminate this Agreement or to proceed with the Closing. If Purchaser elects to terminate this Agreement for any reason set forth in this Section, all rights, duties, obligations and liabilities created under this Agreement shall cease except those provisions hereof that expressly survive such termination, and the Title Company shall release the Non-Refundable Option Deposit to Seller and shall release the remaining portion of the Option Fee, if any, to Purchaser. If Purchaser elects to proceed with the Closing, all rights, duties, obligations and liabilities created under this Agreement shall continue, and (a) Purchaser shall be entitled to any and all insurance proceeds or condemnation awards payable as a result of such damage or taking, and (b) Seller shall assign to Purchaser at Closing all of Seller's rights to such proceeds or awards.

**17. Entire Agreement.** This Agreement is the entire agreement between Seller and Purchaser concerning the sale of the Property and no modification of this Agreement or subsequent agreement relative to the subject matter of this Agreement shall be binding on either party unless in writing and signed by both parties. This Agreement may be amended only by written instrument executed on behalf of



Purchaser (by authority of an ordinance adopted by the City Council of the City of Houston, Texas) and Seller.

**18. Exhibits and Schedules.** Attached hereto and incorporated in this Agreement by this reference for all purposes is the following exhibits and schedules:

Exhibit "A"	PROPERTY DESCRIPTION
Exhibit "B"	SPECIAL WARRANTY DEED
Exhibit "C"	LEASE AGREEMENT
Schedule 1	Voluntary Acquisition – Informational Notice
Schedule 2	Texas Disclosures

**19. Confidentiality.** Seller and Purchaser agree to use their best efforts to keep confidential price, terms, condition, and all other information that is a part of this transaction. Seller and Purchaser agree that they will disclose such matters only to such third parties as may be necessary to carry out usual and customary activities related to the transaction. Notwithstanding the foregoing, both parties acknowledge that the terms of this transaction may become known to the public when the matter is considered by the City Council of the City of Houston, Texas, or pursuant to a request under the Texas Public Information Act.

**20. Miscellaneous.**

a. The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

b. Each and every agreement contained in this Agreement is, and shall be construed as, a separate and independent agreement. If any provision of this Agreement should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected.

c. The obligations of the Agreement that cannot be performed before termination of this Agreement, or before Closing, will survive termination of this Agreement or Closing, and the legal doctrine of merger will not apply to these matters. However, if there is any express conflict between the closing documents provided pursuant to Section 8 hereinabove and this Agreement, the closing documents will control.

d. Time is of the essence in this Agreement.

e. If this Agreement is executed in multiple counterparts, all counterparts taken together will constitute this Agreement.

f. Following the execution of this Agreement by Purchaser through its Mayor and countersigned by the City of Houston Controller, the Director of the Housing and Community Development Department, City of Houston, Texas, or his designee (the "Director"), shall have the authority to act on the behalf of Purchaser in making extensions to the Closing Date or to make other minor modifications to this Agreement, in writing and in consultation with the City Attorney, for the purposes of enabling the achievement of the Purchaser's objectives to acquire the Property from Seller and which do not require further approvals by the City Council of the City of Houston, Texas. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

**21. Signature Authority.** Each party represents that the person signing this Agreement on behalf of such party 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 under this Agreement 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.

**22. Voluntary Acquisitions Program.** Seller acknowledges the following:

a. The acquisition of the Property with CDBG-DR funds is subject to the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("URA"). Specifically, 24 C.F.R. 570.606(e) requires that acquisition of the Property must comply with URA requirements at 49 C.F.R. Part 24.

b. Purchaser is interested in acquiring the Property with CDBG-DR funds for a buyout activities under the Harvey Buyout Program.

c. Seller has no obligation to sell the Property for the project, but Seller is voluntarily selling the Property to Purchaser, subject to the terms and conditions of this Agreement, and Purchaser will not use the power of eminent domain to acquire the Property. Seller has received and executed the Voluntary Acquisition – Informational Notice dated January 8, 2020, a copy of which is attached to this Agreement as Schedule 1 and incorporated herein, as well as any other written communications, as required by applicable laws, regulations and procedures.

d. In accordance with the URA, owner-occupants who move as a result of a voluntary acquisition are not eligible for relocation assistance. However, any resulting displacement of a tenant is subject to the regulations in 49 C.F.R. Part 24.

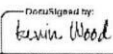
**23. Texas Disclosures.** Seller hereby makes the required notices and disclosures attached hereto as Schedule 2 to Purchaser.

***[Execution pages follow]***

**EXECUTED IN MULTIPLE ORIGINAL COUNTERPARTS**, each of which shall be an original, which together shall constitute but one and the same instrument, effective as of the date of countersignature by the City Controller of the City of Houston. 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.

SELLER

**APPIAN WAY OPPORTUNITY FUND, LLC**,  
a Texas limited liability company

By:  \_\_\_\_\_  
Name: Kevin Wood  
Title: President



PURCHASER

CITY OF HOUSTON, TEXAS, a  
municipal corporation

ATTEST:



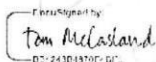
Pat Jefferson-Daniel  
Interim City Secretary



Sylvester Turner  
Mayor of the City of Houston

2-5-2021

APPROVED AND RECOMMENDED:



Tom McCasland  
Director, Housing and Community  
Development Department

COUNTERSIGNED



Chris B. Brown  
City Controller

Countersignature Date:

2-5-21

APPROVED AS TO FORM:



Assistant City Attorney  
L.D. File Number: 0292000506001

\_\_\_\_\_, 2021

An original, fully executed copy of this Agreement has been received by the Title Company, and by execution hereof the Title Company hereby covenants and agrees to be bound by the terms of this Agreement to the extent permissible, without violation of Procedural Rule 35, as promulgated by the Texas State Board of Insurance.

CHICAGO TITLE INSURANCE COMPANY

By:  
Name:  
Title:

**EXHIBIT "A"**

A tract or parcel of land containing approximately 1.092 acres (47,552 square feet) of land conveyed to Appian Way Opportunity Fund LLC, a Texas limited liability company by deed dated June 18, 2019, recorded June 19, 2019 under Clerk's File No. RP-2019-259594, Official Public Records, Harris County, Texas



EXHIBIT "B"

When recorded, return to:

THE CITY OF HOUSTON  
2100 Travis, 9<sup>th</sup> Floor  
Houston, TX 77251-1562  
Attention: Real Estate Manager-Ms. Rupa Sen, Housing and Community  
Development Department

SPECIAL WARRANTY DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

\_\_\_\_\_, 2021

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

**APPIAN WAY OPPORTUNITY FUND LLC**, a Texas limited liability company ("**Grantor**"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which consideration are hereby acknowledged, by these presents does hereby Grant, Bargain, Sell, and Convey, unto the **CITY OF HOUSTON, TEXAS**, a municipal corporation situated in Harris, Fort Bend and Montgomery Counties, Texas ("**Grantee**"), for itself and its successors and assigns (i) all that real property situated in the County of Harris, State of Texas, and more particularly described on **Exhibit A** attached hereto and made a part hereof for all purposes, and (ii) together with all improvements now or hereafter situated thereon (collectively, the "**Property**"), TOGETHER with all and singular tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining thereto.

This Deed is made and accepted expressly subject to the matters set forth in **Exhibit B** attached hereto and made a part hereof for all purposes ("Permitted Encumbrances").

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances belonging in any way to the Property, unto the said Grantee, its successors and assigns forever, and Grantor binds itself and its successors and assigns to warrant and forever defend all and singular the Property to Grantee, its successors and assigns against every person lawfully claiming or to claim all or any part of the Property, by, through or under Grantor, but not otherwise.

### **COVENANTS RUNNING WITH THE PROPERTY**

WHEREAS, Community Development Block Grant – Disaster Recovery ("CDBG-DR") funding for this Agreement is appropriated to the U.S. Department of Housing and Urban Development ("HUD") under the Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Pub. L. 115-56) for activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. §5301 et. seq.) related to disaster relief long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from Hurricane Harvey, under Federal Emergency Management Agency designation "DR-4332", which are Presidentially declared major disaster areas under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. §5121, et. seq.);

WHEREAS, supplemental CDBG-DR funding was appropriated to HUD under the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Pub. Law 115-123) (together with Pub. L. 115-56, the "Appropriation");

WHEREAS, through the publication of 83 Fed. Reg. 5844 (Feb. 9, 2018) and 83 Fed. Reg. 40314 (Aug. 14, 2018), HUD allocated, from the Appropriation, \$5,676,390,000 in CDBG-DR funding (the "State Allocation") to the Texas General Land Office ("GLO");

WHEREAS, from the State Allocation, the Grantee has received a direct allocation from the GLO of \$1,275,878,041 of CDBG-DR development and implementation of programs that directly benefit the residents of the City of Houston, Texas;

WHEREAS, Grantee has created the Multi-family Voluntary Buyout Program ("MVB Program") to acquire residential properties located in a floodway or floodplain to reduce the risk of future flooding by converting the properties to greenspace or detention basins in areas in the City of Houston with at least a 51% Low- to Moderate-Income ("LMI") population; and

WHEREAS, properties acquired by Grantee pursuant to the MVB Program must be dedicated and maintained as greenspace or detention in perpetuity;

NOW, THEREFORE, in accordance with and in furtherance of the requirements set forth in 81 Fed. Reg. 83254, the conveyance of the Property is made by Grantor and accepted by Grantee subject to the following:



1. The Property shall be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or floodplain and wetlands management practices.

2. No new structure will be erected on property acquired, accepted, or from which a structure was removed under the acquisition or relocation program other than: (a) a public facility that is open on all sides and functionally related to a designated open space (e.g., a park, campground, or outdoor recreation area); (b) a rest room; or (c) a flood control structure, provided that structure does not reduce valley storage, increase erosive velocities, or increase flood heights on the opposite bank, upstream, or downstream and that the local floodplain manager approves, in writing, before the commencement of the construction of the structure.

3. No subsequent application for additional disaster assistance for any purpose or to repair damage or make improvements of any sort will be made by the recipient to any Federal entity in perpetuity.

4. The foregoing covenants and agreements are adopted for, and placed upon the Property, and shall run with the land, be binding upon all parties, now and at any time hereafter, having or claiming any right, title or interest in or to the Property or any part thereof, their heirs, legal representatives, executors, administrators, successors and assigns, regardless of the source of, or the manner in which any such right, title or interest is or may be acquired and any conveyance of any interest in the Property by Grantee or a subsequent owner must reference and incorporate the foregoing covenants and require the Property to be dedicated and maintained for compatible uses in perpetuity. The foregoing covenants may be enforced by Grantee, GLO or HUD, jointly or severally; however, failure, refusal or inability by either Grantee, GLO or HUD, jointly or severally, to enforce any of the foregoing covenants shall in no event be deemed a waiver or release of the right to do so thereafter. If one or more of the foregoing covenants shall be held unenforceable, invalid or illegal in any respect, such unenforceability, invalidity or illegality shall not affect any other provision of said covenants, which shall be construed as if such unenforceable, invalid or illegal provision had never been a part hereof.

IN WITNESS WHEREOF, the parties have executed this Special Warranty Deed to be effective as of the date first written herein.



GRANTOR:

**APPIAN WAY OPPORTUNITY FUND LLC,**  
a Texas limited liability company

By: \_\_\_\_\_

Name: Kevin Wood

Title: President

THE STATE OF TEXAS

§

§

COUNTY OF HARRIS

§

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2021, by Kevin Wood, President of Appian Way Opportunity Fund LLC, a Texas limited liability company, on behalf of said limited liability company.

\_\_\_\_\_  
Notary Public

GRANTEE:

**CITY OF HOUSTON, TEXAS**, a  
municipal corporation

ATTEST:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Sylvester Turner  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney  
L.D. File Number: 0292000506001

THE STATE OF TEXAS

§

§

COUNTY OF HARRIS

§

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2021, by Sylvester Turner, Mayor of the City of Houston, Texas, a municipal corporation, on behalf of said municipal corporation.

\_\_\_\_\_  
Notary Public

Grantee's Address:

City of Houston  
2100 Travis, 9<sup>th</sup> Floor  
Houston, TX 77251-1562  
Attention: Real Estate Manager-Ms. Rupa Sen, Housing and Community  
Development Department

EXHIBIT A  
Legal Description

A tract or parcel of land containing approximately 1.092 acres (47,552 square feet) of land conveyed to Appian Way Opportunity Fund LLC, a Texas limited liability company by deed dated June 18, 2019, recorded June 19, 2019 under Clerk's File No. RP-2019-259594, Official Public Records, Harris County, Texas



## EXHIBIT B

### Permitted Encumbrances

The conveyance of the Property is made subject and subordinate to the following terms, provisions, conditions and restrictions (collectively, the "Permitted Encumbrances"):

- a. Rights of tenants in possession, as tenants only, under unrecorded lease agreements.
- b. An easement five (5) feet wide along the south property line and an aerial easement adjoining thereto five feet wide from a plane twenty feet above the ground upward as shown by the recorded plat and dedication set out in Volume 998, Page 379, Deed Records, Harris County, Texas and recorded in Volume 1083, Page 172 affected by Volume 1130, Page 414, Deed Records, Harris County, Texas.
- c. Terms, conditions and provisions contained in that certain Lease Agreement, by and between Coinmach (tenant) and Bayou Crest Investments, L.P., dba Bayou View Gardens Apartments (landlord), a Memorandum of which is filed under Clerk's File No. W817887, Official Public Records, Harris County, Texas.
- d. Royalty interest in and to all coal, lignite, oil, gas or other mineral interest(s), together with rights incident thereto, contained in instrument dated April 15, 1924, recorded April 22, 1924 at Volume 569, Page 599, Deed Records, Harris County, Texas. Reference to which instrument is here made for full particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).
- e. The Land is located within the City of Houston or within its extra territorial jurisdiction (within 5 miles of the city limits but outside another municipality). It is subject to the terms, conditions, and provisions of City of Houston Ordinance No. 85-1878, pertaining to among other things, the platting and replatting of real property and to the establishment of building lines (25 feet along major thoroughfares and 10 feet along other streets). A certified copy of said ordinance was filed August 1, 1991, at Clerk's File No. N253886.

**EXHIBIT "C"**  
**Lease Agreement**

## **LEASE AGREEMENT**

### **APPIAN WAY APARTMENTS**

THIS LEASE AGREEMENT (this "Agreement") is made by and between the CITY OF HOUSTON, TEXAS, a municipal corporation situated in Harris, Fort Bend and Montgomery Counties (the "City"), and APPIAN WAY OPPORTUNITY FUND, LLC, a Texas limited liability company ("Agent"), and is effective as of the date of the City Controller's countersignature (the "Effective Date").

### **RECITALS**

WHEREAS, the City purchased certain real property containing a multifamily housing development, located at 3200 N. MacGregor Way, Houston, TX 77004, together with all improvements, appurtenances, and equipment located thereon, commonly known as APPIAN WAY APARTMENTS (collectively, the "Property") pursuant to the Agreement for Option to Purchase Real Property signed by Agent and the City (the "Option Agreement");

WHEREAS, the City purchased the Property from Agent in connection with the City's Disaster Recovery (DR-17) Multifamily Voluntary Buyout Program with the purpose of demolishing the improvements on the Property and reducing the risk of future flooding by converting the Property into greenspace and/or detention;

WHEREAS, pursuant to the Option Agreement, the City and Agent agreed to execute a lease agreement providing for Agent's continued operation and management of the Property if any Rental Units were not vacated prior to the closing date stated in the Option Agreement (the "Closing Date");

WHEREAS, as of the Closing Date, less than 100% of the Rental Units were vacant, and additional time is needed to relocate the existing Tenants; and

WHEREAS, while the Tenants are being relocated, the City will lease the Property to Agent so that Agent can continue to operate and manage the Property during the relocation process, subject to the terms and provisions of this Agreement, and Agent agrees to perform such services in exchange for the Lease-back Fee provided herein;

NOW, THEREFORE, the City and Agent, in consideration of the sum of \$1.00 paid by the City to Agent, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby mutually covenant and agree as follows:



## **ARTICLE I**

### **GRANTING CLAUSE**

The City hereby demises and leases to Agent, and Agent hereby rents, accepts and takes from the City, the Property to have and to hold said Property for the Lease Term, and pursuant to the terms, provisions, covenants, agreements and conditions set forth in this Agreement.

## **ARTICLE II**

### **DEFINITIONS**

As used in this Agreement:

**"Additional Flow Down Provisions"** shall have the meaning in Section 18.12(b).

**"Auditing Documents"** shall have the meaning set forth in Section 7.02(e).

**"Auditing Entities"** shall have the meaning set forth in Section 7.01.

**"Automatic Renewal"** shall have the meaning set forth in Article III.

**"City Attorney"** means the City Attorney of the City of Houston, or his designee.

**"City Controller"** means the City Controller of the City of Houston, or his designee.

**"Condemnation Award"** means the amount of money awarded by special commissioners, judge, or jury, through settlement, for the whole Property or part Taken and any remainder damages. The term shall also include relocation monies.

**"Condemnation Proceedings"** means any action brought for any Taking of the Property, or any part thereof, or any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Property), by a governmental authority or entity as a result of the exercise of its power of eminent domain, including a voluntary sale to such authority or entity either under the threat of condemnation or while such action or proceeding is pending.

**"Director"** means the Director of the City of Houston's Housing and Community Development Department, or his designee.

**"Force Majeure"** means any contingency or cause beyond the reasonable control of a party including, without limitation: acts of God or the public enemy, war, riot, civil commotion, insurrection, acts of superior governmental or military authority, fires, explosions, epidemics, pandemics, and floods. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn, strikes, or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical.

**"GLO Agreement"** means the subrecipient agreement between the City and the Texas General Land Office ("GLO"), GLO Contract No. 19-147-001-B489, Community Development Block Grant Disaster Recovery Program Projects Non-Research & Development Harvey Round 1 Funding ("CDBG-DR17 Program") countersigned by the City Controller on January 4, 2019 and approved by City of Houston Ordinance No. 2019-10 and No. 2019-904, and any amendments thereto.

**"Hazardous Material"** means any chemical, substance, material or waste or component thereof which is now or hereafter listed, defined or regulated as a hazardous or toxic chemical, substance, material or waste or component thereof by any federal, state or local governing or regulatory body having jurisdiction, or which would trigger any employee or community "right-to-know" requirements adopted by any such body.

**"Lease"** means any written or oral agreement between Agent and Tenant that establishes or modifies the terms, conditions, rules, or other provisions regarding the use and occupancy of a Rental Unit.

**"Lease Term"** shall have the meaning set forth in Article III.

**"Notice of Appeal"** shall have the meaning set forth in Section 7.05(a).

**"Operating Account"** shall have the meaning set forth in Section 8.012.

**"Operating Budget"** means the operating budget for the Lease Term, attached hereto as **Exhibit "C"** and incorporated herein, which will be prepared by Agent and approved by the Director, as may be amended from time to time in writing by Agent.

**"Original Allocation"** shall have the meaning set forth in Section 8.04(b)(ii).

**"Relocation Requirements"** means the federal relocation requirements set forth in the Uniform Relocation Assistance Act and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1894 (codified at 42 U.S.C. §§ 4601-4655, as amended, and Section 104(d) of Housing and Community Development Act of 1974, Pub. L. 93-383, 88 Stat. 633-2 (codified as amended at 42 U.S.C. §§ 5301-5321), as applicable.

**"Renewal Term"** shall have the meaning set forth in Article III.

**"Rent"** means the monthly amount that a Tenant is obligated to pay Agent pursuant to the terms of a Lease.

**"Rental Unit"** means one or more rooms rented for use as a permanent residence at the Property, under a single Lease to one or more Tenants.

**"Supplemental Allocation"** shall have the meaning set forth in Section 8.04(b)(ii).

**"Taking"** or **"Taken"** means the date the governmental authority or other person deposits money into the registry of the court for purposes of obtaining title to the Property, or any part thereof, or



any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Property), pursuant to a Condemnation Proceeding, or the date of execution and delivery of a deed-in-lieu of condemnation.

**"Temporary Taking"** shall have the meaning set forth in Section 12.04.

**"Tenant(s)"** means a person who is authorized by a Lease to occupy a Rental Unit at the Property, to the exclusion of others, and who is obligated under the Lease to pay Rent.

**"Tenant Deposit"** means any advance of money, other than a rental application deposit or an advance payment of rent, that is intended primarily to secure performance under a Lease.

### **ARTICLE III**

#### **TERM AND AUTOMATIC RENEWAL**

This Agreement shall commence on the Effective Date and shall expire on the earlier of (i) the date that is thirty (30) days after the date the last Tenant vacates the Property; or (ii) the date that is twelve (12) months from the Effective Date (the "Lease Term"). This Agreement shall operate in full force and effect for the duration of the Lease Term, unless terminated by the City or Agent in accordance with Article X.

In the event that all Tenants have not vacated the Property at the expiration of the Lease Term, this Agreement shall automatically renew (the "Automatic Renewal") for one (1) additional twelve (12)-month term, or until thirty (30) days after the date the last Tenant vacates the Property, whichever is sooner ("Renewal Term").

### **ARTICLE IV**

#### **SERVICES OF AGENT**

**Section 4.01 Standard of Conduct.** Agent shall provide all labor, material and supervision necessary to perform the services described in this Agreement. Agent represents that it is experienced in professional operation and management multifamily rental properties similar to the Property, and Agent shall operate and manage the Property in accordance with industry standards for multifamily rental properties of the Property's type.

**Section 4.02 Collection of Rents and Other Receipts.** Agent shall collect, when due, all Rents, charges, and other amounts receivable from Tenant(s) and shall deposit said funds into the Operating Account in accordance with the provisions of Section 8.02(a). Under no circumstances shall the funds be commingled with Agent's other funds not derived from the Rents, charges, and other amounts collected under this Agreement.

**Section 4.03 Lease Enforcement.**

(a) **Lease Enforcement.** Agent shall ensure each Tenant abides by his Lease. Agent shall properly assess and collect from each Tenant or, the Tenant Deposit as the case



may be, the cost of repairing any damages to a Rental Unit arising during Tenant's occupancy. Agent shall also disburse Tenant Deposits in accordance with the terms of each Lease and Chapter 92 of the Texas Property Code, as may be amended from time to time.

(b) Relocation of Tenants. Agent shall comply with all Relocation Requirements. Agent shall emphasize a Tenant's voluntary compliance with Relocation Requirements and counsel Tenants and make referrals to community agencies in cases of financial hardship or under other circumstances deemed appropriate by the Director and Agent to avoid any involuntary termination of tenancies to the maximum extent consistent with sound management of the Property.

(c) Termination of Lease and Attorneys' Fees.

(i) Agent may, and shall, if requested by the Director, lawfully terminate any tenancy when, in Agent or the Director's judgment, sufficient cause for termination occurs under the terms of Tenant's Lease. To determine if a tenancy should be terminated, Agent shall request from the Director, in writing, the ability to consult with legal counsel. If authorized to do so, Agent may consult with legal counsel selected by Agent and approved by the City Attorney to determine appropriateness of bringing an eviction action, executing notices to vacate and/or filing other relevant judicial proceedings against a Tenant. Agent shall keep the Director informed of any and all legal actions and shall abide by any and all directions to proceed or refrain from proceeding issued by the Director and/or the City Attorney.

(ii) Reasonable attorneys' fees and other actual and necessary costs incurred in connection with such actions, as determined by the Director, and supported by invoices, are to be paid out of the Operating Account, but shall not exceed \$5,000.00 in the aggregate, without written, advance permission from the Director and/or the City Attorney. Such expenses are subject to the expenditure provisions in Section 8.03.

**Section 4.04 Maintenance, Repairs and Capital Improvements.** Agent shall maintain the Property in a decent, safe, and sanitary condition. Additionally, Agent shall maintain the Property in a condition acceptable to the Director and in compliance to industry standards for a multifamily development of similar type. Incident thereto, the following provisions shall apply:

(a) No later than ten (10) days after the Effective Date, Agent shall submit a preventative maintenance plan for the Lease Term to the Director for approval and adhered to by Agent.

(b) Agent shall contract with qualified independent contractors for the maintenance and repair of major mechanical systems and for the performance of extraordinary repairs beyond the capability of regular maintenance personnel. Prior to commencement of any work, Agent shall provide the Director with all contractors' current

insurance certificates that satisfy the City's standard requirements for insurance coverage according to the work to be performed.

(c) Agent shall promptly investigate all service requests from Tenants, take appropriate action to remedy the request, if justified, and keep records of the transactions. Excluding emergencies, the prior written approval of the Director shall be required for any service expenditure that exceeds Five Hundred and No/100 Dollars (\$500.00), per instance. Upon Agent's receipt of any emergency requests, including requests regarding heating, cooling, plumbing, and/or flooding, Agent shall (i) promptly report to the Director the pricing of all costs associated with the request, (ii) service the request within twenty-four (24) hours of the request, or as is standard based on best business practices of the industry, and (iii) after completion of the service, provide the Director with a service report, including total costs incurred by Agent and details on the issue and resolution. Agent shall pay standard prices for all emergency costs and be responsible for demonstrating to the Director the reasonableness and necessity of all emergency costs. Any costs incurred above the amount of emergency costs approved by the Director shall be borne by Agent. Additionally, during the Lease Term, Agent shall take all necessary actions related to exercising all rights provided by guarantees and warranties associated with repairs performed on the Property.

(d) Except as otherwise provided in this Section, subject to expenditure provisions in Section 8.03, Agent is authorized to purchase, using funds from the Operating Account, any needed materials, equipment, tools, appliances, supplies, and services necessary for proper maintenance and repair of the Property, of which Agent is not already in possession of. The prior written approval of the Director is required for any expenditure for labor, maintenance and/or materials not outlined on the Operating Budget that exceeds One Thousand and No/100 Dollars (\$1,000.00), per instance. Agent shall secure all discounts, rebates, and/or commissions obtainable with respect to purchase, service contracts, and all other transactions made by Agent on the City's behalf.

(e) In the event of emergency repairs involving manifest danger to persons or property or requiring the suspension of any necessary service to the Property, Agent shall notify the Director of the facts promptly and in no event later than twenty-four (24) hours after the occurrence of the event. Such emergency expenditures shall not exceed Two Thousand and No/100 Dollars (\$2,000.00), per instance, without the prior written approval of the Director. Such expenses are subject to the expenditure provisions provided in Section 8.03.

(f) Within ten (10) days after the date a Tenant vacates the Property, Agent shall conduct a final inspection of the Tenant's Rental Unit, remove all chattel from the Rental Unit, secure the Rental Unit and submit a move-out inspection report for the Rental Unit to the Director.

**Section 4.05 Utilities and Services.** Agent shall maintain water, electricity, gas, sewage, trash disposal, vermin extermination, laundry facilities, telephone services, and other necessary services in connection with the Property as may be outlined in the Tenant Lease.



**Section 4.06 Personnel.** Agent shall hire and employ all necessary personnel to operate, manage, and maintain the Property in accordance with the provisions of the Agreement. All property management personnel, including maintenance and custodial workers, shall be contracted service providers or employees of Agent. Such property management personnel are not the City's employees, agents, contractors, or subcontractors for any purpose whatsoever, and Agent shall have no authority to employ City personnel.

(a) Agent shall employ an adequate amount of properly trained employees or contractors to provide efficient service to the Tenants. The City reserves the right to monitor Agent's employees' customer service quality, and, should such service become unacceptable, the Director will notify Agent of the deficiency in writing and outline required corrective action. Agent agrees to promptly review the Director's suggestions and immediately take corrective action.

(b) Agent shall keep accurate records of the names, addresses, and other legal identification of employees to assure proper identification and legal working status of employment at any time required by the City or any other proper agency.

**Section 4.07 Licenses and Permits.** Agent is required to obtain and maintain all permits required by the City or any other governmental agency with authority to regulate the Property as well as perform, or allow to be performed, any periodic inspections that are required by any such governmental agency. Agent shall also acquire and abide by all licenses and permits required for the operation of the Property as rental housing.

**Section 4.08 Records and Reports.** Agent shall follow recognized, modern business practices to provide efficient and adequate services to the Tenants. Accurate, prompt, and timely reporting is of the essence, and the Agent's failure to do so shall constitute a default subject to the notice and cure rights and remedies outlined in Article X. The Director may require audited statements of Agent's operations under this Agreement for any period of time during the Lease Term with such expense being borne by Agent. In addition to any requirements specified in this Agreement, Agent has the following responsibilities with respect to records and reports:

(a) Agent shall establish and maintain a system of records, books, and accounts in a manner that is satisfactory to the Director and the City Controller. All records, books, and accounts are subject to audit and examination by the Director and the City Controller at reasonable hours upon reasonable notice to Agent.

(b) Agent shall prepare monthly reports in a form satisfactory to the Director, along with any other reports that are requested by the Director that are consistent with Agent's duties hereunder, containing and including at least the following:

(i) a statement of income and expenses and accounts receivable and payable for the preceding month, including an itemized list of all delinquent Rents for the month and a report of actions taken on the delinquent accounts by Agent;

(ii) rent roll/cash receipts from the previous month;



(iii) a disbursement summary for the previous month, including paid invoices and evidence of payment of insurance premiums;

(iv) a statement comparing budgeted revenues and expenses to actual revenues and expenses, including any indication that the actual annual net operating income is anticipated to be more than five percent (5%) less than budgeted in the Operating Budget;

(v) current bank statements of the Operating Account with a detailed report on any financial deficits experienced during the reported period, including the deficit amounts and any out-of-pocket expenses incurred by Agent in reconciling such deficits;

(vi) a narrative of any unusual actions taken or emergencies responded to by Agent;

(vii) a full report of any accidents, claims, and potential claims for the previous month; and

(viii) any other information required by the Director.

Agent shall submit each report to the Director on or before the tenth (10<sup>th</sup>) day of each month.

(c) All bookkeeping, data processing services, and management overhead expenses are to be paid for by Agent.

(d) Agent shall furnish whatever additional information (including monthly occupancy reports) requested from time to time by the Director within the time period provided in the request with respect to the leasing and financial, physical, or operational condition of the Property.

(e) Agent shall establish and maintain Tenant files containing copies of all Leases, certification forms, notices, and other documentation required by the Director. Said files shall be easily accessible to the Director upon request.

**Section 4.09 City Communications.** Agent shall be available for communications with the Director and inform the Director of items materially affecting the Property within twenty-four (24) hours after the occurrence of the material event.

## ARTICLE V

### MANAGEMENT AUTHORITY

#### Section 5.01 Authority.

(a) Agent's authority is expressly limited to the provisions contained herein as they may be amended in writing from time to time in accordance with the provisions of this Agreement.

(b) The City expressly withholds from Agent any power or authority to undertake the following actions:

(i) make any structural change in or to the Property or to make any other major alterations or additions in or to the Property or fixtures or equipment therein;

(ii) execute or promise any new Leases or Lease renewals, or approve any sublets or assignments;

(iii) implement or enforce any Rent increases in accordance with a Lease that would take effect during the Lease Term;

(iv) enter into any agreement, instrument or covenant or take any action that would:

1) constitute an encumbrance on the Property;

2) bind the City or the Property;

3) be outside a normal, reasonable, and necessary act needed to perform Agent's duties under this Agreement; or

4) have a term that will exceed the Lease Term or that cannot be terminated with thirty (30) days' notice;

(v) incur any expense not outlined in the Operating Budget without the prior written consent of the Director; and/or

(vi) commit or allow Tenant to commit waste on or to the detriment of the Property.

(c) Agent is an independent contractor and shall perform the services provided for in this Agreement in that capacity.

**Section 5.02 Delegation of Duties.** Agent has the right to engage independent contractors for performance of Agent's duties hereunder as Agent deems necessary, but Agent has the responsibility of supervising the performance of those duties. All contracts with independent

contractors are subject to the prior written consent of the Director. Expenses associated with the delegation of Agent's duties will be the sole financial responsibility of Agent.

**Section 5.03 Compliance with Law.** Agent shall take all necessary actions to comply with any and all statutes, laws, ordinances, orders and requirements of federal, state, county, and municipal authorities having jurisdiction over the Property, including orders of any insurance companies and other similar bodies, relative to the leasing, use, operation, repair, and maintenance of the Property. Upon receiving notice of any violation, Agent shall promptly remedy any violation of any law, ordinance, rule, or regulation, and shall notify the Director in writing by the end of the next business day of the violation and how and when the violation has been or will be remedied.

## **ARTICLE VI**

### **INSURANCE AND INDEMNIFICATION**

**Section 6.01 Liability of Agent.** Agent shall be personally liable for its breaches of this Agreement and for uninsured damages and costs (including reasonable attorneys' fees) resulting from Agent's negligence or misconduct and Agent's employees and contractors' negligence and misconduct.

**Section 6.02 Insurance.**

(a) Agent shall at all times during the Lease Term, at its own expense, keep and maintain, the following insurance policies having at least the following minimum limits:

(i) Commercial General Liability, including Contractual Liability, Bodily Injury and Property Damage, Personal & Advertising Injury, and Products and Completed Operations, with at least the following limits:

General Aggregate Limit	\$2,000,000
Personal and Advertising Injury Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000

(ii) Texas Statutory Workers' Compensation, including Employer's Liability with at least the following limits:

Each Accident	\$1,000,000
Each Employee	\$1,000,000
Policy Limit	\$1,000,000

(iii) Business Automobile Liability, covering (a) any auto or (b) all owned, hired and non-owned autos with at least the following limits:

Combined Single Limit	\$1,000,000
-----------------------	-------------



(iv) Commercial Umbrella or Excess Liability to provide excess liability limits over the underlying Commercial General Liability and Business Auto Liability policies. Coverage terms must "follow from" or be broader than the underlying policies. Any combination of underlying and Umbrella or Excess limits can be used to provide total liability limits of at least:

Per Occurrence	\$10,000,000
General Aggregate	\$10,000,000

(iii) Pollution Liability with at least the following limits:

Per Occurrence	\$2,000,000
Aggregate per 12-month period	\$4,000,000

(iv) Crime policy, which shall include but not be limited to coverage for the following: losses arising out of or in connection with fraudulent or dishonest acts committed by the employees of Agent, acting alone or in collusion with others, including the property and funds of others in their care, custody or control; employee theft; counterfeit money; computer fraud coverage; funds transfer coverage; forgery or alteration coverage; money and securities coverage; and theft per loss coverage. The Crime Policy coverage shall also include an extension for property of others.

Per Occurrence	\$100,000.00
----------------	--------------

(c) General Provisions. Prior to beginning performance under this Agreement, at any time upon the Director's request, or each time coverage is renewed or updated, Agent and its contractors shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Agent and its contractors shall be responsible for and pay (i) all premiums and (ii) any claims or losses to the extent of any deductible amounts. Agent and its contractors waive any claim they may have for premiums or deductibles against the City, its officers, agents, or employees. If any insurance policy required hereunder does not have a flat premium rate and such premium has not been paid in full, such policy must have a rider or other appropriate certificate or waiver sufficient to establish that the issuer is entitled to look only to Agent and its contractors for any further premium payment and has no right to recover any premiums from the City. Agent and its contractors shall also require all subcontractors or consultants whose subcontracts exceed \$100,000.00 to provide proof of insurance coverage meeting all requirements stated above except the amount must be commensurate with the amount of the subcontract, but no less than \$500,000.00 per claim.

(k) Form of Insurance. The insurance form 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 Article, or (ii) waive or estop the City from asserting its rights to terminate this Agreement. The policy issuer shall (1) have a certificate of authority to transact insurance business in the State of Texas issued by the Texas Board of Insurance, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+. The policy issuer shall have a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide.

(d) Required Coverage. The City shall be an additional insured under this Agreement, and all policies, except workers' 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. Agent and its contractors waive any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Agent's and its contractors' insurance policies. Each policy, except workers' compensation, 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.

(e) Notice. AGENT AND ITS CONTRACTOR SHALL GIVE THIRTY (30) DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED. Within the 30-day period, Agent and its contractors shall provide other suitable policies in order to maintain the required coverage. If Agent or its contractors fails to comply with this requirement, the Director, at his sole discretion, may immediately terminate this Agreement, suspend Agent and its contractors from any further performance under this Agreement, and begin procedures to terminate for default.

(f) Certificates of Insurance. The insurance coverages may be represented in one or more certificates of insurance. It is agreed, however, that nothing included within or omitted from the insurance certificates shall relieve Agent from its duties to provide the required coverage.

(g) Deductibles. A policy may contain deductible amounts as approved by Agent and its contractors. Agent and its contractors shall assume and bear any claims or losses to the extent of such deductible amounts, and waive any claim they may ever have for the same against the City, its officers, agents or employees with respect to such deductible amounts.

(h) Blanket Policies. Agent and its contractors shall be entitled to purchase and maintain the insurance required under this Article under so called "blanket" policies, provided the coverage thereunder is at least equal to the levels contained herein and is otherwise adequate in keeping with prudent underwriting standards.

(i) Policies. At the Director's request, copies of all policies referred to above, certified by the agent or attorney-in-fact issuing them, together with written proof that the premiums have been paid, shall be deposited by Agent with the Director. If the Director fails to request copies of such policies, Agent shall provide certificates of insurance, in lieu



of policies, reflecting that the terms of this Section have been met, with such certificates to be provided before the Agent begins any work in, on or about the Property. Along with such policies or certificates, Agent shall provide the Director with a list of any claims paid out against the aggregate total of any such policy.

(j) WAIVER OF RIGHT OF RECOVERY. ANYTHING TO THE CONTRARY IN THIS AGREEMENT NOTWITHSTANDING, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE CITY AND AGENT EACH WAIVE ALL RIGHTS OF RECOVERY, CLAIMS, ACTIONS OR CAUSES OF ACTION OR SUBROGATION AGAINST THE OTHER AND THE OTHER'S AFFILIATES AND THEIR RESPECTIVE PARTNERS, AGENTS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES OR REPRESENTATIVES FOR ANY DAMAGE TO THE PROPERTY AND/OR THE IMPROVEMENTS, TO THE EXTENT THAT SUCH DAMAGE IS DUE TO AN INSURED CASUALTY RISK REGARDLESS OF CAUSE OR ORIGIN, INCLUDING NEGLIGENCE OF THE CITY, AGENT, THEIR AFFILIATES OR THEIR PARTNERS, AGENTS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES OR REPRESENTATIVES.

**Section 6.03 Cooperation.** Agent shall furnish whatever readily available information is requested by the Director for the purpose of obtaining insurance coverage and shall aid and cooperate in every reasonable way with respect to the insurance and any loss thereunder.

**Section 6.04 Contractor's Insurance.** Agent shall require that every contractor working on the Property maintain, at the contractor's own expense, commercial general liability, workers' compensation, business automobile liability, and commercial umbrella or excess liability insurance in the amounts stated in Section 6.02. Agent must be notified promptly if the Director waives any of the requirements in this Section.

**Section 6.05 Standard of Care.** In the performance of its duties and obligations under this Agreement, Agent shall diligently and in good faith seek to protect the property rights and interests of the City, to protect the best economic interests of the City in its ownership and operating of the Property, and to manage the Property in accordance with normal and accepted industry standards.

**Section 6.06 Release.** AGENT AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY FOR THIS SECTION, 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. AGENT HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELEASED BY AGENT UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.



## ARTICLE VII

### AUDIT, INSPECTION AND MAINTENANCE OF RECORDS

**Section 7.01** City representatives (including without limitation the Director and the City Controller), State of Texas and Federal Government authorized representatives (collectively "Auditing Entities") may perform (1) audits of Agent's books and records or (2) inspections of the Property. Agent shall retain its books and records (including without limitation any documentation required under 2 C.F.R. Part 200, Subpart D) to be available for City representatives to review for at least (i) three (3) years after the General Land Office's ("GLO") closeout of the CDBG-DR17 program that is the subject of the GLO Agreement; (ii) the time period required by 2 C.F.R. § 200.333 (retention requirements for records) in the event this Agreement is wholly or partially federally funded; or (iii) seven (7) years after this Agreement terminates, whichever is longer. If the books and records are located outside of Harris County, Texas, Agent shall make them available in Harris County, Texas.

**Section 7.02** Within twenty-four (24) hours of Agent's receipt of written notice, Auditing Entities have the right to audit and inspect Agent's books, documents, papers, and records, both written and electronic, that pertain to the Property, Rental Units, or services provided under this Agreement. Such documents may include, but are not limited to:

- (a) payroll and personnel records, such as salaries, benefits and bonuses;
- (b) subcontractor agreements, records and invoices;
- (c) any and all records pertaining to the Property saved within Agent's accounting or management systems;
- (d) records and information saved on all computers or servers on which the City information is stored; and
- (e) all documents or records evidencing costs and expenses, direct and indirect, relating to Agent's operation and maintenance of the Property (collectively, "Audited Documents").

**Section 7.03** Agent shall permit Auditing Entities to reproduce or copy and retain any and all Audited Documents.

**Section 7.04** Agent shall provide Auditing Entities access to the Property during regular business hours.

#### **Section 7.05 Audit Findings of Disallowed Disbursements or Expenditures.**

- (a) Audit Findings by the City. Within thirty (30) days of the Director's request, Agent shall refund the City a sum equivalent to the amount of any disallowed disbursements made by the City to Agent or Agent's expenditures, in the event the City,

through the review of a monthly financial report(s) and/or audit(s), monitoring finding, or other action, determines that the disbursement or expenditure of any funds disbursed under this Agreement was not made in compliance with this Agreement, applicable law, or applicable regulations. If Agent intends to appeal the disallowance, then no later than five (5) business days after receiving the Director's request, Agent shall provide the Director with written notice to appeal the disallowance ("Notice of Appeal"), which shall explain the reasons supporting Agent's appeal. Agent's Notice of Appeal shall include bank statements, time sheets, receipts, and any other documentation reasonably requested by the Director. Within ten (10) business days of receiving Agent's Notice of Appeal, the Director shall render a decision to accept or deny Agent's appeal of a disallowance. The Director's decision shall be final. Within thirty (30) days of receiving a denial of the Notice of Appeal, Agent shall pay the City the amount disallowed.

(b) Audit Findings by Other Auditing Entities. If any audit or inspection performed by an Auditing Entity, other than the City, results in the disallowance, recapture, repayment, refund, return and/or reimbursement of Federal funds used by the City to reimburse Agent for fees and/or expenses related to the operation and maintenance of the Property, Agent shall cooperate with the Director and/or the City Controller to support the City's responses to any applicable Auditing Entity's repayment requests. If the City is unable to satisfy repayment findings, Agent shall reimburse the City for all such Federal fees and/or expenses required to be repaid by the City to an applicable Auditing Entity. Agent shall pay any adjustments or payments that were determined as a result of any such audit or inspection of the Agent's performance under the Agreement, including invoices or records, within thirty (30) days from presentation of the written findings by the Director to Agent.

**Section 7.06** Agent has been advised that the City is a party to the GLO Agreement.

**Section 7.07 Correction of Discrepancies.** If the Director discovers any discrepancies in Agent's records and/or documents, the Director may, in his discretion, require Agent to immediately correct said discrepancies and provide the Director with the corrected records and/or documents within ten (10) business days.

## ARTICLE VIII

### OPERATING BUDGET AND REMITTANCE OF FUNDS

#### **Section 8.01 Operating Budget.**

(a) Initial Operating Budget. Agent has prepared, and the Director has approved, the initial Operating Budget, as attached herein as **Exhibit "C"**.

(b) Revisions to Operating Budget. If the total expenditures accrued under this Agreement are less than the budgeted expenditures or revenues are higher than budgeted for the Lease Term, Agent shall revise the estimated cost of the affected line items in the



Operating Budget. Such revisions for decreased expenditures or increased revenues does not require a formal amendment of this Agreement and is evidenced by a revised Operating Budget submitted by Agent to the Director within three (3) business days of the budget revision. Any excess funds remaining after revising the affected line items in the Operating Budget are subject to reallocation to other line items in the Operating Budget, projects and/or contracts related to the Property at the Director's sole discretion. Any revisions for a variance of 15% of expenditures higher or revenues lower than budgeted under this Agreement must be approved by the Director.

**Section 8.02            Operating Account.** On or before the Effective Date, Agent shall establish a new bank account, solely in the Agent's name, to be used for revenue deposits and Property operation and maintenance expenditures (the "Operating Account"). The City shall not be named as an authorized user of the Operating Account, nor shall the City have signature authority on the account. Disbursements from the Operating Account are to be made in accordance with the Operating Budget, or as otherwise approved in writing by the Director.

(a)    Deposit of Funds into Operating Account. Upon receipt, Agent shall immediately deposit all Rents and other funds collected from the operation of the Property into the Operating Account.

(b)    Expense Payments from Operating Account. Expenses shall be paid out of the Operating Account in accordance with the Operating Budget, or as otherwise approved in writing by the Director. Expenses not included in the Operating Budget shall be subject to the terms and conditions set forth in Article IV. Upon expenditure of funds out of the Operating Account, Agent shall include in the monthly financial report, described in subsection (c), an itemization of the expenditures funded by the Operating Account, for the Director's review and approval.

(c)    Monthly Financial Reporting. Agent shall provide the Director a monthly financial report in accordance with Section 4.08(b). The Director shall approve the financial report if, in the Director's opinion, Agent expended funds in accordance with this Agreement.

(d)    Minimum Reserve Amount for Tenant Deposits. All existing Tenant Deposits shall be transferred to the Operating Account within ten (10) days after the Effective Date. At all times, the Operating Account shall maintain a minimum reserve amount equal to the total amount of Tenant Deposits owed to Tenants. Agent shall maintain detailed records of all Tenant Deposits, and the records must be open for inspection by the Director at all times. The required minimum reserve amount shall only decrease in direct correlation to reimbursed Tenant Deposits, as required by Texas Property Code Section 92.103, during the Lease Term. Agent shall document each Tenant Deposit reimbursed during the Lease Term and designate such reimbursement as a line item in the monthly financial report required under Section 4.08(b).



### **Section 8.03                      Expenditures.**

(a)     Expenditure Reimbursements to Agent. If Agent incurs any out-of-pocket expenses in reconciling any financial deficits detailed in Section 4.08(b), Agent shall submit requests for expenditure reimbursements to the Director for review and approval. Requests for expenditure reimbursements shall include:

- (i)     an itemized invoice(s) that sufficiently describes the charge(s) so that financial reporting can be achieved as described in Section 4.08(b);
- (ii)    a receipt(s) evidencing payment of the invoice(s); and
- (iii)   any additional documentation as may be requested by the Director and/or the City Controller.

After the Director's approval, the City will reimburse Agent for such out-of-pocket expenses in accordance with the Operating Budget, or as otherwise approved in writing by the Director, and the Texas Private Prompt Payment Act, Chapter 28 of the Texas Property Code.

(b)     Advanced Payments Made by Agent. Agent may, but is not obligated to, make any advance payment to the Operating Account or to pay any amount except out of funds in the Operating Account, and Agent is not obligated to incur any extraordinary liability or obligation outside of the Operating Budget unless the Director approves of such liability or obligation and the Director furnishes Agent with the necessary funds for the discharge thereof.

**Section 8.04                      Insufficient Funds in Operating Account.** If the balance in the Operating Account is at any time insufficient to pay expenses due and payable under this Agreement, Agent shall promptly inform the Director of the insufficiency and the City may then remit sufficient funds to Agent to cover the deficiency. Agent is required to notify the Director of an insufficient balance in the Operating Account when the balance in the Operating Account is or is expected to be less than 100% of the allowable expenses for the following month, as established by the Operating Budget and other expenses approved in accordance with this Agreement. Agent must immediately notify the Director of such insufficiency, including the estimated percentage of funds available in the Operating Account to cover the allowable expenses, but no later than twenty-four (24) hours after Agent's determination of the insufficiency.

(a)     If Agent determines that the Operating Account has funds available to cover at least 90% of the allowable expenses, Agent shall cover the deficiency with its own funds and request reimbursement from the City for incurring such out-of-pocket expenses. Such reimbursements shall be subject to the terms provided in Section 8.03(a).

(b)     If Agent determines that the Operating Account has funds available to cover less than 90% of the budgeted monthly expenses, Agent shall request payment from the Director to cover such deficiency in the notice required in this Section. To request

payment, Agent shall submit the invoice(s) that will not be paid with funds from the Operating Account due to insufficient funds. Within 30 days of the Director's review and approval of such invoice(s), the City shall remit funds to cover the payment of such invoice(s).

(viii) The City's duty to pay Agent under this Agreement or make any payments in connection with this Agreement, including without limitation, into the Operating Account due to insufficient funds in the Operating Account, is limited in its entirety by the provisions of this Section and the Operating Budget, as may be amended from time to time.

(ix) 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 up to \$100,000.00 to pay Agent under this Agreement or make any payments in connection with this Agreement, including without limitation, into the Operating Account due to insufficient funds in the Operating Account during the Lease Term (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Section of the Agreement (the "Supplemental Allocation"), but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

5) The City has not allocated supplemental funds or made a Supplemental Allocation for this Agreement unless the City has issued to Agent 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 the City Council.

#### **NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS**

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

\$

6) The Original Allocation plus all Supplemental Allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Section in excess of the Allocated Funds. Agent must

assure itself that sufficient allocations have been made to pay disbursement due and payable under this Section. If Allocated Funds are exhausted, Agent'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 City and no right to damages of any kind.

**Section 8.05 Taxes.** The City is exempt from payment of federal excise and transportation tax and Texas limited sales and use tax. Agent's invoices to the City must not contain assessments of any of these taxes. The City will furnish the City's exemption certificate and federal tax identification number to Agent if requested.

## **ARTICLE IX**

### **COMPENSATION**

**Section 9.01 Lease-back Fee.** The City will compensate Agent \$49,500.00 (the "Lease-back Fee") for its services under this Agreement in twelve (12) monthly payments, in accordance with the monthly schedule below, to be treated as an operating expense and paid out of the Operating Account. The monthly fee will be payable on the first (1st) day of each month during the term of the Agreement with respect to the services performed during the prior month. The Lease-back Fee shall be paid monthly as follows:

<u>Month</u>	<u>Lease-back Fee</u>	<u>Cumulative Total Lease-back Fees</u>
1	\$12,000.00	\$12,000.00
2	\$10,000.00	\$22,000.00
3	\$8,000.00	\$30,000.00
4	\$3,000.00	\$33,000.00
5	\$3,000.00	\$36,000.00
6	\$3,000.00	\$39,000.00
7	\$3,000.00	\$42,000.00
8	\$1,500.00	\$43,500.00
9	\$1,500.00	\$45,000.00
10	\$1,500.00	\$46,500.00
11	\$1,500.00	\$48,000.00



12

\$1,500.00

\$49,500.00

The parties agree that Agent shall not receive any amount exceeding the Lease-back Fee or any other additional compensation from the City if this Agreement extends into the Renewal Term.

**Section 9.02 Early Termination.** If the Agreement terminates prior to the expiration of the Lease Term, Agent shall be entitled to payment of the remaining unpaid portion of the Lease-back Fee so long as such termination did not occur pursuant to Article X. Agent shall receive payment of the remaining unpaid portion of the Lease-back Fee no later than sixty (60) days after the termination of this Agreement.

## ARTICLE X

### DEFAULT AND TERMINATION; REMEDIES; INDEMNIFICATION

#### Section 10.01 Termination.

(a) Termination for Convenience by the City. The City may terminate this Agreement at any time by giving thirty (30) days' written notice to Agent. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future. On receiving the notice, Agent 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. The City shall (i) pay Agent any unpaid Lease-back Fee pro rata as to the days services were provided by Agent during the month in which termination occurs; and (ii) reimburse Agent for any Property expenditures incurred in performing the services, but not already reimbursed, in the same manner as prescribed in Section 8.03

RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE AGENT'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. AGENT 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.

(b) Default by Agent; Termination for Cause by the City. If Agent defaults under this Agreement, the City may either terminate this Agreement or require Agent to cure the default as provided below. The City's right to terminate this Agreement for Agent's default is cumulative of all rights and remedies which exist now or in the future. Default by Agent occurs if:

(i) Agent fails to operate the Property as a residential multi-family rental facility;

(ii) there is a (i) filing of a voluntary petition in bankruptcy on Agent's behalf; (ii) adjudication of Agent as a bankrupt; (iii) filing of any petition or other pleading in any action seeking reorganization, rearrangement, adjustment, or composition of, or in respect of, Agent under the United States Bankruptcy Code or any other similar state or federal law dealing with creditors' rights generally, unless within ninety (90) days after such filing such proceeding is stayed or discharged; or (iv) appointment of a receiver, trustee or other similar official of Agent;

(iii) Agent fails to reasonably correct within a reasonable period any hazardous condition, caused by Agent after written notice of such condition was provided by the City. In the event Agent does not promptly remedy the hazardous condition, the City may exercise all of its rights under this Agreement, including the right of the City to perform Agent's obligations as set forth in this Agreement; or

(iv) Agent fails to keep, observe or perform any of the terms, covenants or agreements contained in this Agreement to be kept, performed or observed by Agent. If (i) such failure is not remedied by Agent within thirty (30) days after written notice from the Director of such default or (ii) in the case of any such default which cannot with due diligence and good faith be cured within thirty (30) days, Agent fails to commence to cure such default within thirty (30) days after written notice from the Director of such default or Agent fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith; it being intended that, in connection with any such default which is not susceptible of being cured with due diligence and in good faith within thirty (30) days, the time within which Agent is required to cure such default shall be extended for such additional period as may be necessary for the curing thereof with due diligence and in good faith.

If a default occurs, the Director shall deliver a written notice to Agent describing the default and the termination date. The Director, at his or her sole option, may extend the termination date to a later date. If the Director allows Agent to cure the default and Agent does so to the Director's satisfaction before the termination date, then the termination is ineffective. If the Director allows Agent to cure and Agent 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.

**Section 10.02 Remedies Cumulative.** Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.



**Section 10.03 Final Accounting and Closing Operations.** Within thirty (30) days after the termination or expiration of this Agreement, Agent shall transfer to the City the following:

- (a) Any outstanding balance remaining in the Operating Account;
- (b) All certificates of deposits, if any;
- (c) Any money belonging to the City held by Agent on the City's behalf;
- (d) All records, contracts, Leases, keys, receipts for deposits, unpaid bills, as authorized under the Operating Budget or otherwise in writing by the Director, and other papers, files, documents, books and records relating to the Property; and
- (e) All reports required under this Agreement hereof to the date of the termination.

Within three (3) days of the City's request, Agent shall assign to the City all contracts requested by the City concerning the Property, to the extent permitted by the contracts, and shall cooperate with the City in connection with the transition to a new manager, if necessary.

**Section 10.04 Indemnification.**

(a) **AGENT AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY FOR THIS SECTION, 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:**

(i) **AGENT AND/OR ITS AGENTS', EMPLOYEES, OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS (i)-(iii), "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**

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

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



(b) **AGENT'S FOREGOING INDEMNIFICATION OBLIGATION SHALL APPLY DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THIS AGREEMENT TERMINATES. AGENT'S FOREGOING INDEMNIFICATION IS LIMITED TO \$1,000,000 PER OCCURRENCE. AGENT SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.**

(c) **SUBCONTRACTOR'S INDEMNITY. AGENT 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.**

(d) **INDEMNIFICATION PROCEDURES.**

(i) Notice of Claims. If the City or Agent receives notice of any claim or circumstances which could give rise to an indemnified or non-indemnified loss, the receiving party shall give written notice to the other party within five (5) days. For an indemnified loss, the notice must include the following:

- (1) a description of the indemnification event in reasonable detail;
- (2) the basis on which indemnification may be due; and
- (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 Director does not provide this notice within the required 5-day period, it does not waive any right to indemnification except to the extent that Agent is prejudiced, suffers loss, or incurs expense because of the delay.

(ii) Defense of Claims.

(1) Assumption of Defense. Agent may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City Attorney. Agent 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 be unreasonably withheld. Within five (5) days after receiving written notice of the indemnification request, Agent must advise the Director as to whether or not it will defend the claim. If Agent does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

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

(3) Non-indemnified Claims. The party in receipt of a non-indemnified claim notice shall promptly give to the other party all pertinent information and reasonable assistance in the defense or other disposition thereof, at its sole expense.

(e) Survival of Indemnity Obligations. The indemnity obligations contained in this Agreement will survive the termination of this Agreement.

## **ARTICLE XI**

### **DAMAGE OR DESTRUCTION**

**Section 11.01 Occurrence of Casualty and Use of Insurance Proceeds.** If all or any part of the Property is materially damaged or destroyed, Agent will immediately notify the Director as to the nature and extent of such damage or destruction. Agent shall assign to the City all insurance proceeds received with respect to any material damage or destruction to the Property.

**Section 11.02 Repairs.** Promptly upon the City's receipt of any insurance proceeds relating to damage or destruction to the Property, Agent shall consult with the Director in determining the next appropriate steps regarding any repairs conducted on the Property.

**Section 11.03 Property at Agent's Risk.** Agent's supplies and all merchandise, effects, and other property of every kind, nature, and description belonging to Agent, which may be on or in the Property during the Lease Term shall be at the sole risk and hazard of Agent; and if the whole or any part thereof shall be destroyed or damaged for any reason, the City shall not be liable or responsible.

**Section 11.04 Destruction of Properties under Contract.** If the Property is destroyed or materially damaged to such extent that the Director determines that the Property is wholly unfit, in whole or a material part, for use by Agent in its operations, the City may terminate this Agreement.

## **ARTICLE XII**

### **EMINENT DOMAIN**

**Section 10.01 Efforts to Prevent Taking.** The City shall use reasonable efforts to cause all other governmental authorities and/or entities with the power of eminent domain to refrain from instituting any Condemnation Proceedings or exercising any other powers of eminent domain with respect to the Property, or any interest in any of the foregoing during the Lease Term.

**Section 10.02 Entire Taking.** If all or at least 75% of the square footage of the Property is Taken in Condemnation Proceedings, Agent shall have the right to terminate this



Agreement in accordance with Article X effective as of the date of such Taking, and from and after such date Agent and the City shall not have any further obligations under this Agreement with respect to the portion of the Property so Taken, provided the City has fully complied with its obligations under this Section.

**Section 10.03          Partial Taking.**

(a) If less than 75% of the square footage of the Property is Taken in Condemnation Proceedings, after the Taking, Agent and the City shall not have any further obligations under this Agreement with respect to the portion of the Property so Taken.

(b) If, following any partial Taking, Agent exercises any right of termination under this Agreement as to the Property, then Agent may vacate the Property and, after vacation, Agent and the City shall not have any other obligations under this Agreement with respect to the Property, provided the City has fully complied with its obligations under this Section.

(c) If Agent does not elect to vacate the Property upon any partial Taking thereof, then the Property shall be reduced by the portion Taken in the Condemnation Proceeding.

**Section 10.04          Temporary Taking.** A Taking shall be considered temporary if the Taking will only affect the Property for a period of three (3) months or less ("Temporary Taking"). If any portion of the Property is subject to a Temporary Taking, Agent and the City's obligations under this Agreement shall be abated for the affected portion of the Property for the duration of the Temporary Taking. Once the Temporary Taking has expired, Agent and the City's obligations under this Agreement will resume as to the affected portion of the Property and shall continue for the duration of the Term.

**Section 10.05          Condemnation Award.**

(a) At any time within one hundred eighty (180) days after a Taking, following which Agent vacates the Property or a portion thereof, the Director or Agent may terminate this Agreement by delivering a written termination notice to the other party specifying the effective date of such termination, in which event this Agreement shall terminate as to the Property or a portion thereof as of the date specified by the Director or Agent in such notice, and the entire condemnation award attributable to such Taking shall be paid to the City.

(b) In the event all or any portion of the Property is not terminated from the scope of this Agreement in connection with a Taking as provided above, the Condemnation Award shall be paid to the City. Should the Condemnation Award be deposited into the registry of the court, the City shall withdraw the money from the registry of the court with no objections from the Agent.

**Section 10.06          Survival.** The provisions contained in this Article shall survive the expiration or earlier termination of this Agreement, but only insofar as such provisions relate to



any Condemnation Proceedings or condemnation awards that arose prior to the expiration or termination of this Agreement.

## **ARTICLE XI**

### **ENVIRONMENTAL RESTRICTIONS**

**Section 11.01 Hazardous Material.** Neither the City nor Agent shall transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any Hazardous Material upon or about the Property, nor permit their employees, agents, and contractors to engage in such activities upon or about the Property. However, the foregoing provisions shall not prohibit the transportation to and from, and use, storage, maintenance and handling within, the Property of substances customarily used in owning, managing, repairing, leasing, or operating real estate similar to the Property; provided (i) such substances shall be used and maintained only in such quantities as are reasonably necessary and in accordance with applicable law and the manufacturers' instructions therefor and (ii) such substances may be disposed of, released or discharged at the Property if permitted by and in compliance with applicable laws, and shall be transported to and from the Property in compliance with all applicable laws.

**Section 11.02 Notification.** Each party shall promptly notify the other party upon the notifying party becoming aware of: (i) any enforcement, cleanup, or other regulatory action taken or threatened against either party by any governmental or regulatory authority with respect to the presence of any Hazardous Material on the Property, (ii) any demands or claims made or threatened by any party against the City or Agent relating to any loss or injury resulting from any Hazardous Material, (iii) any unlawful release, discharge or nonroutine, improper or unlawful disposal or transportation of any Hazardous Material on or from the Property, and (iv) any matters where the party is required by law to give a notice to any governmental or regulatory authority respecting any Hazardous Materials on the Property.

**Section 11.03 Clean up and Removal.** If any Hazardous Material is released, discharged or disposed of by Agent or its employees, agents or contractors, on or about the Property in violation of the foregoing provisions, Agent shall immediately, properly and in compliance with all applicable laws and ordinances, clean up and remove the Hazardous Material from the Property and any other affected property, at Agent's sole cost and expense. Such clean up and removal work shall be subject to the Director's prior written approval, and shall include, without limitation, any testing, investigation and/or preparation and implementation of any remedial action plan required by any governmental body having jurisdiction. If Agent shall fail to comply with the provisions of this Section within five (5) days after written notice by the Director, or such shorter time as may be required by law, the City may terminate this Agreement.

## ARTICLE XIV

### ASSIGNMENT; SUBLETTING; NON-DISTURBANCE

Except with regard to an assignment to a related entity to Agent for which Director approval is obtained, Agent shall not assign this Agreement, or sublet or assign any of the Property, in whole or in part, at any time.

## ARTICLE XV

### SMALL BUSINESS, MINORITY AND WOMEN BUSINESS ENTERPRISES; NON-DISCRIMINATION

**Section 15.01 Business Opportunity.** Agent 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. Agent shall make good faith efforts to award subcontracts or supply agreements in at least 25% of the value of this Agreement to MWBEs. Agent 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.

**Section 15.02 Non-Discrimination.** Agent shall not discriminate in its employment practices, service provision, or in any other manner in the management and/or operation of the Property or in the exercise of the rights and privileges granted by this Agreement because of sex, race, color, ethnicity, national origin, age, familial status, marital status, religion, disability, sexual orientation, genetic information, gender identity, pregnancy, ancestry, handicap, or religion.

**Section 15.03 Minority Hiring Encouragement.** Agent will encourage the hiring of minorities and women employees, and seek contracts with small, minority, and disadvantaged business enterprises.

## ARTICLE XVI

### AGENT'S REPRESENTATIONS AND WARRANTIES

Agent hereby represents and warrants as follows:

(a) Existence. Agent is registered in the State of Texas as a limited liability company.

(b) Authority. Agent has all requisite power and authority to operate its business, enter into this Agreement and consummate the transactions herein contemplated, and by proper action has duly authorized the execution and delivery of this Agreement and the consummation of the transactions herein contemplated.

(c) Binding Obligations. This Agreement is a valid and binding obligation of Agent and is enforceable against Agent in accordance with its terms.

(e) Consents. No permission, approval or consent by third parties or any other governmental authority is required in order for Agent to enter into this Agreement or perform the obligations of Agent hereunder, other than those consents which have been obtained.

(uu) Proceedings. There are no actions, suits or proceedings pending or, to the best knowledge of Agent, threatened or asserted against Agent which could reasonably be expected to affect or impair Agent's ability to enter into this Agreement or to perform its obligations hereunder, at law or in equity or before or by any governmental authority.

## ARTICLE XII

### NOTICES

Any notice or other communications required or permitted hereunder shall be sufficiently given if sent by electronic mail or United States certified or registered mail, postage prepaid, and addressed as follows. Notice shall be deemed to have been given as of the date emailed, or three (3) days from the date mailed:

If to City:                      City of Houston, Texas  
Housing and Community Development Department  
Attn.: Tom McCasland, Director  
c/o Rupa Sen, Real Estate Manager  
2100 Travis Street, 9th Floor  
Houston, Texas 77002  
Telephone: (832) 394-6217  
Email: [rupa.sen@houstontx.gov](mailto:rupa.sen@houstontx.gov)

With a copy to:                City of Houston Legal Department  
Attn.: City Attorney  
900 Bagby Street, 4th Floor  
Houston, Texas 77002  
Email: [ronald.lewis@houstontx.gov](mailto:ronald.lewis@houstontx.gov)

City of Houston Legal Department  
Attn.: Disaster Recovery Section  
900 Bagby Street, 3rd Floor  
Houston, Texas 77002  
Email: [Brnilda.Santiago@houstontx.gov](mailto:Brnilda.Santiago@houstontx.gov)



If to Agent: Mr. Kevin Wood  
Woodbaker Investment Holdings  
2450 Louisiana St., Suite 427  
Houston, Texas 77006  
Telephone: 832-444-9284  
E-mail: kevin@stagecoachequity.com

With a copy to: Kelsey W. Gray  
Telephone: 832-714-9491  
Email: kelseywalkergray@gmail.com

The above addresses may be changed by the appropriate party giving written notice of the change to the other party.

### **ARTICLE XIII**

#### **MISCELLANEOUS**

**Section 18.01 Inspection.** Agent shall permit the City and its agents, at all reasonable times and without interfering with the operation being conducted upon the Property, to enter into and upon the Property during normal business hours for the purpose of inspecting the same, provided that such entry and inspection by the City does not interfere with the quiet enjoyment of the Property by Agent or any Tenant.

**Section 18.02 Special Power of Attorney.** The City authorizes Agent as attorney-in-fact for the City to collect Rents and other funds due the City in Agent's name on the City's behalf, to appear on behalf of the City in proceedings related to tenancy if requested by the City, and to establish and make deposits into and withdrawals from the Operating Account in accordance with the terms of this Agreement.

**Section 18.03 Not a Property Interest; Amendments.** This Agreement is not intended to convey any interest in real property. This Agreement constitutes the entire agreement between Agent and the City, and no alteration, modification, or addition to this Agreement will be valid or enforceable unless expressed in writing and signed by the Director and Agent.

**Section 18.04 Headings.** All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provisions of this Agreement.

**Section 18.05 Waiver.**

(a) Limitations. The waiver of any of the terms and conditions of this Agreement on any occasion or occasions is not to be deemed as waiver of those terms and conditions on any future occasion. No waiver by the City of any breach of this Agreement is to be deemed a waiver of any other or subsequent breach.

(b) Written Documentation. No party shall have or be deemed to have waived any default under this Agreement by the other party unless such waiver is embodied in a document signed by the waiving party that describes specifically the default that is being waived. Further, no party shall be deemed to have waived its rights to pursue any remedies under this Agreement, unless such waiver is embodied in a document signed by such party that describes specifically any such remedy that is being waived.

(c) Governmental Immunity. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement shall constitute a waiver by the City of any provisions of any law relating to governmental immunity or limitations of liability of a governmental entity.

**Section 18.06 Interpretation.** Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partnership, joint venture or any association between the parties hereto, it being understood and agreed that none of the provisions contained herein or any acts of the parties in the performance of their respective obligations hereunder shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

**Section 18.07 Addenda.** The following addenda are attached to this Agreement and incorporated herein:

- (a) **Exhibit "A"** – GLO Agreement
- (b) **Exhibit "B"** – Federal Contract Requirements
- (c) **Exhibit "C"** – Operating Budget

In the event of conflicts or inconsistencies between this Agreement and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: 1) any and all applicable federal and state laws, rules, and regulations; 2) this Agreement; 3) GLO-approved guidelines; and 4) exhibits to this Agreement: **Exhibit "A"**, **Exhibit "B"**, and **Exhibit "C"**.

**Section 18.08 Enforceability.** If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.



**Section 18.09 Exercise of Remedies.** The City's remedies under this Agreement are cumulative, and the exercise of one remedy is not to be deemed an election of remedies or a foreclosure of the exercise of the City's other remedies. The failure of a party to seek redress for violation of this Agreement, or to insist upon the strict performance of this Agreement, shall not constitute a waiver of any covenant, agreement, provision or condition of this Agreement.

**Section 18.10 Successors and Assigns.** This Agreement inures to the benefit of and constitutes a binding obligation on the City and Agent and their respective successors and assigns; provided, however, that Agent may not assign this Agreement or any of its duties hereunder without the prior written consent of the City.

**Section 18.11 Federal Requirements.** The Parties acknowledge that the City may seek reimbursement from the U.S. Department of Housing and Urban Development ("HUD") for costs incurred under this Agreement. Agent shall comply with all Community Development Block Grant – Disaster Recovery ("CDBG-DR") program requirements outlined in **Exhibit "A"** and made a part hereof. Agent shall abide by the Federal requirements outlined in **Exhibit "B"** as may be applicable. Notwithstanding the previous sentence, the parties acknowledge that the Federal Government is not a party to this Agreement and is therefore not obligated to perform any actions under this Agreement. Agent shall comply with and shall perform services in compliance with all GLO/HUD requirements outlined in this Agreement and otherwise applicable to the services performed, any subsequent audit by the GLO, HUD, or any other reviewing agency, and reimbursement, if any, from the GLO, HUD, or any other federal agency for the costs incurred under this Agreement.

**Section 18.12 Flow-Through Provisions.**

(a) The City is a party to the GLO Agreement that contains the provisions set out in **Exhibit "A"** to this Agreement. Agent shall comply with the applicable terms set out in **Exhibit "A"** and any amendments thereto as if it were the City, except to the extent this Agreement specifically addresses a topic also covered in **Exhibit "A"**, in which case the terms of this Agreement shall apply. In the event Agent believes a term or condition of the GLO Agreement is inapplicable, Agent must seek clarification from the Director. The Director, in his sole but reasonable discretion, shall determine which terms are applicable to this Agreement and the services provided thereunder. If the parties fail to reach an agreement, Agent may submit a dispute in accordance with Section 18.13 of this Agreement. Agent may utilize the Section 18.13 dispute resolution process under this Section regardless of whether the dispute involves a question of law.

(b) In the event the City is a recipient or subrecipient of other grant, federal, or state funds or the City otherwise uses restricted funds to pay Agent for services or expenses provided under this Agreement, Agent shall agree, in writing, to be bound by the same contract or grant terms and conditions, laws, and regulations as the City, to the extent relevant to Agent's scope of work ("Additional Flow Down Provisions"). Agent's agreement to the Additional Flow Down Provisions must be in writing, signed by Agent and the Director and approved by the City Attorney. Such written agreement does not require amendment of this Agreement but shall be incorporated into this Agreement as if



fully referenced herein. If within a reasonable time after receipt of a written request from the Director (not to exceed fifteen (15) business days), the parties are unable to reach a written agreement on the relevant Additional Flow Down Provisions following good faith negotiations, the Director, at his or her sole discretion may (i) immediately suspend Agent from any further performance, or (ii) terminate this Agreement. Under no circumstances may Agent's service or construction contracts contain a percentage mark-up provision.

**Section 18.13            Dispute Resolution.** Except as may otherwise be provided by law, a dispute that (1) arises during the performance of this Agreement; and (2) is not resolved between the City and Agent must be handled as described below:

(a)     The property manager shall put his decision in writing and mail or otherwise furnish Agent with a copy. Agent may abide by the decision or may appeal the decision to the Director.

(b)     If Agent desires to appeal a decision of the property manager, Agent must submit a written appeal to the Director. Agent must file its written appeal within seven (7) days following receipt of the property manager's original decision. The Director shall provide Agent with a written response to the appeal within fourteen (14) days following its receipt. The decision of the Director is final.

**Section 18.14            Estoppel Certificates.** Agent and the City shall, at any time and from time to time upon not less than twenty (20) days prior written request by the other party, execute, acknowledge and deliver to the City and Agent, as the case may be, a statement certifying (a) the ownership interest of the City or Agent (as the case may be), (b) that this Agreement is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (c) the dates to which any charges required hereunder have been paid, and (d) that, to the best knowledge of the City or Agent, as the case may be, no default hereunder on the part of the other party exists (except that if any such default does exist, the certifying party shall specify such default).

**Section 18.15            Written Cancellation or Termination.** Upon request of Agent, the City will execute and deliver a written cancellation and termination of this Agreement upon the cancellation or termination of this Agreement.

**Section 18.16            Force Majeure.**

(a)     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 Agent. 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.

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

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

(ii) provides the other party with prompt written notice of the cause and its anticipated effect.

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

(d) 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.

(e) If the Force Majeure continues for more than fifteen (15) days from the date performance is affected, the Director may terminate this Agreement by giving seven (7) days' written notice to Agent. This termination is not a default or breach of this Agreement. **AGENT 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.**

**Section 18.17 City's Right to Perform Agent's Covenants.** If Agent fails to perform any of the covenants, obligations or agreements contained in this Agreement, and such failure shall continue without Agent curing or commencing to cure such failure within all applicable grace and/or notice and cure periods, the City may perform the same on behalf of, and at the expense of Agent, and the amount of any payment made or other reasonable expenses (including reasonable attorneys' fees) incurred by the City in curing such default, together with interest thereon at the rate of ten percent (10%) per annum, shall be payable by Agent to the City within thirty (30) days of request of payment. This provision is not in lieu of, but is in addition to, any other rights or remedies the City may have with respect to Agent's failure to perform.

**Section 18.18 Applicable Law and Venue.** 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.

**Section 18.19 Brokerage Commission.** The City and Agent represent and warrant one to the other that no broker commission, finder's fees or similar compensation is due to any party claiming by, through or under the City or Agent as applicable.

**Section 18.20 Survival.** Covenants in this Agreement providing for performance after termination of this Agreement shall survive the termination of this Agreement.



**Section 18.21      Entire Agreement.** This Agreement and the documents referenced in this Agreement constitute the entire agreement between the City and Agent regarding the subject matter thereof. There are no representations, promises or agreements of either the City or Agent, one to the other, regarding the subject matter of this Agreement not contained in this Agreement or the documents referenced in this Agreement.

**Section 18.22      Covenants Running with the Land.** The parties hereto covenant and agree that all of the conditions, covenants, agreements, rights, privileges, obligations, duties, specifications and recitals contained in this Agreement, except as otherwise expressly stated herein, shall during the Lease Term be construed as covenants running with title to the Property, and the leasehold estate hereunder, respectively, which shall extend to, inure to the benefit of and bind the City, Agent, and their respective permitted successors and assigns to the same extent as if such successors and assigns were named as original parties to this Agreement, such that this Agreement shall during the Lease Term bind the owner and holder of any fee or leasehold interest in or to the Property, or any portion thereof, and shall bind predecessors thereof except as otherwise expressly provided herein.

**Section 18.23      Non-Merger of Estates.** The interests of the City and Agent in the Property shall at all times be separate and apart and shall in no event be merged, notwithstanding the fact that this Agreement or the leasehold estate created hereby, or any interest therein, may be held directly or indirectly by or for the account of the same person who shall own the fee title to the Property or any portion thereof; and no such merger of estates shall occur by operation of law, or otherwise, unless and until all persons at the time having any interest in the Property or under this Agreement join in the execution and recordation of a written instrument effecting such merger of estates.

**Section 18.24      City Council Approvals and Appropriations.** This Agreement is subject to all applicable terms and provisions of the Charter and the Code of Ordinances of the City, and is subject to approval by the City Council, and shall not be effective until signed by the Mayor and countersigned by the City Controller. Notwithstanding anything contained in this Agreement to the contrary, this Agreement does not, nor shall it be construed to, foreclose or waive the application of all lawful requirements under the applicable laws of the State of Texas for (i) the appropriation and payment of funds by the City, or (ii) the approval or issuance of future agreements, permits or licenses by the City. Any provision of this Agreement which contemplates (x) the payment of money by the City, which payment would require the appropriation of funds over and above any sums appropriated prior to the Effective Date in connection with this Agreement or (y) any other future action, decision, agreement, waiver or approval which by its nature must be approved by the City Council, including without limitation, the issuance of permits or licenses, shall be subject to the approval of any subsequent City Council to which such matter is presented and to the appropriation by such City Council of the required funds, in the exercise of its legislative discretion.

**Section 18.25      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. Agent has reviewed Executive Order



1-56, as revised, and shall comply with its terms and conditions as they are set out on the Effective Date. Agent shall notify the City's Chief Procurement Officer, the City Attorney, and the Director of any information regarding possible violation of such Executive Order by the Agent or its subcontractors providing services or goods under this Agreement.

**Section 18.26**      **Anti-Boycott of Israel.** Agent certifies that Agent 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.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

[Remainder of page intentionally left blank]

**EXECUTED IN MULTIPLE ORIGINAL COUNTERPARTS**, each of which shall be an original, which together shall constitute but one and the same instrument, effective as of the date of countersignature by the City Controller of the City of Houston. 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.

**CITY OF HOUSTON, TEXAS**, a municipal corporation

ATTEST:

\_\_\_\_\_  
Pat Jefferson-Daniel  
Interim City Secretary

\_\_\_\_\_  
Sylvester Turner  
Mayor of the City of Houston

APPROVED AND RECOMMENDED:

COUNTERSIGNED

\_\_\_\_\_  
Tom McCasland  
Director, Housing and Community  
Development Department

\_\_\_\_\_  
Chris B. Brown  
City Controller

Countersignature Date:

\_\_\_\_\_  
APPROVED AS TO FORM:  
Assistant City Attorney  
File No. 0292000506001



AGENT

**APPIAN WAY OPPORTUNITY FUND, LLC,**  
a Texas limited liability company

By: \_\_\_\_\_  
Kevin Wood, President  
Tax I.D. No. \_\_\_\_\_

**LEASING AGREEMENT**

**EXHIBIT "A"**

**GLO AGREEMENT No. 19-147-001-B489 and Amendment No. 1 of said GLO  
Agreement**



**GLO CONTRACT NO. 19-147-001-B489  
COMMUNITY DEVELOPMENT BLOCK GRANT  
DISASTER RECOVERY PROGRAM PROJECTS  
NON-RESEARCH & DEVELOPMENT  
HARVEY ROUND 1 FUNDING**

The **GENERAL LAND OFFICE** ("the GLO"), a Texas state agency, and **CITY OF HOUSTON**, DUNS No. 832431985 ("Subrecipient"), each a "Party" and collectively "the Parties," enter into this Subrecipient agreement (the "Contract") under the U.S. Department of Housing and Urban Development Community Development Block Grant Disaster Recovery ("CDBG-DR") program to provide financial assistance with funds appropriated under the Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Public Law 115-56), enacted on September 8, 2017, to facilitate disaster recovery, restoration, and economic revitalization and to affirmatively further fair housing, in accordance with Executive Order 12892, in areas affected by the Texas Hurricane Harvey (DR-4332), which are Presidentially-declared major disaster areas under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121, *et seq.*).

Through CDBG-DR Federal Award Number B-17-DM-48-0001, awarded February 9, 2018, as amended August 14, 2018, and as may be further amended from time to time, the GLO administers grant funds as Community Development Block Grants (Catalog of Federal Domestic Assistance Number 14.228, "Community Development Block Grants/State's program and Non-Entitlement Grants in Hawaii"), as approved by the Texas Land Commissioner, and limited to use for facilitating recovery efforts in Presidentially-declared major disaster areas.

**ARTICLE I - GENERAL PROVISIONS**

**1.01 SCOPE OF PROJECT AND SUBAWARD**

**(a) Scope of Project**

The purpose of this Contract is to set forth the terms and conditions of Subrecipient's participation in the CDBG-DR program. In strict conformance with the terms and conditions of this Contract, Subrecipient shall perform, or cause to be performed, the Programs listed in **Attachment A**, as applicable, in the City of Houston (the "Project"). Subrecipient shall conduct the Project in strict accordance with this Contract, including all Contract Documents listed in **SECTION 1.02** below, and any Amendments, Revisions, or Technical Guidance Letters issued by the GLO. The aggregate use of CDBG-DR funds shall benefit low- and moderate-income families in a manner that ensures that at least 70 percent of the Subaward



is expended for Activities that benefit such persons, unless another percentage is permitted by HUD in a published waiver as specified in the Federal Registers.

**(b) Subaward**

Subrecipient submitted a Grant Application under the CDBG-DR program. The GLO enters into this Contract based on Subrecipient's approved Grant Application.

Subject to the terms and conditions of this Contract and Subrecipient's approved Grant Application, the GLO shall issue a subaward to Subrecipient in the amount of **\$1,175,954,338.00**, payable as reimbursement of Subrecipient's allowable expenses, to be used in strict conformance with the terms of this Contract, the Program Budgets listed in **Attachment A**, and the **Performance Statements** for the Programs, attached hereto and incorporated herein for all purposes.

The GLO, in its sole discretion, may reimburse Subrecipient for allowable Project costs incurred from August 25, 2017 until the Effective Date of this Contract, in accordance with federal law, but the GLO is not liable to Subrecipient for any costs incurred prior to August 25, 2017 or after the expiration or termination of this Contract.

All funds obtained by Subrecipient from the GLO and utilized on Subrecipient's CDBG-DR Activities are subject to compliance with all Federal and State regulations governing this Contract.

**1.02 CONTRACT DOCUMENTS**

This Contract and the following Attachments, attached hereto and incorporated herein in their entirety for all purposes, shall govern this Contract:

**ATTACHMENT A:** Program Budgets

**ATTACHMENT B:** Federal Assurances and Certifications

**ATTACHMENT C:** General Affirmations

**ATTACHMENT D:** Nonexclusive List of Applicable Laws, Rules, and Regulations

**ATTACHMENT E:** Special Conditions

**ATTACHMENT F:** GLO Information Security Appendix

**ATTACHMENT G:** Program Completion Report

**PERFORMANCE STATEMENT 1:** Buyout Program

**PERFORMANCE STATEMENT 2:** Economic Revitalization Program

**PERFORMANCE STATEMENT 3:** Homebuyer Assistance Program

**PERFORMANCE STATEMENT 4:** Homeowner Assistance Program

**PERFORMANCE STATEMENT 5:** Housing Administration Program and Planning Program

**PERFORMANCE STATEMENT 6:** Multifamily Rental Program

**PERFORMANCE STATEMENT 7:** Public Services Program

**PERFORMANCE STATEMENT 8:** Single Family Development Program

**PERFORMANCE STATEMENT 9:** Small Rental Program

### 1.03 GUIDANCE DOCUMENTS

Subrecipient is deemed to have read and understood, and shall abide by, all guidance documents applicable to the CDBG-DR program, including, without limitation:

- (1) 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- (2) The Federal Registers;
- (3) The State of Texas Plan for Disaster Recovery: Hurricane Harvey – Round 1, as amended, found at <http://recovery.texas.gov/hud-requirements-reports/hurricane-harvey/index.html>; and
- (4) Federal Register publications and other relevant guidance documents posted at: <http://recovery.texas.gov/hud-requirements-reports/hurricane-harvey/index.html>.

### 1.04 DEFINITIONS

“Act” means Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. § 5301, *et seq.*).

“Activity” or “Activities” means a defined class of works or services eligible to be accomplished using CDBG-DR funds. Activities are specified in a Subrecipient Performance Statement.

“Administrative and Audit Regulations” means all applicable statutes, regulations, and other laws governing administration or audit of this Contract, including Title 2, Part 200, Code of Federal Regulations and Chapters 321 and 2155 of the Texas Government Code.

“Amendment” means a written agreement, signed by the Parties hereto, which documents alterations to the Contract other than those permitted by Technical Guidance Letters or Revisions, as herein defined.

“Application” or “Grant Application” means the information Subrecipient provided to the GLO, which is the basis for the award of funding under this Contract.

“Benchmark” means the reimbursement milestones identified in a Performance Statement required for release of Administrative and Project Delivery funding throughout the life of the Contract.

“Budget” means the budget for the Programs and Activities funded by the Contract, as specified in **Attachment A** and the **Performance Statements**, respectively.

“C.F.R.” means the United States Code of Federal Regulations.

“CDBG-DR” means the U.S. Department of Housing and Urban Development’s Community Development Block Grant Disaster Recovery program.

“Construction Documents” means the engineering specifications, construction plans, and/or architectural plans for the construction of improvements funded under the Contract.

“Contract” means this entire document, along with any Performance Statement or Attachments, both physical and incorporated by reference; and any Amendments, Revisions, or Technical Guidance Letters the GLO may issue, to be incorporated by reference herein for all purposes as they are issued and provided to Subrecipient, if any.



“Contract Documents” means the documents listed in **SECTION 1.02**.

“Equipment” means tangible personal property with a useful life of more than one (1) year and an acquisition cost of Five Thousand Dollars (\$5,000.00) or more per unit, as further defined at 2 CFR § 200.313.

“Event of Default” means the occurrence of any of the events set forth in **SECTION 3.03** herein.

“Federal Assurances” means Standard Form 424B (non-construction projects) or Standard Form 424D (construction projects), as applicable, in **Attachment B**, attached hereto and incorporated herein for all purposes.

“Federal Certifications” means the “Certification Regarding Lobbying – Compliant with Appendix A to 24 C.F.R. Part 87” and Standard Form LLL, Disclosure of Lobbying Activities, also in **Attachment B**, attached hereto and incorporated herein for all purposes.

“Federal Register(s)” means the official journal of the federal government of the United States that contains government agency rules, proposed rules, and public notices including U.S. Department of Housing and Urban Development Federal Register Docket Nos. FR-6066-N-01 and FR-6109-N-01 and any other publication affecting Hurricane Harvey – Round 1 CDBG-DR funding allocations.

“Final Inspection Report” means the document submitted by a housing inspector to a Subrecipient under a CDBG-DR Housing contract, indicating the completed construction of one Housing Unit (as defined herein).

“Fiscal Year” means the period beginning July 1 and ending June 30 each year, which is the annual accounting period for the City of Houston.

“GAAP” means “generally accepted accounting principles.”

“GASB” means accounting principles as defined by the Governmental Accounting Standards Board.

“General Affirmations” means the affirmations in **Attachment C**, which Subrecipient certifies by signing this Contract.

“GLO” means the Texas General Land Office, its officers, employees, and designees.

“Housing” refers to a project involving home repair, home reconstruction, new home construction, down payment assistance, and buyout and acquisition, including housing for single-family and multi-family rental units under a CDBG-DR contract.

“Housing Unit” means one single-family dwelling or one unit in a multi-family residential complex.

“HUD” means the United States Department of Housing and Urban Development.

“Minimum Property Standards” or “MPS” means the Minimum Property Standards (MPS) established in HUD Handbook 4910.1, as amended or superseded. MPS, as read in the context of this Contract, encompasses housing quality standards established by HUD to provide “decent, safe and sanitary” housing.

“Performance Statement” means a statement of work for each Program listed in **Attachment A**, which includes specific Benchmarks and Activities required under the



Program. The Performance Statements for this Contract are listed in Section 1.02 as **Performance Statement 1, Performance Statement 2, Performance Statement 3, Performance Statement 4, Performance Statement 5, Performance Statement 6, Performance Statement 7, Performance Statement 8, and Performance Statement 9** and are substantially the forms attached hereto and incorporated herein.

**"Program"** means each Community Development Block Grant Disaster Recovery program administered by the City of Houston and listed in **Attachment A** (collectively, the "Programs").

**"Program Completion Report"** means a report created by the GLO and included in **Attachment G**, containing an as-built accounting of all Programs completed under a CDBG-DR program, and all information required for final acceptance of deliverables and Contract closeout.

**"Program Guidelines"** means, collectively, the individual sets of guidelines adopted by Subrecipient and approved by the GLO governing the implementation of each Program under this Contract, as applicable.

**"Project"** means the work to be performed under this Contract, as described in Section 1.01(a), above and including all Programs listed in **Attachment A** and further described in the **Performance Statements**.

**"Project Manager"** means a representative of the GLO Community Development and Revitalization ("CDR") Program designated to oversee the Project.

**"Public Information Act" or "PIA"** means Chapter 552 of the Texas Government Code.

**"Revision"** means the GLO's written approval of changes to Benchmarks, movement of funds among budget categories, and other Contract adjustments the Subrecipient's Director of Housing and Community Development and the GLO may approve without a formal Amendment.

**"Setup"** means documentation, submitted by a Subrecipient, necessary for the GLO to determine that housing sites meet minimum eligibility criteria, resulting in approval for the Subrecipient to move forward with the projects.

**"Subrecipient"** means the City of Houston, a recipient of federal CDBG-DR funds through the GLO as the pass-through funding agency. Subrecipient may also be referred to as "Provider" herein.

**"Technical Guidance Letter" or "TGL"** means an instruction, clarification, or interpretation of the requirements of this Contract, issued by the GLO and provided to Subrecipient, applicable to specific subject matter pertaining to this Contract, and to which the addressed Program participants shall be subject as of a specific date.

**"U.S.C."** means the United States Code.

#### **1.05 INTERPRETIVE PROVISIONS**

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms;

- (b) The words "hereof," "herein," "hereunder," and similar words refer to this Contract as a whole and not to any particular provision, section, attachment, work order, or schedule of this Contract, unless otherwise specified;
- (c) The term "including" is not limiting, and means "including, without limitation" and, unless otherwise expressly provided in this Contract,
- (d) References to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications thereto, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract:
- (e) References to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation, as may be amended from time to time;
- (f) The captions and headings of this Contract are for convenience of reference only and shall not affect the interpretation of this Contract;
- (g) All Attachments within this Contract, including those incorporated by reference, and any Amendments, are considered part of the terms of this Contract;
- (h) This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters, which will be clearly identified in the Contract. All such limitations, regulations, and policies are cumulative and each shall be performed in accordance with its terms;
- (i) Unless otherwise expressly provided, reference to any action of the GLO or by the GLO by way of consent, approval, or waiver shall be deemed modified by the phrase "in the sole discretion of the GLO";  
Notwithstanding the preceding sentence, any approval, consent, or waiver required by, or requested of, the GLO shall not be unreasonably withheld or delayed;
- (j) All due dates and/or deadlines referenced in this Contract that occur on a weekend or holiday shall be considered as if occurring on the next business day of Subrecipient;
- (k) All time periods in this Contract shall commence on the day after the date on which the applicable event occurred, report is submitted, or request is received;
- (l) Time is of the essence in this Contract;
- (m) In the event of conflicts or inconsistencies between this contract and its attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: 1) any and all applicable federal and state laws, rules, and regulations; 2) the Contract; 3) GLO-approved Program guidelines; 4) **Performance Statements**; and 5) Attachments to the Contract: **Attachment A, Attachment B, Attachment E, Attachment C, Attachment D, Attachment F, and Attachment G.**



## **ARTICLE II – REIMBURSEMENT, ADVANCE PAYMENT, BUDGET VARIANCE, AND INCOME**

### **2.01 REIMBURSEMENT REQUESTS**

Each invoice submitted by Subrecipient shall be supported by actual receipts, cancelled checks, and/or such other documentation that, in the judgment of the GLO, allows for full substantiation of the costs incurred. The GLO shall issue and provide to Subrecipient a Technical Guidance Letter containing the GLO-established invoice submission procedures required under this Contract. Prior to the issuance of the Technical Guidance Letter, the GLO will provide Subrecipient instructions for interim invoicing processes.

**With the exception of GLO-approved allowable Project costs incurred after August 25, 2017 and before the Effective Date of this Contract, the GLO must acknowledge the successful completion by Subrecipient of a specific Benchmark, which will require the submission by Subrecipient and approval by the GLO of invoices related to said Benchmark, including invoices for expenses incurred by any subcontractor, before Subrecipient may access additional Administrative and Project Delivery funds for reimbursement as outlined in the Performance Statements.**

### **2.02 TIMELY EXPENDITURES**

In accordance with the Federal Register and to ensure timely expenditure of grant funds, Subrecipient shall submit reimbursement requests under this contract, at a minimum, quarterly.

Subrecipient shall make timely payments to its subcontractors in accordance with Chapter 2251, Texas Government Code.

Subrecipient shall submit final reimbursement requests to the GLO no later than ninety (90) days after the Contract expires or is terminated. The GLO, in its sole discretion, may deny payment and deobligate remaining funds from the Contract ninety (90) days after expiration or termination of the Contract. The GLO's ability to deobligate funds under this Section 2.02 notwithstanding, the GLO shall pay all eligible reimbursement requests.

### **2.03 VARIANCE**

Amendments to decrease or increase the subaward amount or to add or delete a Program may be made only by written agreement of the Parties, under the formal Amendment process described in Section 8.15, below. Upon completion of any Program, the GLO shall formally close out the Program by issuing a close-out letter to Subrecipient. The GLO may, in its sole discretion and in conformance with federal law, approve other adjustments required during Project performance through a Revision or Technical Guidance Letter. Such approvals must be in writing, and may be delivered by regular mail, electronic mail, or facsimile transmission.

**SUBRECIPIENT SHALL SUBMIT FINAL BUDGETS AND ACTUAL EXPENDITURES AS PART OF THE PROGRAM COMPLETION REPORTS TO THE GLO NO LATER THAN SIXTY (60) DAYS AFTER THE CONTRACT TERMINATES OR EXPIRES OR AT THE CONCLUSION OF ALL CONTRACT ACTIVITIES, WHICHEVER OCCURS FIRST. THE PROGRAM COMPLETION**



**REPORTS SHALL BE IN A FORMAT PRESCRIBED BY THE GLO AND SHALL CONFIRM COMPLETION OF ALL ACTIVITIES PERFORMED UNDER THIS CONTRACT.**

#### **2.04 PROGRAM INCOME**

In accordance with 2 C.F.R. § 200.307, Subrecipient shall maintain records of the receipt and accrual of all Program Income, as Program Income is defined at 2 C.F.R. § 200.80. Subrecipient shall report Program Income to the GLO in accordance with **ARTICLE 4** of this Contract. Any GLO-authorized use of Program Income by Subrecipient shall be subject to GLO or HUD restrictions.

### **ARTICLE III - DURATION, EXTENSION, AND TERMINATION OF CONTRACT**

#### **3.01 DURATION OF CONTRACT AND EXTENSION OF TERM**

This Contract shall become effective on the date signed by the last Party ("Effective Date") and shall continue until August 16, 2024 or the Project has been fully completed and closed out, whichever date is earlier ("Contract Period"). **ANY REQUEST FOR EXTENSION MUST BE RECEIVED BY THE GLO AT LEAST SIXTY (60) DAYS BEFORE THE ORIGINAL TERMINATION DATE OF THIS CONTRACT AND, IF APPROVED, SUCH EXTENSION SHALL BE BY FORMAL WRITTEN AMENDMENT.**

**Subrecipient must meet all Program Benchmarks stated in the Performance Statements. Subrecipient's failure to meet any Benchmark may result in suspension of payment or termination under SECTION 3.02, 3.03 or 3.04 below.**

#### **3.02 EARLY TERMINATION**

In the event the State of Texas or HUD eliminates funding under this Contract or the CDBG-DR Program is assigned to another state agency, the GLO may terminate this Contract by giving written notice specifying a termination date at least thirty (30) days after the date of the notice. Upon receipt of such notice, Subrecipient shall cease work, terminate any subcontracts, and incur no further expense related to this Contract. **Such early termination shall be subject to the equitable settlement of the respective interests of the Parties, accrued up to the date of termination.**

#### **3.03 EVENTS OF DEFAULT**

Each of the following events shall constitute an Event of Default under this Contract: (i) Subrecipient fails to comply with any term, covenant, or provision contained in this Contract; (ii) Subrecipient makes a general assignment for the benefit of creditors or takes any similar action for the protection or benefit of creditors; (iii) Subrecipient makes a materially incorrect representation or warranty in a Performance Statement, a reimbursement request for payment, or any report submitted to the GLO under the Contract; or (iv) notwithstanding the GLO's option to terminate the Contract early under Section 3.02, the GLO fails to comply with any term, covenant, or provision contained in this Contract. Prior to a determination of an Event of Default, the Parties shall allow a thirty (30) day period to cure any deficiency or potential cause of an Event of Default. The Parties may extend the time allowed to cure any deficiency or potential cause of an Event

of Default. The Parties shall not arbitrarily withhold approval of an extension of the time allowed to cure a deficiency or potential cause of an Event of Default. In no event shall the amount of time allowed to cure a deficiency or potential cause of an Event of Default extend beyond the Contract Period.

### **3.04 REMEDIES; NO WAIVER**

Upon the occurrence of any Event of Default, the Parties may avail themselves of any equitable or legal remedy available to them, including without limitation, the withholding of payment, disallowing all or part of noncompliant Activities, or suspending or terminating the Contract.

The Parties' rights or remedies under this Contract are not intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this Contract, or hereafter legally existing, upon the occurrence of an Event of Default. The failure of either Party to insist upon the strict observance or performance of any of the provisions of this Contract, or to exercise any right or remedy provided in this Contract, shall not impair, waive, or relinquish any such right or remedy with respect to another Event of Default.

## **ARTICLE IV - CONTRACT ADMINISTRATION**

### **4.01 SUBMISSIONS – GENERALLY**

Except for legal notices that must be sent by specific instructions pursuant to **SECTION 8.10** of the Contract and all other reports and documentation the GLO requires, any report, form, or request required to be submitted to the GLO under this Contract shall be sent in the format prescribed by the GLO.

**If the Subrecipient fails to timely submit documentation to the GLO in the time and manner required by the Contract, the GLO may, in its sole discretion, withhold any payments pending Subrecipient's correction of the deficiency.**

#### **(a) PROGRAM GUIDELINES**

No later than the close of business sixty (60) days subsequent to the Effective Date of this Contract, Subrecipient must submit Program Guidelines to the GLO for approval.

#### **(b) FORMS**

Subrecipient must execute the forms included in **Attachment B** and certifies by the execution of this Contract to all affirmations in **Attachment C**, confirming compliance with required state and federal laws applicable to the Contract.

- (i)** General Affirmations are found in **Attachment C** and Subrecipient certifies by the execution of this Contract to all statements therein.
- (ii)** The Federal Assurances for Construction Programs (Standard Form 424D), as applicable to the Project, is found at Page 1 of **Attachment B** and must be executed by Subrecipient.



- (iii) The "Certification Regarding Lobbying – Compliant with Appendix A to 24 C.F.R. Part 87" is found at Page 3 of **Attachment B** and must be executed by Subrecipient.
- (iv) If any funds granted under this Contract have been used for lobbying purposes, Subrecipient must complete and execute Standard Form LLL, Disclosure of Lobbying Activities, found at Page 4 of **Attachment B**.

#### **4.02 MONTHLY ACTIVITY STATUS REPORTS**

Subrecipient must provide monthly Activity status reporting, in a format to be specified by the GLO for each Program identified in **Attachment A**, on or before on the fifteenth day of the month following the month in which the reported Activities were performed for the duration of the Contract. Any licenses or permits required for the work identified in the Performance Statements shall be included as a part of the monthly Activity status reports for the period during which they are obtained, pursuant to Article 8.01 herein.

### **ARTICLE V - FEDERAL AND STATE FUNDING, RECAPTURE OF FUNDS, AND OVERPAYMENT**

#### **5.01 FEDERAL FUNDING**

- (a) Funding for this Contract is appropriated under the Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Public Law 115-56), enacted on September 8, 2017, to facilitate disaster recovery, restoration, economic revitalization, and to affirmatively further fair housing in accordance with Executive Order 12892, in areas affected by the Texas Hurricane Harvey (DR-4332), which are Presidentially-declared major disaster areas under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121, *et seq.*). The fulfillment of this Contract is based on those funds being made available to the GLO as the lead administrative state agency. All expenditures under this Contract must be made in accordance with this Contract, the rules and regulations promulgated under the CDBG-DR Program and any other applicable laws. **Funds disbursed under each Activity may be subject to recapture and repayment for non-compliance.**
- (b) To participate in the CDBG-DR program, Subrecipient must have a data universal numbering system (DUNS) number, and a Commercial And Government Entity (CAGE) Code.
- (c) Subrecipient must report its DUNS number and CAGE Code to the GLO for use in various reporting documents. A DUNS number and CAGE Code may be obtained by visiting the Central Contractor Registration website at:

<https://www.sam.gov>

Assistance with this web site is available by calling 866-606-8220.

#### **5.02 STATE FUNDING**

- (a) This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or the GLO in violation of Article III, Section 49, of the Texas Constitution.



In compliance with Article VIII, Section 6 of the Texas Constitution, all obligations of the GLO hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the GLO may terminate this Contract. In that event, the Parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests, accrued up to the date of termination.

- (b) Any claim by Subrecipient for damages under this Contract may not exceed the amount due and owing Subrecipient under the Contract or the amount of funds appropriated for payment, but not yet paid to Subrecipient, under the annual budget in effect at the time of the breach. Nothing in this provision shall be construed as a waiver of sovereign immunity.

### **5.03 RECAPTURE OF FUNDS**

**SUBRECIPIENT SHALL CARRY OUT THE ACTIVITIES UNDER THE CONTRACT IN A MANNER THAT COMPLIES WITH THE TERMS AND CONDITIONS OF THE CONTRACT AND ALL APPLICABLE LAWS. THE GLO MAY RECAPTURE AND BE REIMBURSED BY SUBRECIPIENT FOR ANY PAYMENTS MADE BY THE GLO (I) THAT EXCEED THE MAXIMUM ALLOWABLE HUD RATE; (II) THAT ARE NOT ALLOWED UNDER APPLICABLE LAWS, RULES, AND REGULATIONS; OR (III) THAT ARE OTHERWISE INCONSISTENT WITH THIS CONTRACT, INCLUDING ANY UNAPPROVED EXPENDITURES. THIS RECAPTURE PROVISION APPLIES TO ANY FUNDS EXPENDED FOR THE PROJECT OR ANY PROGRAM OR ACTIVITY THAT DOES NOT MEET A CDBG-DR PROGRAM NATIONAL OBJECTIVE AS SPECIFIED IN EACH PERFORMANCE STATEMENT OR THAT IS NOT OTHERWISE ELIGIBLE UNDER CDBG-DR REGULATIONS.**

### **5.04 OVERPAYMENT AND DISALLOWED COSTS**

Subrecipient shall be liable to the GLO for any costs disallowed pursuant to financial and/or compliance audit(s) of funds received under this Contract. Subrecipient shall reimburse disallowed costs from funds which were not provided or otherwise made available to Subrecipient under this Contract.

### **5.05 FINAL BENCHMARKS**

To ensure all programmatic requirements are met for each Program, the GLO shall only release the final five percent (5%) of each Program Budget upon submittal of completion and acceptance by the GLO of all Activities and Benchmarks identified in each Program's Performance Statement. The GLO shall disburse each Program's retained funds within thirty (30) days following approval of each Program Completion Report and all related closeout documentation necessary to determine that Subrecipient has completed all Activities in accordance with the terms and requirements of the Performance Statement, the Contract Documents, and all applicable laws, rules, and regulations.

## **ARTICLE VI - INTELLECTUAL PROPERTY**

### **6.01 OWNERSHIP AND USE**

- (a) Except for City Materials (as defined below in 6.01(c)), and except for any third-party proprietary intellectual property or information for which the City does not have a legal ownership right, the Parties shall jointly own all right, title, and interest in and to all reports, or other material, data, drawings, computer programs, and codes created under this Contract by either Party, and/or any copyright or other intellectual property rights, and any material or information developed and/or required to be delivered under this Contract, with each Party having the right to use, reproduce, or publish any or all of such information and other materials without obtaining permission from the other Party and without expense or charge. For any City or third-party proprietary intellectual property or information for which the City has a license to use or access, the City shall provide the GLO at least one (1) user license.
- (b) Except for City Materials, and except for any third-party proprietary intellectual property or information for which the City and/or the GLO do not have a legal ownership right, Subrecipient grants the GLO and HUD, and GLO and HUD grants to Subrecipient, a royalty free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for governmental purposes, all reports, or other material, data, drawings, computer programs, and codes created under this Contract by either Party, and/or any copyright or other intellectual property rights, and any material or information developed and/or required to be delivered under this Contract by either Party.
- (c) "City Materials" means all works of authorship, materials, information, and other intellectual property created prior to the performance of any City obligation under this Contract, plus any modifications or enhancements thereto and derivative works based thereon, unless any such modifications, enhancements, or derivative works were funded using CDBG-DR funds. For clarity, if modifications, enhancements, or derivative works were funded using CDBG-DR funds, then only the applicable modification, enhancements, or derivative works are not included in the definition of City Materials.

### **6.02 NON-ENDORSEMENT BY STATE AND THE UNITED STATES**

Subrecipient shall not publicize or otherwise circulate promotional material (such as advertisements, sales brochures, press releases, speeches, still or motion pictures, articles, manuscripts, or other publications) that states or implies the GLO, State of Texas, U.S. Government, or any government employee endorses a product, service, or position the Subrecipient represents. Subrecipient may not state or imply that the GLO, the State of Texas, or the U.S. Government approves of Subrecipient's work products or considers Subrecipient's work product to be superior to other products or services.



### 6.03 PUBLICATION DISCLAIMER REQUIRED

Subrecipient shall include a disclaimer on all public information releases issued pursuant to this Contract stating that the funds for this Project or any Program are provided by the City of Houston and the Texas General Land Office through HUD's CDBG Program.

## ARTICLE VII - RECORDS, AUDIT, AND RETENTION

### 7.01 BOOKS AND RECORDS

Subrecipient shall keep and maintain, under GAAP or GASB, as applicable, full, true, and complete records sufficient to allow the GLO, the Texas State Auditor's Office, the United States Government, and/or their authorized representatives to determine Subrecipient's compliance with this Contract and all applicable laws, rules, and regulations, including the applicable laws and regulations provided in Attachment D.

### 7.02 INSPECTION AND AUDIT

- (a) All records related to this Contract, including records of Subrecipient and its Subcontractors, shall be subject to the Administrative and Audit Regulations. Accordingly, such records and work product shall be subject, at any time, to inspection, examination, audit, and copying at the Subrecipient's primary location or any location where such records and work product may be found, with or without notice from the GLO or other government entity with necessary legal authority. Subrecipient shall cooperate fully with any federal or state entity in the conduct of inspection, examination, audit, and copying, including providing all information requested. Subrecipient will ensure that this clause concerning federal and state entities' authority to inspect, examine, audit, and copy records and work product, and the requirement to fully cooperate with the federal and state entities, is included in any subcontract it awards.
- (b) The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. Acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. **The Office of the Comptroller General of the United States, the Government Accountability Office, the Office of Inspector General, or any authorized representative of the U.S. Government shall also have this right of inspection.** Subrecipient shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Subrecipient and the requirement to cooperate is included in any subcontract it awards.



- (c) Subrecipient will be deemed to have read and know of all applicable federal, state, and local laws, regulations, and rules pertaining to the Project, including those identified in **Attachment D**, governing audit requirements.

### **7.03 SUBRECIPIENT SELF-AUDIT AND TARGETED AUDITS**

#### **(a) Subrecipient Self-Audit**

Upon the GLO's or HUD's approval, Subrecipient may conduct an annual financial and compliance audit of funds received and performance rendered under this Contract. Subrecipient may use funds budgeted under this Contract to pay for that portion of the cost of such audit services properly allocable to the Activities funded under this Contract, provided that the GLO shall not pay the cost of such audit services until the GLO has received Subrecipient's satisfactory audit report and invoice, as determined by the GLO. The invoice submitted for reimbursement must clearly show the percentage of cost allocable to the Activities funded under this Contract relative to the total cost of the audit services. Therefore, Subrecipient shall submit an invoice showing the total cost of the audit and the corresponding prorated charge per funding source. If applicable, Subrecipient shall submit an explanation with the reimbursement request, explaining why the percentage of audit fees exceeds the prorated amount allowable.

#### **(b) Targeted Audits & Monitoring Visits**

The GLO may at any time perform, or instruct the performance of, an annual program and/or fiscal audit, or conduct a special or targeted audit of any aspect of the Subrecipient's operation, using an auditor of the GLO's choice. Subrecipient shall maintain financial and other records prescribed by the GLO or by applicable federal or state laws, rules, and regulations.

### **7.04 PERIOD OF RETENTION**

All records relevant to this Contract shall be retained for a period of three (3) years subsequent to the final closeout of the overall Project, in accordance with federal regulations set forth at 2 CFR § 200.333. **The GLO will notify all CDBG-DR program participants of the date upon which local records may be destroyed.**

## **ARTICLE VIII - MISCELLANEOUS PROVISIONS**

### **8.01 LEGAL OBLIGATIONS**

Subrecipient shall procure and maintain for the duration of this Contract any license, authorization, insurance, waiver, permit, qualification, or certification required by federal, state, county, or city statute, ordinance, law, or regulation to be held by Subrecipient to provide the goods or services required by this Contract. Subrecipient shall pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Subrecipient shall pay any such government obligations not paid by its subcontractors during performance of this Contract. **Subrecipient shall include copies of such licenses and permits as a part of the monthly Activity status reports for the period during which they are obtained.**

## 8.02 INDEMNITY

To the extent permitted under the law, except for damages directly or proximately caused by the gross negligence of the GLO, Subrecipient shall indemnify and hold harmless the State of Texas, the GLO, and the officers, representatives, agents, and employees of the State of Texas and the GLO from any losses, claims, suits, actions, damages, or liability (including all costs and expenses of defending against all of the aforementioned) arising in connection with:

- (a) This Contract;
- (b) Any negligence, act, omission, or misconduct in the performance of the services referenced herein; or
- (c) Any claims or amounts arising or recoverable under federal or state workers' compensation laws, the Texas Tort Claims Act, or any other such laws.

Subrecipient shall be responsible for the safety and well-being of its employees, customers, and invitees. These requirements shall survive the term of this Contract until all claims have been settled or resolved and suitable evidence to that effect has been furnished to the GLO. The provisions of this Section shall survive termination of this Contract. Subrecipient has not appropriated any money for payment under this Contract and nothing in this provision requires that funds be assessed or collected or that a sinking fund be created for any Claims arising under this Contract.

## 8.03 INSURANCE AND BOND REQUIREMENTS

- (a) Unless Subrecipient is a self-insured governmental entity pursuant to Chapter 2259 of the Texas Government Code to self-insure, Subrecipient shall carry insurance for the duration of this Contract in types and amounts necessary and appropriate for the Project.
- (b) Subrecipient shall require all contractors, subcontractors, vendors, service providers, or any other person or entity performing work described in **Attachment A** to carry insurance for the duration of the Project in the types and amounts customarily carried by a person or entity providing such goods or services. Subrecipient shall require any person or entity required to obtain insurance under this Section to complete and file the declaration pages from the insurance policies with Subrecipient whenever a previously identified policy period expires during the term of Subrecipient's contract with the person or entity, as proof of continuing coverage. Subrecipient's contract with any such person or entity shall clearly state that acceptance of the insurance policy declaration pages by the Subrecipient shall not relieve or decrease the liability of the person or entity. **Persons or entities shall be required to update all expired policies before Subrecipient's acceptance of an invoice for monthly payment from such parties.**
- (c) Subrecipient shall require performance and payment bonds to the extent they are required under Chapter 2253 of the Texas Government Code.



- (d) Subrecipient shall require, on all construction projects, that any person or entity required to provide Federal Construction Assurances shall complete form SF-424D, entitled "Assurances – Construction Programs," and Subrecipient shall maintain such documentation.

#### **8.04 ASSIGNMENT AND SUBCONTRACTS**

Subrecipient shall not assign, transfer, or delegate any rights, obligations, or duties under this Contract without the GLO's prior written consent. Notwithstanding this provision, Subrecipient may subcontract some or all of the services to be performed under this Contract. In any subcontracts, Subrecipient shall legally bind the subcontractor to perform and make such subcontractor subject to all the duties, requirements, and obligations of Subrecipient as specified in this Contract. Nothing in this Contract shall be construed to relieve Subrecipient of the responsibility for ensuring that the goods delivered, and/or the services rendered by Subrecipient and/or any of its subcontractors, comply with all the terms and provisions of this Contract.

For all construction contracts or subcontracts to which Federal Labor Standards requirements apply, Subrecipient shall submit to the GLO all labor related documentation required to ensure compliance. Subrecipient shall retain five percent (5%) of the payment due under each of Subrecipient's construction or rehabilitation subcontracts until the GLO determines that the Federal Labor Standards requirements applicable to each such contract or subcontract have been satisfied.

#### **8.05 PROCUREMENT**

Subrecipient must comply with the procurement procedures stated at 2 C.F.R. §§ 200.318 through 200.326 and all other applicable federal, state, and local procurement procedures and laws, regulations, and rules. Subrecipient must confirm that its vendors and subcontractors are not debarred from receiving state or federal funds at each of the following web addresses:

Texas Comptroller's Vendor Performance Program at:

[https://comptroller.texas.gov/purchasing/;](https://comptroller.texas.gov/purchasing/)

and the Federal General Services Administration's System for Award Management (SAM):

<https://www.sam.gov>.

#### **8.06 PURCHASES AND EQUIPMENT**

Any purchase of Equipment under this Contract shall be made in accordance with all applicable laws, regulations, and rules including those listed in **Attachment D**. Subrecipient shall retain title to and possession of any Equipment unless and until transferred to the GLO or disposed of in accordance with federal regulations. Subrecipient shall furnish, with its final request for reimbursement, a list of all Equipment purchased with Program funds under the Contract, including the name of the manufacturer, the model



number, and the serial number, if applicable. The disposition of any Equipment shall be in accordance with all applicable laws, regulations, and rules, including those listed in **Attachment D**.

#### **8.07 COMMUNICATION WITH THIRD PARTIES**

The GLO and the authorities named in **ARTICLE 7**, above, may initiate, in accordance with any legal authority granted by statute, regulation, or rule, communications with any subcontractor, and may request access to any books, documents, personnel, papers, and records of a subcontractor which are pertinent to this Contract. Such communications may be required to conduct audits, examinations, Davis-Bacon Labor Standards interviews, and gather additional information as provided in **ARTICLE 7** herein. The results of such communication will be shared with Subrecipient, in writing, prior to any publication.

#### **8.08 RELATIONSHIP OF THE PARTIES**

The Parties to this Contract are associated only for the purposes and to the extent specified in this Contract. Subrecipient is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract creates a partnership or joint venture, employer-employee or principal-agent relationships, or any liability whatsoever with respect to the indebtedness, liabilities, or obligations of Subrecipient or any other party. If applicable, Subrecipient shall be solely responsible for and the GLO shall have no obligation with respect to: withholding of income taxes, FICA, or any other taxes or fees; industrial or workers' compensation insurance coverage; accumulation of vacation leave or sick leave; or unemployment compensation coverage provided by the State.

#### **8.09 COMPLIANCE WITH OTHER LAWS**

In the performance of this Contract, Subrecipient shall comply with all applicable federal, state, and local laws, ordinances, and regulations, including those listed in **Attachments B, C, and D**. Subrecipient is deemed to know and understand all applicable laws, statutes, ordinances, and regulations affecting its performance under this Contract.

#### **8.10 NOTICES**

Any notices required under this Contract shall be deemed delivered when deposited either in the United States mail, postage paid, certified, return receipt requested; or with a common carrier, overnight, signature required, to the appropriate address below:

**GLO**

Texas General Land Office  
1700 N. Congress Avenue, 7<sup>th</sup> Floor  
Austin, TX 78701  
Attention: Contracts Management Division

**Subrecipient**

City of Houston

900 Bagby St., 4<sup>th</sup> Floor

Houston, TX 77002

Attention: Director of Housing and Community Development Department

Notice given in any other manner shall be deemed effective only if and when received by the Party to be notified. Either Party may change its address for notice by written notice to the other Party as herein provided.

**8.11 GOVERNING LAW AND VENUE**

This Contract and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Subrecipient irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of *forum non conveniens*, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction with respect to this Contract or any document related hereto. **NOTHING IN THIS CONTRACT SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO OR A WAIVER OF GOVERNMENTAL IMMUNITY BY SUBRECIPIENT.**

**8.12 SEVERABILITY**

If a court of competent jurisdiction determines any provision of this Contract is invalid, void, or unenforceable, the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

**8.13 DISPUTE RESOLUTION**

Subrecipient shall use the dispute resolution process established in Chapter 2260 of the Texas Government Code and related rules to attempt to resolve any dispute under this Contract, including a claim for breach of contract by the GLO, that the Parties cannot resolve in the ordinary course of business. Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of such a claim constitute grounds for Subrecipient to suspend performance under this Contract of Programs unaffected by the claim(s) at issue. Notwithstanding this provision, the GLO and Subrecipient reserves all legal and equitable rights and remedies available to it.

**8.14 PUBLIC RECORDS**

Information related to the performance of this Contract may be subject to the Public Information Act ("PIA") and will be withheld from public disclosure or released only in accordance therewith. Subrecipient shall make any information created or exchanged with the state pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state/the GLO. Subrecipient shall make any information required



under the PIA available to the GLO in portable document file (".pdf") format or any other format agreed between the Parties. Subrecipient's failure to mark as "confidential" or a "trade secret" any information it believes to be excepted from disclosure waives all claims Subrecipient may make against the GLO for releasing such information without prior notice to Subrecipient.

**Subrecipient shall release the following information upon receipt of an open records request:**

- The amount of CDBG-DR funds expected to be made available;
- The range of Programs or Activities that may be undertaken with CDBG-DR funds;
- The estimated amount of CDBG-DR funds proposed to be used for Activities that will meet the national objective of benefit to low- and moderate-income persons; and
- The proposed CDBG-DR Activities likely to result in displacement and the Subrecipient's anti-displacement and relocation plan.

#### **8.15 AMENDMENTS TO THE CONTRACT**

Amendments to decrease or increase the subaward, to add or delete a Program, to extend the term of the Contract, and/or to make other substantial amendments to the Contract may be made only by written agreement of the Parties, under the formal amendment process except that, upon completion of a Program, the GLO shall issue a close-out letter pursuant to **SECTION 2.03**. The formal amendment process requires submission by the GLO Project Manager of the proposed amended language or amount to the GLO Contract Management Division for the preparation of a formal Amendment and circulation for necessary GLO and Subrecipient signatures. In the sole discretion of the GLO, and in conformance with federal law, the GLO may approve other adjustments required during Project performance by the GLO by way of a Revision or Technical Guidance Letter unilaterally issued by the GLO and acknowledged by the Subrecipient. Such approvals must be in writing and may be delivered by U.S. mail or electronic mail.

Pursuant to **SECTION 2.03** hereof, final **Program Completion Reports** for all Programs performed under this Contract shall be submitted to the GLO and shall include all such informal revisions agreed to by the Subrecipient and GLO over the life of the Contract.

#### **8.16 REVISIONS TO PERFORMANCE STATEMENTS**

Performance Statements may be revised by the Subrecipient quarterly and submitted to the GLO for approval. A proposed Revision to any Performance Statement does not require application of the formal Amendment process established in Section 8.15, above, but must be approved by the GLO, in writing, in order to take effect.

#### **8.17 ENTIRE CONTRACT AND MODIFICATIONS**

This Contract, its Attachment(s), any Amendment(s) Technical Guidance Letter(s), and/or Revision(s) issued in conjunction with this Contract, if any, constitute the entire agreement of the Parties and are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements made in connection with the



subject matter hereof. Any additional or conflicting terms in Attachment(s), Technical Guidance Letter(s), and/or Revision(s) shall be harmonized with this Contract to the extent possible. Unless an Attachment, Technical Guidance Letter, or Revision specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language shall be construed consistently with the Contract.

#### **8.18 PROPER AUTHORITY**

Each Party hereto represents and warrants that the person executing this Contract on its behalf has full power and authority to legally bind its respective entity. Subrecipient acknowledges that this Contract is effective for the period of time specified in the Contract. Any work performed by Subrecipient after the Contract terminates is performed at the sole risk of Subrecipient.

#### **8.19 COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which shall be an original, and all such counterparts shall together constitute but one and the same Contract.

#### **8.20 SURVIVAL**

The provisions of **ARTICLES 5, 6, AND 7; AND SECTIONS 1.01, 1.03, 2.05, 3.02, 3.04, 8.02, 8.03, 8.07, 8.08, 8.09, 8.10, 8.11, 8.13, 8.14, 8.15** of this Contract, and any other continuing obligations of Subrecipient shall survive the termination or expiration of this Contract.

#### **8.21 CONTRACT CLOSEOUT**

Upon completion of all Programs and Activities required for the Contract, and pursuant to **SECTION 2.03** hereof, Subrecipient shall prepare final **Program Completion Reports** confirming final performance measures, budgets, and expenses and the GLO will close the Contract in accordance with 2 C.F.R. §§ 200.343 through 200.345 and GLO CDBG-DR guidelines consistent therewith. The GLO will notify Subrecipient via official closeout letter upon review of the final Program Completion Report.

#### **8.22 INDIRECT COST RATES**

Unless Subrecipient has negotiated or does negotiate an indirect cost rate with the federal government, subject to periodic renegotiations of the rate during the Contract Period, Subrecipient's indirect cost rate shall be set by 2 C.F.R. § 200.414(f), i.e., ten percent (10%).

#### **8.23 CONFLICT OF INTEREST**

- (a) Subrecipient shall abide by the provisions of this Section and include the provisions in all subcontracts. Subrecipient shall comply with all conflict of interest laws and regulations applicable to the Program.
- (b) Subrecipient shall maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts, which standards may be located in various

Subrecipient governing documents, including but not limited to, the Subrecipient's Charter, Code of Ordinances, Administrative Procedures, Executive Orders, and Policies and Procedures.

#### **8.24 ENVIRONMENTAL CLEARANCE REQUIREMENTS**

- (a) Subrecipient is responsible for conducting environmental reviews and for obtaining any environmental clearance necessary for successful completion of the Project. Subrecipient shall prepare environmental review or assessment of each Activity in accordance with applicable laws, regulations, rules, and guidance. Subrecipient shall maintain a written Environmental Review Record ("ERR") for each Activity, including all supporting source documentation and documentation to support any project mitigation. Subrecipient shall provide a copy of the ERR and all related source documentation to the GLO.
- (b) Subrecipient shall address inquiries and complaints and shall provide appropriate redress related to environmental Activities. Subrecipient shall document each communication issued or received hereunder in the related ERR.
- (c) The GLO may, in its sole discretion, reimburse Subrecipient for certain exempt environmental Activities, as defined in federal regulations. Reimbursement requests for exempt environmental Activities must be supported by the proper HUD-prescribed form.
- (d) The Parties acknowledge and understand that the GLO may enter into Interagency agreements with the Texas Historical Commission, including GLO Contract No. 19-127-000-B465, and other entities in order to facilitate any necessary environmental or historic review. The GLO may incorporate one or more Interagency agreement into this contract via a Technical Guidance Letter.

#### **8.25 CITIZEN PARTICIPATION AND ALTERNATIVE REQUIREMENTS**

- (a) Subrecipient must ensure that all citizens have equal and ongoing access to information about the Programs, including ensuring that Program information is available in the appropriate languages for the geographical area served by the Subrecipient. Information furnished to citizens shall include, without limitation:
  - 1. The amount of CDBG-DR funds expected to be made available;
  - 2. The range of Activities that may be undertaken with the CDBG-DR funds;
  - 3. The estimated amount of the CDBG-DR funds proposed to be used for Activities meeting the national objective of benefiting low-to-moderate income persons; and
  - 4. A clear statement if any proposed CDBG-DR Activities are likely to result in displacement and the entity's anti-displacement and relocation plan.



- (b) Complaint Procedures: Subrecipient must have written citizen complaint procedures that provide a timely written response (within fifteen (15) working days) to complaints and grievances. Subrecipient shall notify citizens of the location and the days and hours when the location is open for business, so they may obtain a copy of these written procedures.
- (c) Technical Assistance: Subrecipient shall provide technical assistance to all Program participants, regardless of income, abilities, or LMI status, and shall make reasonable accommodations for any potential Program participant who requires assistance to access any Program. For example, Subrecipient shall provide an alternative means for completing a Program application for any applicant who is unable to access an online application.
- (d) Subrecipient shall maintain a citizen participation file which includes a copy of the Subrecipient's complaint procedures, documentation and evidence of opportunities provided for citizen participation (e.g., public notices, advertisements, flyers, etc.), documentation of citizen participation events (e.g., meeting minutes, attendance lists, sign-in sheets, news reports, etc.), and documentation of any technical assistance requested and/or provided.

#### **8.26 SIGNAGE REQUIREMENTS**

On any public building or public facility funded under this Contract, Subrecipient shall place permanent signage. Signs shall be placed in a prominent, visible public location. Subrecipient shall format each sign to best fit the architectural design of the building or facility but should be legible from at least three (3) feet distance.

For other construction projects (e.g., water transmission lines, sewer collection lines, drainage, roadways, housing rehabilitation) funded under this Contract, Subrecipient shall place temporary signage erected in a prominent location at the construction project site or along a major thoroughfare within the locality.

All signage required under this Section 8.25 shall contain the following:

"This project is funded by the City of Houston, the Texas General Land Office of the State of Texas, and the United States Department of Housing and Urban Development through the Community Development Block Grant Program to provide for disaster recovery and restoration of infrastructure for communities impacted by Hurricane Harvey."

#### **8.27 PROCUREMENT OF RECOVERED MATERIALS**

(a) To the extent applicable, the Provider shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. That meet contract performance requirements; or
- iii. At a reasonable price.

(b) To ensure maximum use of recovered/recycled materials per 2 CFR § 200.322,



information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>, along with the list of EPA-designated items.

**8.28 INFORMATION AND DATA SECURITY STANDARDS**

Subrecipient shall comply with all terms specified in the **GLO Information Security Appendix**, incorporated herein for all purposes as **Attachment F**.

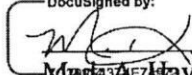
**8.29 STATEMENTS OR ENTRIES**

Except as otherwise provided under federal law, any person who knowingly and willfully falsifies, conceals, or covers up a material fact by any trick, scheme or device or who makes any materially false, fictitious, or fraudulent statement or representation or who makes or uses any false writing or document knowing the writing or document to contain any materially false, fictitious, or fraudulent statement or entry shall be prosecuted under Title 18, United States Code, § 1001. Under penalties of 18 U.S.C. § 1001, the undersigned Provider representative hereby declares that he/she has examined this Contract and Attachments, including without limitation, the Solicitation and Solicitation Response, and to the best of his/her knowledge and belief any statements, entries, or claims made by Provider are, correct, accurate and complete.






**SIGNATURE PAGES FOLLOW**

**GLO SIGNATURE PAGE FOR GLO CONTRACT NO. 19-147-001-B489  
SUBRECIPIENT AGREEMENT – HURRICANE HARVEY – ROUND 1**

**GENERAL LAND OFFICE**

DocuSigned by:  
  
Mark A. Havens, Chief Clerk/  
Deputy Land Commissioner

Date of execution: 1/5/2019

OGC   
DD   
SDD   
DGC   
GC 

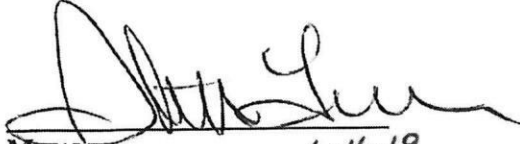
**ATTACHED TO THIS CONTRACT:**

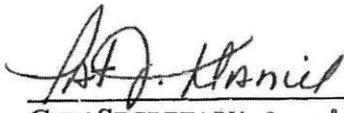
- ATTACHMENT A:** Program Budgets
- ATTACHMENT B:** Federal Assurances and Certifications
- ATTACHMENT C:** General Affirmations
- ATTACHMENT D:** Nonexclusive List of Applicable Laws, Rules, and Regulations
- ATTACHMENT E:** Special Conditions
- ATTACHMENT F:** GLO Information Security Appendix
- ATTACHMENT G:** Program Completion Report
- PERFORMANCE STATEMENT 1: Buyout Program**
- PERFORMANCE STATEMENT 2: Economic Revitalization Program**
- PERFORMANCE STATEMENT 3: Homebuyer Assistance Program**
- PERFORMANCE STATEMENT 4: Homeowner Assistance Program**
- PERFORMANCE STATEMENT 5: Housing Administration Program and Planning Program**
- PERFORMANCE STATEMENT 6: Multifamily Rental Program**
- PERFORMANCE STATEMENT 7: Public Services Program**
- PERFORMANCE STATEMENT 8: Single Family Development Program**
- PERFORMANCE STATEMENT 9: Small Rental Program**

**CITY OF HOUSTON SIGNATURE PAGE FOLLOWS**

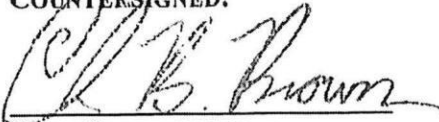
**CITY OF HOUSTON SIGNATURE PAGE FOR GLO CONTRACT NO. 19-147-001-B489  
SUBRECIPIENT AGREEMENT – HURRICANE HARVEY – ROUND 1**

**CITY OF HOUSTON**

  
MAYOR 1-4-19

  
CITY SECRETARY Assistant


**COUNTERSIGNED:**

  
CITY CONTROLLER  
Jenell Bell

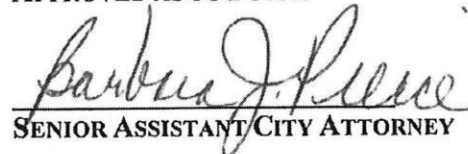
**DATE OF COUNTERSIGNATURE:**

1-4-19

**APPROVED:**

  
DIRECTOR, HOUSING AND  
COMMUNITY DEVELOPMENT  
DEPARTMENT

**APPROVED AS TO FORM:**

  
SENIOR ASSISTANT CITY ATTORNEY

**ATTACHMENTS FOLLOW**



**CITY OF HOUSTON SIGNATURE PAGE FOR GLO CONTRACT NO. 19-147-001-B489  
SUBRECIPIENT AGREEMENT – HURRICANE HARVEY – ROUND 1**

**CITY OF HOUSTON**

\_\_\_\_\_  
**MAYOR**

\_\_\_\_\_  
**CITY SECRETARY**

**COUNTERSIGNED:**

**DATE OF COUNTERSIGNATURE:**

\_\_\_\_\_  
**CITY CONTROLLER**

**APPROVED:**

**APPROVED AS TO FORM:**

DocuSigned by:

*Tom McLasland*

\_\_\_\_\_  
**DIRECTOR, HOUSING AND  
COMMUNITY DEVELOPMENT  
DEPARTMENT**

\_\_\_\_\_  
**SENIOR ASSISTANT CITY ATTORNEY**

**ATTACHMENTS FOLLOW**

**CITY OF HOUSTON PROGRAM BUDGETS**

<b>Activity No.</b>	<b>HUD Activity Type</b>	<b>Other Funds</b>	<b>Total</b>
	Homeowner Assistance Program		\$ 392,729,436
	Single Family Development Program		\$ 204,000,000
	Multifamily Rental Program		\$ 321,278,580
	Small Rental Program		\$ 61,205,100
	Homebuyer Assistance Program		\$ 21,741,300
	Buyout Program		\$ 40,800,000
	Public Services		\$ 60,000,000
	Economic Revitalization Program		\$ 30,264,834
	Houston Planning		\$ 23,100,000
	Houston Housing Administration		\$ 20,835,088
	<b>Total</b>		<b>\$ 1,175,954,338</b>

Draft – For review/discussion purposes only. Final Programs and Budgets to be approved by the U.S. Department of Housing and Urban Development.

**ASSURANCES - CONSTRUCTION PROGRAMS**OMB Approval No. 4040-0009  
Expiration Date: 01/31/2019

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET.  
SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**


**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681- 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other non-discrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.



11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
20. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		TITLE
 DocuSigned by: Tom McLasland		Director
APPLICANT ORGANIZATION		DATE SUBMITTED
City of Houston, Housing and Community Development		1/4/2019

**CERTIFICATION REGARDING LOBBYING  
COMPLIANT WITH APPENDIX A TO 24 C.F.R. PART 871***Certification for Contracts, Grants, Loans, and Cooperative Agreements:*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

*Statement for Loan Guarantees and Loan Insurance:*

The undersigned states, to the best of his or her knowledge and belief, that: If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification.**

NAME OF APPLICANT

AWARD NUMBER AND/OR PROJECT NAME

City of Houston, Housing and Community Development 19-147-001-B489

PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

Tom McCasland

SIGNATURE

DocuSigned by:

Tom McCasland

B38C2814E5F844F...

DATE

1/4/2019



### Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
 (See reverse for public burden disclosure)

<b>1. Type of Federal Action:</b> a. contract _____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	<b>2. Status of Federal Action:</b> a. bid/offer/application _____ b. initial award c. post-award	<b>3. Report Type:</b> a. initial filing _____ b. material change  <b>For material change only:</b> Year _____ quarter _____ Date of last report _____
<b>4. Name and Address of Reporting Entity:</b> _____ Prime _____ Subawardee Tier _____, if Known:  Congressional District, if known:		<b>5. If Reporting Entity in No. 4 is Subawardee,</b> Enter Name and Address of Prime:  Congressional District, if known:
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i>		<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>
<b>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>		Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
<b>Federal Use Only</b>		Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)



**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 4040-0013. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (4040-0013), Washington, DC 20503.

### **General Affirmations**

To the extent they apply, Subrecipient affirms and agrees to the following, without exception:

1. Subrecipient represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Subrecipient nor the firm, corporation, partnership, or institution represented by Subrecipient, or anyone acting for such a firm, corporation, partnership, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Contract or any solicitation response upon which this Contract is based to any competitor or any other person engaged in the same line of business as Subrecipient.
2. If the Contract is for services, Subrecipient shall comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.
3. Under Section 231.006 of the Family Code, the Subrecipient certifies that Provider's legal entity named in this Contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
4. A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application. Subrecipient certifies it has submitted this information to the GLO.
5. If the Contract is for the purchase or lease of computer equipment, as defined by Texas Health and Safety Code Section 361.952(2), Subrecipient certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code, related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in Title 30 Texas Administrative Code Chapter 328.
6. Pursuant to Section 2155.003 of the Texas Government Code, Subrecipient represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract.
7. Payments due under the Contract shall be directly applied towards eliminating any debt or delinquency Subrecipient owes to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.
8. Upon request of the GLO, Subrecipient shall provide copies of its most recent business continuity and disaster recovery plans.



9. If the Contract is for consulting services governed by Texas Government Code Chapter 2254, Subchapter B, in accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Subrecipient certifies that it does not employ an individual who has been employed by The GLO or another agency at any time during the two years preceding the Subrecipient's submission of its offer to provide consulting services to the GLO or, in the alternative, Subrecipient, in its offer to provide consulting services to the GLO, disclosed the following: (i) the nature of the previous employment with the GLO or other state agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.
10. If the Contract is not for architecture, engineering, or construction services, Subrecipient must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve any dispute arising under the Contract.
11. If the Contract is for architecture, engineering, or construction services, subject to Texas Government Code, Section 2260.002 and Texas Civil Practice and Remedies Code Chapter 114, Subrecipient shall use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve all disputes arising under this Contract. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005, claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code Section 114.002 shall be governed by the dispute resolution process set forth below in subsections (a)-(d).
  - a. Notwithstanding Texas Government Code, Chapter 2260.002(3) and Chapter 114.012 and any other statute or applicable law, if the Subrecipient's claim for breach of contract cannot be resolved by the parties in the ordinary course of business, Subrecipient may make a claim against the GLO for breach of contract and the GLO may assert a counterclaim against the Subrecipient as is contemplated by Texas Government Code, Chapter 2260, Subchapter B. In such event, Subrecipient must provide written notice to the GLO of a claim for breach of the Contract not later than the 180th day after the date of the event giving rise to the claim. The notice must state with particularity: (1) the nature of the alleged breach; (2) the amount the Subrecipient seeks as damages; and (3) the legal theory of recovery.
  - b. The chief administrative officer, or if designated in the Contract, another officer of the GLO, shall examine the claim and any counterclaim and negotiate with the Subrecipient in an effort to resolve them. The negotiation must begin no later than the 120th day after the date the claim is received, as is contemplated by Texas Government Code, Chapter 2260, Section 2260.052.
  - c. If the negotiation under paragraph (b) above results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the agreement or settlement to writing and each party shall sign the agreement or settlement. A partial settlement or resolution of a claim does not waive a party's rights under this Contract as to the parts of the claim that are not resolved.



- d. If a claim is not entirely resolved under paragraph (b) above, on or before the 270th day after the date the claim is filed with the GLO, unless the parties agree in writing to an extension of time, the parties may agree to mediate a claim made under this dispute resolution procedure. This dispute resolution procedure is the Subrecipient's sole and exclusive process for seeking a remedy for an alleged breach of contract by the GLO if the parties are unable to resolve their disputes as described in this section.
  - e. Nothing in the Contract shall be construed as a waiver of the state's or the GLO's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies or immunities or be considered as a basis for estoppel. The GLO does not waive any privileges, rights, defenses, or immunities available to it by entering into this Contract or by its conduct, or by the conduct of any representative of the GLO, prior to or subsequent to entering into this Contract.
  - f. Compliance with the dispute resolution process provided for in Texas Government Code, Chapter 2260, subchapter B and incorporated by reference in subsection (a)-(d) above is a condition precedent to the Subrecipient: (1) filing suit pursuant to Chapter 114 of the Civil Practices and Remedies Code; or (2) initiating a contested case hearing pursuant to Subchapter C of Chapter 2260 of the Texas Government Code.
12. Subrecipient represents and warrants that, pursuant to Section 2270.002 of the Texas Government Code, Subrecipient does not boycott Israel and will not boycott Israel during the term of the Contract.
13. This Contract is contingent upon the continued availability of lawful appropriations by the Texas Legislature. Subrecipient understands that all obligations of the GLO under this Contract are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the GLO may terminate the Contract. The Contract shall not be construed as creating a debt on behalf of the GLO in violation of Article III, Section 49a of the Texas Constitution.
14. Subrecipient certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
15. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Subrecipient certifies that it is not (1) the executive head of the GLO, (2) a person who at any time during the four years before the effective date of the Contract was the executive head of the GLO, or (3) a person who employs a current or former executive head of the GLO.

16. Subrecipient represents and warrants that all statements and information prepared and submitted in connection with this Contract are current, complete, true, and accurate. Submitting a false statement or making a material misrepresentation during the performance of this Contract is a material breach of contract and may void the Contract or be grounds for its termination.
17. Pursuant to Section 2155.004(a) of the Texas Government Code, Subrecipient certifies that neither Subrecipient nor any person or entity represented by Subrecipient has received compensation from the GLO to participate in the preparation of the specifications or solicitation on which this Contract is based. Under Section 2155.004(b) of the Texas Government Code, Subrecipient certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate. This Section does not prohibit Subrecipient from providing free technical assistance.
18. Subrecipient represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
19. If the Contract is for professional or consulting services governed by Texas Government Code Chapter 2254, Subrecipient represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the Contract, were former employees of the GLO during the twelve (12) month period immediately prior to the date of execution of the Contract.
20. The Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the GLO.
21. IF THE CONTRACT IS NOT FOR ARCHITECTURE OR ENGINEERING SERVICES GOVERNED BY TEXAS GOVERNMENT CODE CHAPTER 2254, SUBRECIPIENT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE GLO, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF SUBRECIPIENT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY SUBRECIPIENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN Texas STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND



SUBRECIPIENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. SUBRECIPIENT AND THE GLO SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

22. IF THE CONTRACT IS FOR ARCHITECTURE OR ENGINEERING SERVICES GOVERNED BY TEXAS GOVERNMENT CODE CHAPTER 2254, SUBRECIPIENT SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE GLO, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES TO THE EXTENT CAUSED BY, ARISING OUT OF, OR RESULTING FROM ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILLFUL MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY, AND/OR OTHERWISE RELATED TO SUBRECIPIENT'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE SUBRECIPIENT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, CONSULTANTS UNDER CONTRACT TO SUBRECIPIENT, OR ANY OTHER ENTITY OVER WHICH THE CONTRACTOR EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY SUBRECIPIENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN Texas STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND SUBRECIPIENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. SUBRECIPIENT AND THE GLO SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM
23. SUBRECIPIENT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE GLO AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF SUBRECIPIENT PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) THE GLO'S AND/OR SUBRECIPIENT'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO THE GLO BY SUBRECIPIENT OR OTHERWISE TO WHICH THE GLO HAS ACCESS AS A RESULT OF SUBRECIPIENT'S PERFORMANCE UNDER THE CONTRACT. SUBRECIPIENT AND THE GLO shall FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. SUBRECIPIENT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY SUBRECIPIENT WITH THE



OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND SUBRECIPIENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, SUBRECIPIENT WILL REIMBURSE THE GLO AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF THE GLO DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF SUBRECIPIENT OR IF THE GLO IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, THE GLO WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND SUBRECIPIENT WILL PAY ALL REASONABLE COSTS OF THE GLO'S COUNSEL.

24. Subrecipient has disclosed in writing to the GLO all existing or potential conflicts of interest relative to the performance of the Contract.
25. Sections 2155.006 and 2261.053 of the Texas Government Code prohibit state agencies from accepting a solicitation response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Subrecipient certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
26. Subrecipient understands that the GLO will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material related to this Contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Subrecipient shall make any information created or exchanged with the State/GLO pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State or the GLO.
27. The person executing this Contract certifies that he/she is duly authorized to execute this Contract on his/her own behalf or on behalf of Subrecipient and legally empowered to contractually bind Subrecipient to the terms and conditions of the Contract and related documents.
28. If the Contract is for architectural or engineering services, pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code, Subrecipient shall perform services (1) with professional skill and care ordinarily provided by competent engineers or architects

practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

29. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Subrecipient shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the Contract and the requirement to cooperate is included in any subcontract it awards. The GLO may unilaterally amend the Contract to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.
30. Subrecipient certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in the Contract by any state or federal agency.
31. Subrecipient expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Subrecipient represents and warrants to the GLO that any technology provided to the GLO for purchase pursuant to this Contract is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: providing equivalent access for effective use by both visual and non-visual means; presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this Section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.
32. If the Contract is for the purchase or lease of covered television equipment, as defined by Section 361.971(3) of the Texas Health and Safety Code, Subrecipient certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.

33. Pursuant to Section 572.069 of the Texas Government Code, Subrecipient certifies it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for the GLO involving Subrecipient within two (2) years after the date that the contract is signed, or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.



### **NONEXCLUSIVE LIST OF APPLICABLE LAWS, RULES, AND REGULATIONS**

If applicable to a Program or Activity, Provider must be in compliance with the following laws, rules, and regulations; and any other state, federal, or local laws, rules, and regulations as may become applicable throughout the term of the Contract, and Provider acknowledges that this list may not include all such applicable laws, rules, and regulations.

**Provider and is deemed to have read and understands the requirements of each of the following, if applicable to the Project under this Contract:**

#### **GENERALLY**

The Acts and Regulations specified in this Contract;

Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Public Law 115-56);

The Housing and Community Development Act of 1974 (12 U.S.C. § 5301 *et seq.*);

The United States Housing Act of 1937, as amended, 42 U.S.C. § 1437f(o)(13) (2016) and related provisions governing Public Housing Authority project-based assistance, and implementing regulations at 24 C.F.R. Part 983 (2016);

Cash Management Improvement Act regulations (31 C.F.R. Part 205);

Community Development Block Grants (24 C.F.R. Part 570);

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Disaster Recovery Implementation Manual;

GLO Housing Guidelines; and

State of Texas Plan for Disaster Recovery: Hurricane Harvey – Round 1, dated April 6, 2018, as amended.

#### **CIVIL RIGHTS**

Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d *et seq.*); 24 C.F.R. Part I, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e, *et seq.*);

Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. § 3601, *et seq.*), as amended;

Executive Order 11063, as amended by Executive Order 12259, and 24 C.F.R. Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063"; The failure or refusal of Provider to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;

The Age Discrimination Act of 1975 (42 U.S.C. § 6101, *et seq.*); and

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794.) and "Nondiscrimination

Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development", 24 C.F.R. Part 8. By signing this Contract, Provider understands and agrees that the activities funded shall be performed in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, *et seq.*), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system.

#### **LABOR STANDARDS**

The Davis-Bacon Act, as amended (originally, 40 U.S.C. §§ 276a-276a-5 and re-codified at 40 U.S.C. §§ 3141-3148); 29 C.F.R. Part 5;

The Copeland "Anti-Kickback" Act (originally, 18 U.S.C. § 874 and re-codified at 40 U.S.C. § 3145); 29 C.F.R. Part 3;

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (originally, 40 U.S.C. §§ 327A and 330 and re-codified at 40 U.S.C. §§ 3701-3708);

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act) (29 C.F.R. Part 5); and

Federal Executive Order 11246, as amended.

#### **EMPLOYMENT OPPORTUNITIES**

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u); 24 C.F.R. §§ 135.3(a)(2) and (a)(3);

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. § 4212);

Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1688); and

Federal Executive Order 11246, as amended.

#### **GRANT AND AUDIT STANDARDS**

Single Audit Act Amendments of 1996, 31 U.S.C. § 7501;

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Uniform Grant and Contract Management Act (Texas Government Code Chapter 783) and the Uniform Grant Management Standards, issued by Governor's Office of Budget and Planning; and

Title 1 Texas Administrative Code § 5.167(c).

#### **LEAD-BASED PAINT**

Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831(b)).

#### **HISTORIC PROPERTIES**

The National Historic Preservation Act of 1966 as amended (16 U.S.C. § 470, *et seq.*), particularly sections 106 and 110 (16 U.S.C. §§ 470 and 470h-2), except as provided in §58.17 for Section 17 projects;



Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 C.F.R., 1971-1975 Comp., p. 559, particularly section 2(c);

Federal historic preservation regulations as follows: 36 C.F.R. Part 800 with respect to HUD programs; and

The Reservoir Salvage Act of 1960, as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. § 469, *et seq.*), particularly section 3 (16 U.S.C. § 469a-1).

#### **ENVIRONMENTAL LAW AND AUTHORITIES**

Environmental Review Procedures for Recipients assuming HUD Environmental Responsibilities (24 C.F.R. Part 58, as amended);

National Environmental Policy Act of 1969, as amended (42 U.S.C. §§ 4321-4347); and

Council for Environmental Quality Regulations for Implementing NEPA (40 C.F.R. Parts 1500-1508).

#### **FLOODPLAIN MANAGEMENT AND WETLAND PROTECTION**

Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 C.F.R., 1977 Comp., p. 117, as interpreted in HUD regulations at 24 C.F.R. Part 55, particularly Section 2(a) of the Order (For an explanation of the relationship between the decision-making process in 24 C.F.R. Part 55 and this part, see § 55.10.); and

Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 C.F.R., 1977 Comp., p. 121 particularly Sections 2 and 5.

#### **COASTAL ZONE MANAGEMENT**

The Coastal Zone Management Act of 1972 (16 U.S.C. § 1451, *et seq.*), as amended, particularly sections 307(c) and (d) (16 U.S.C. § 1456(c) and (d)).

#### **SOLE SOURCE AQUIFERS**

The Safe Drinking Water Act of 1974 (42 U.S.C. §§ 201, 300(f), *et seq.*, and 21 U.S.C. § 349) as amended; particularly section 1424(e)(42 U.S.C. § 300h-3(e)); and

Sole Source Aquifers (Environmental Protection Agency-40 C.F.R. part 149.).

#### **ENDANGERED SPECIES**

The Endangered Species Act of 1973 (16 U.S.C. § 1531, *et seq.*) as amended, particularly section 7 (16 U.S.C. § 1536).

#### **WILD AND SCENIC RIVERS**

The Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271, *et seq.*) as amended, particularly sections 7(b) and (c) (16 U.S.C. § 1278(b) and (c)).

#### **AIR QUALITY**

The Clean Air Act (42 U.S.C. § 7401, *et seq.*) as amended, particularly sections 176(c) and (d) (42 U.S.C. § 7506(c) and (d)).

Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency-40 C.F.R. Parts 6, 51, and 93).



**FARMLAND PROTECTION**

Farmland Protection Policy Act of 1981 (7 U.S.C. § 4201, *et seq.*) particularly sections 1540(b) and 1541 (7 U.S.C. §§ 4201(b) and 4202); and

Farmland Protection Policy (Department of Agriculture-7 C.F.R. part 658).

**HUD ENVIRONMENTAL STANDARDS**

Applicable criteria and standards specified in HUD environmental regulations (24 C.F.R. Part 51)(other than the runway clear zone and clear zone notification requirement in 24 C.F.R. § 51.303(a)(3)); and

HUD Notice 79-33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979.

**ENVIRONMENTAL JUSTICE**

Executive Order 12898 of February 11, 1994—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (59 FR 7629), 3 C.F.R., 1994 Comp. p. 859.

**SUSPENSION AND DEBARMENT**

Use of debarred, suspended, or ineligible contractors or subrecipients (24 C.F.R. § 570.609);

General HUD Program Requirements; Waivers (24 C.F.R. Part 5); and

Nonprocurement Suspension and Debarment (2 C.F.R. Part 2424).

**OTHER REQUIREMENTS**

Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58).

**ACQUISITION / RELOCATION**

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601, *et seq.*), 24 C.F.R. Part 42, and 24 C.F.R. § 570.606.

**FAITH-BASED ACTIVITIES**

Executive Order 13279 of December 12, 2002 - Equal Protection of the Laws for Faith-Based and Community Organizations, (67 FR 77141).

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

### **SPECIAL CONDITIONS**

If applicable to a Program or Activity, Subrecipient must be in compliance with the following Special Conditions and any other State, Federal, or local laws, rules, and regulations as may be applicable, throughout the term of the Contract, prior to the release of any grant funds for the Programs or Activities anticipated.

Subrecipient is deemed to have read and to understand the requirements of each of the following, if applicable to the Program or Activity under this Contract:

#### **A. REIMBURSEMENT, GENERALLY**

As provided for in Public Law 115-56, the Contract funds may not be used for activities that are eligible to be reimbursed by, or for which funds are made available by, (a) the Federal Emergency Management Agency (FEMA); (b) the Army Corps of Engineers (Corps); (c) any other federal funding source; or (d) covered by insurance, and Subrecipient shall ensure compliance with all such requirements.

#### **B. NATIONAL FLOOD INSURANCE PROGRAM COMPLIANCE**

- (1) Subrecipient must provide documentation which indicates they have received approval from the Texas Water Development Board (TWDB), the National Flood Insurance Program (NFIP) State Coordinating Agency, that appropriate ordinances or orders necessary for Subrecipient to be eligible to participate in the NFIP have been adopted.
- (2) Where Activities specified in a Performance Statement, involve structures that are located in Special Flood Hazard Areas (SFHA), flood insurance may be required, and Subrecipient shall obtain such insurance, and shall maintain documentation evidencing compliance with such requirements.
- (3) Subrecipient acknowledges and agrees that if any property that is the subject of an Activity under this Contract located within a floodplain, that the following terms and conditions shall apply:
  - a. Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001- 4128), Federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:
    - i. The community in which the area is situated is participating in the National Flood Insurance Program ("NFIP") (44 CFR parts 59 through 79), or less than one (1) year has passed since the FEMA notification regarding such hazards; and
    - ii. The community is participating in the NFIP, or that flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.
  - b. Where the community is participating in the NFIP and the recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, Subrecipient is responsible for ensuring that flood insurance under the NFIP is obtained and maintained.
  - c. Under Section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 515a, HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for flood damage to any personal, residential, or commercial property if:
    - i. The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and



- ii. The person failed to obtain and maintain flood insurance.
- d. Subrecipient understands and agrees that it has a responsibility to inform homeowners receiving disaster assistance that triggers the flood insurance purchase requirement of their statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so.

**C. PROJECT MAPPING/DESIGN INFORMATION**

For construction projects, Subrecipient shall require and maintain copies, in written and/or digital format, of final Project record drawing(s) and engineering schematics, as constructed.

**D. WATER SYSTEM IMPROVEMENTS**

- (1) Prior to the GLO's release of funds for the construction of any water system improvements, Subrecipient shall provide certification to the GLO that plans, specifications, and related documents for the specified water system improvements have been prepared by the engineer selected for such activities, or the engineer's duly authorized representative, and that the review of such plans, specifications, and related documents meet the applicable Texas Commission on Environmental Quality (TCEQ) review requirements described in Title 30 of the Texas Administrative Code.
- (2) Prior to construction, Subrecipient shall provide documentation to the GLO that an approved new or amended Certificate of Convenience and Necessity (CCN), or the equivalent permit or authority for the area to be served, has been issued by the TCEQ.
- (3) Prior to Subrecipient submission of the Project Completion Report for any water system improvements described in Attachment A, Subrecipient shall provide a letter from the TCEQ that the constructed well is approved for interim use and may be temporarily placed into service pursuant to 30 Texas Administrative Code, Chapter 290—Rules and Regulations for Public Water Systems.

**E. SEWER SYSTEM IMPROVEMENTS**

Prior to the construction of any sewer system improvements described, Subrecipient shall provide certification that plans, specifications, and related documents for the specified sewer system improvements have been prepared by the engineer selected for such activities, or the engineer's duly authorized representative, and that the review of such plans, specifications, and related documents meet the Texas Commission on Environmental Quality (TCEQ) review requirements described in 30 Texas Administrative Code, Chapter 217, Subchapter D.

Further, prior to the construction of any sewer lines or additional service connections described in Attachment A, Subrecipient shall provide notification of the start of construction on any sewer treatment plant or other system-related improvements included in this Contract.

**F. WASTEWATER TREATMENT CONSTRUCTION**

Prior to incurring costs for any wastewater treatment construction in Attachment A, Subrecipient shall provide documentation of an approved permit or amendment(s) to an existing permit for such activities from the TCEQ's Water Quality Division.

In addition, Subrecipient shall provide documentation to the GLO that an approved new or amended Certificate of Convenience and Necessity (CCN), or equivalent permit or authority for the area to be served has been issued by the TCEQ.



#### **G. SEPTIC SYSTEM IMPROVEMENTS**

- (1) Subrecipient shall provide documentation that final plans, specifications, and installation of its septic system improvements have been reviewed and approved by the City or County Health Department through authority granted by the TCEQ.
- (2) Subrecipient shall mitigate all existing septic systems in accordance with 30 Texas Administrative Code Chapter 285, Subchapter D, §285.36(b), which states, "All tanks, boreholes, cesspools, seepage pits, holding tanks, and pump tanks shall have the wastewater removed by a waste transporter, holding a current registration with the executive director. All tanks, boreholes, cesspools, seepage pits, holding tanks, and pump tanks shall be filled to ground level with fill material (less than three inches in diameter), which is free of organic and construction debris."
- (3) Prior to the selection of program recipients for proposed On-Site Sewer Facilities (OSSF), Subrecipient shall provide a copy of its proposed program guidelines to for GLO review. All proposed OSSF programs must meet or exceed guidelines set forth in 30 Texas Administrative Code Chapter 285 Subchapter D.

#### **H. BUILDING CONSTRUCTION**

Subrecipient shall provide documentation that the construction of a new building and facilities are in compliance with the Texas Accessibility Standards (TAS) of the Architectural Barriers Act, Chapter 469, Texas Government Code, and the Texas Department of Licensing and Regulation (TDLR) Architectural Barriers Administrative Rules, 16 Texas Administrative Code, Part 4, Chapter 68. If estimated construction costs exceed Fifty Thousand Dollars (\$50,000.00), Construction Documents must be submitted to the Texas Department of Licensing and Regulation (TDLR) for an accessibility plan review.

#### **I. BRIDGE CONSTRUCTION/REHABILITATION**

Subrecipient shall use the minimum design requirements of the Texas Department of Transportation (TxDOT) for bridge construction/rehabilitation. Final plans and specifications must be submitted to TxDOT for review and approval prior to the start of construction, and documentation of such approval must be provided to the GLO.

#### **J. DISASTER SHELTERS**

Subrecipient shall ensure that the primary purpose of a facility designated a "disaster shelter" is to serve as a disaster shelter, and shall ensure the facility is operated at all times in a manner that ensures that the priority use is to serve as a disaster shelter regardless of any other scheduled uses or commitments that existed at the time of the disaster or emergency situation. In addition, Subrecipient shall prepare or be incorporated into an approved emergency management plan, as prescribed by the Texas Division of Emergency Management, identifying the shelter as a facility that provides short-term lodging for evacuees during and immediately after an emergency situation. Subrecipient shall submit a copy of Subrecipient's Emergency Management Plan Annex for Shelter and Mass Care to the GLO.

#### **K. DEBRIS REMOVAL**

Subrecipient shall ensure that any debris to be removed consists primarily of vegetation, construction and demolition materials from damaged or destroyed structures, and personal property. Only debris identified as the responsibility of the local jurisdiction will be eligible for the reimbursement of cost of removal.

Prior to beginning debris collection operations, Subrecipient shall address all pertinent environmental concerns, adhere to all applicable regulations, and obtain all required permits. Further, Subrecipient

shall adhere to the methods described herein for the collection and storage of debris prior to proper disposal.

While construction and demolition debris may be collected and disposed of at an appropriately rated landfill, woody and/or vegetative debris must be stored prior to disposal by use of temporary debris storage and reduction sites (TDSR). Subrecipient will prepare and operate the TDSR sites, or local jurisdictions choosing to conduct their own debris operations may review Chapter 7 of the FEMA Debris Management Guide regarding the use of TDSR sites. This document may be obtained at <https://www.fema.gov/pdf/government/grant/pa/demagde.pdf>.

In order to maintain the life expectancy of landfills, Subrecipients disposing of woody and/or vegetative debris must choose burning, chipping, or grinding as the method of disposal. Any project disposing of woody and/or vegetative debris must be approved in writing by the GLO.

#### **L. USE OF BONDS**

Subrecipient must notify the GLO of its issuance and sale of bonds for completion of the Project funded under this Contract.

#### **M. PROGRAM GUIDELINES**

Prior to the selection of Program beneficiaries for each Program, Subrecipient shall provide to the GLO, for GLO review and approval, a copy of its proposed guidelines for the Program. The guidelines must meet or exceed the requirements in the Federal Registers. The guidelines must include provisions for compliance with the Federal Fire Prevention and Control Act of 1974 (which requires that any housing unit rehabilitated with grant funds be protected by a hard-wired or battery-operated smoke detector) and provisions for compliance with 24 CFR 35 (HUD lead-based paint regulation), as applicable.

#### **N. COMPLIANCE PERIODS FOR PROGRAMS**

Subrecipient shall adopt appropriate compliance periods for each Program or Activity, as applicable, in accordance with Federal Register regulations. The specific compliance period and loan term requirements will be recorded in the Program Guidelines, subject to GLO approval.

#### **O. COASTAL MANAGEMENT**

Subrecipient acknowledges and agrees that any Project that may impact a Coastal Natural Resource Area must be consistent with the goals and policies of the Texas Coastal Management Program as described in 31 Texas Administrative Code, Part 16, Chapter 501.

#### **P. INELIGIBLE HOUSING ACTIVITIES**

The following are ineligible housing activities:

- (1) Forced mortgage payoff
- (2) Incentive payments to households that move to disaster-impacted floodplains
- (3) Properties that served as second homes at the time of the disaster, or following the disaster, are not eligible for rehabilitation assistance or housing incentives
- (4) Rehabilitation/reconstruction of homes located in the floodway
- (5) Rehabilitation/reconstruction of a home where:
  - i. the combined household income is greater than 120 percent AMI or the national median, and
  - ii. the property was as located in a floodplain at the time of the disaster, and

- iii. the property owner did not maintain flood insurance on the damaged property, even when the property owner was not required to obtain and maintain such insurance.
- (6) Assistance for the repair, replacement, or restoration of a property to a person who has failed to meet Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a), which states that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for "repair, replacement, or restoration" for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property.



## **GLO Information Security Appendix**

### **1. Definitions**

"Breach of Security" or "Breach" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information including data that is encrypted if the person accessing the data has the key required to decrypt the data.

"Personal Identifying Information" or "PII" means information that alone or in conjunction with other information identifies an individual, as defined at Tex. Bus. & Com. Code § 521.002(1) as of the Effective Date of this Contract.

"Sensitive Personal Information" or "SPI" means the information categories listed at Tex. Bus. & Com. Code § 521.002(2), which as of the Effective Date of this Contract, reads as follows: (A) an individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted: (i) social security number; (ii) driver's license number or government-issued identification number; or (iii) account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or (B) information that identifies an individual and relates to: (i) the physical or mental health or condition of the individual; (ii) the provision of health care to the individual; or (iii) payment for the provision of health care to the individual. "Sensitive Personal Information" does not include publicly available information that is lawfully made available to the public from the federal government or a state or local government.

### **2. Security and Privacy Compliance**

- 2.1. Subrecipient shall keep all PII and SPI received or generated under the Contract and any documents containing PII or SPI strictly confidential.
- 2.2. Subrecipient shall comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations and directives.
- 2.3. Subrecipient shall implement administrative, physical, and technical safeguards to protect PII and SPI that are consistent with the guidelines in the National Institute of Standards and Technology ("NIST") Cybersecurity Framework Version 1.1. All such safeguards shall comply with applicable data protection and privacy laws.
- 2.4. Subrecipient will legally bind any contractors and their subcontractors to the same requirements stated herein and obligations stipulated in the Contract and documents related thereto. Subrecipient shall ensure that the requirements stated herein are imposed on any subcontractor of Provider's subcontractor(s).
- 2.5. Subrecipient will not share PII or SPI with any third parties, except as necessary for Subrecipient's performance under the Contract.

2.6. Subrecipient will ensure that initial privacy and security training, and annual training thereafter, is completed by its employees and contractors, including any subcontractor, that have access to PII or SPI or who create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise personally handle PII or SPI on behalf of Subrecipient. Subrecipient agrees to maintain and, upon request, provide documentation of training completion. The requirement for initial privacy and security training may be satisfied by verifiable existing security awareness training.

2.7. Any PII or SPI maintained or stored by Subrecipient or any contractor, including any subcontractor, must be stored on servers or other hardware located within the physical borders of the United States and shall not be accessed outside of the United States.

### **3. Data Ownership**

3.1. The GLO shall retain full ownership of all data, including PII and SPI, provided to Subrecipient by the GLO.

3.2. Upon termination of the Contract, Subrecipient shall promptly return to the GLO all GLO-owned data possessed by Subrecipient and its employees, agents, or contractors, including any subcontractor. Subrecipient shall retain no copies or back-up records of GLO-owned data. If such return is infeasible or causes undue business hardship, as mutually determined by the GLO and Subrecipient, the obligations set forth in this **Attachment G**, with respect to GLO-owned data, shall survive termination of the Contract and Subrecipient shall limit any further use and disclosure of GLO Data to the purposes that make the return of or GLO-owned data infeasible or causes undue business hardship. However, no provision in this Section 3.2 in no event shall circumvent the record-keeping and access requirements of 24 C.F.R. Part 570. In lieu of the requirements in this Section 3.2, the GLO may direct Subrecipient to destroy any GLO-owned data in Subrecipient's possession. Any such destruction shall be certified by Subrecipient.

### **4. Data Mining**

4.1. Subrecipient agrees not to use PII or SPI for unrelated purposes, advertising or advertising-related services, or for any other purpose not explicitly authorized by the GLO in the Contract or any document related thereto.

4.2. Subrecipient agrees to take all reasonably feasible physical, technical, administrative, and procedural measures to ensure that no unauthorized use of PII or SPI occurs.

### **5. Breach of Security**

5.1. Subrecipient agrees to provide the GLO with the name and contact information for a Subrecipient employee which shall serve as the GLO's primary data security contact.



- 5.2. Upon discovery of a Breach of Security or suspected Breach of Security by the Subrecipient, Subrecipient agrees to use commercially reasonable efforts to notify the GLO as soon as possible upon discovery of the Breach of Security or suspected Breach of Security, but in no event shall notification occur later than twenty-four (24) hours after discovery. Notification of a Breach of Security or suspected Breach of Security shall be provided by telephone to one of the following GLO Information Security team members: Brandon Rogers, GLO Information Security Officer, at (512) 463-5763; Larissa Cameron, GLO Privacy Officer, at (512) 475-1438; Arturo Montalvo, Director of Information Security, at (512) 463-5316; and the GLO Office of Information Security (OIS) Monitoring Desk at (512) 839-7021. Within five (5) business days, Subrecipient agrees to provide, at minimum, a written preliminary report regarding the Breach or suspected Breach to the GLO with root cause analysis including a log detailing the data affected.
- 5.3. The initial notification and preliminary report shall be submitted to the GLO Information Security Officer at [brandon.rogers@glo.texas.gov](mailto:brandon.rogers@glo.texas.gov).
- 5.4. Subrecipient agrees to take all reasonable steps to promptly mitigate a Breach of Security and reduce the risk of any further Breach of Security.
- 5.5. If the Breach of Security includes SPI, including Social Security Numbers, payment card information, or health information, Subrecipient agrees to provide affected individuals complimentary access for one (1) year of credit monitoring services.

## 6. Right to Audit

- 6.1. At the GLO's request, Subrecipient agrees to promptly and accurately complete a NIST based information security questionnaire provided by the GLO regarding Subrecipient's business practices and information technology environment. Subrecipient would also agree to provide any external IT service provider's (that they use) SSAE16 SOC Type II, Cloud Security Alliance Cloud Controls Matrix, or similar certification.
- 6.2. In conducting any audit under this section GLO shall keep Subrecipient's business practices and information technology environment ("City Security Information") strictly confidential and shall not use the City Security Information for any other purpose not expressly authorized by the City under this Contract and shall not disclose City Security Information to third parties. GLO shall destroy and certify to such destruction of all City Security Information and any other documents and materials related thereto within five business days of the expiration or termination of this Contract or when the need to know no longer exists, whichever is earlier.
- 6.3. In the event of a breach of system security, subject to applicable laws, Subrecipient shall use reasonable efforts to provide full access and cooperation for all activities determined by HUD and the GLO to be required to ensure an effective incident response, including providing all requested images, log files, and event information to facilitate rapid



resolution of data breaches. All information disclosed, gathered, or accessible to the GLO, or other agency of the State of Texas, the State of Texas or HUD pursuant to this Contract, is considered City Security Information and, subject to applicable laws, is subject to the confidentiality obligations set forth in this Section 6.



**Texas General Land Office**  
**Community Development & Revitalization Program**  
**HOUSING**  
**Program Completion Report**

Subrecipient/Grant Administrator: GLO Contract Number: DUNS No. Contract Start Date: Contract End Date: ☐ HOUSING**Part I. General Reports****Certificate of Expenditures:**

Activity	GLO-CDR Budget	GLO-CDR Funds Drawn To-Date	GLO-CDR Funds not Received (including pending draws)		Local Contribution	Percent Matched
			GLO-CDR Reserved Funds	Unutilized Funds (Deob)		
Total						0 %

**Civil Rights & Citizen Participation:**Requirements met and forms attached: ☐ Equal Employment Opportunity ☐ Section 3 ☐ Excessive Force Policy and Resolution ☐ Section 504Fair Housing Activity (describe): Work Completed Date: **Certifications:**

As Executive Director, I certify that:

- All activities undertaken with funds provided under the contract identified in this report, have, to the best of my knowledge, been carried out in accordance with the contract agreement;
- The information contained in this Project Completion Report is accurate to the best of my knowledge;
- All records related to contractor activities are available for review;
- GLO-DR funds were not used to reduce the level of local financial support for housing and community development activities;
- The persons to benefit from the activities described in Exhibit A, Performance Statement, of this contract are receiving service or a benefit from the use of the new or improved facilities and activities;
- For all activities undertaken with funds provided under the contract identified in this report, promotion of MBE participation has been undertaken;
- All requirements to Affirmatively Further Fair Housing have been met; and
- Proper provision has been made for the payment of all unpaid costs and unsettled third-party claims and the State of Texas is under no obligation to make any further payment to the recipient under the contract agreement in excess of the amount identified in the Certificate of Expenditures table as "GLO-CDR Reserved Funds".

<input type="text"/>	<input type="text"/>	<input type="text"/>
Name and Title (Print)	Signature	Date

**Attachments:** The following documents support this report.

☐ Original Submittal,  
also submitted via email☐ Revision Date revised: **Part II. Performance Report**

Report work performed, performance measures and beneficiary data for each contract budget activity.

**Actual Accomplishments:**

Activity/Project:	<input type="text"/>		
Project Description/Location:	<input type="text"/>		
Project Accomplishments:	<input type="text"/>	Total #:	<input type="text"/>

**HUD Performance Measures:**

Activity	Objective	Outcome
<input type="text"/>	<input type="text"/>	<input type="text"/>
Benefit Indicator	<input type="text"/>	
Special Category	<input type="text"/>	

**Beneficiary Detail - Activities**

Identify all activities that benefit the persons reported on this sheet; report beneficiary details for those persons and households.

**Activity:** **Beneficiaries by Demographic:**

	No. of Persons			No. of Households (demographics of the Head of Household)		
	Male	Female	Total	Male	Female	Total
Gender	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Race	Non-Hispanic	Hispanic	Sub-Total	Non-Hispanic	Hispanic	Sub-Total
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Grand Total:	<input type="text"/>			<input type="text"/>		

**Beneficiaries by Income:**

Income Level	No. of Persons	No. of Owner Occupied Households	No. of Renter Occupied Households
Very Low (at or below 30% of the AMFI)	<input type="text"/>	<input type="text"/>	<input type="text"/>
Low (31-50% of the AMFI)	<input type="text"/>	<input type="text"/>	<input type="text"/>
Moderate (51-80% of the AMFI)	<input type="text"/>	<input type="text"/>	<input type="text"/>
Non-Low/Moderate (above 80% of the AMFI)	<input type="text"/>	<input type="text"/>	<input type="text"/>
Total	<input type="text"/>	<input type="text"/>	<input type="text"/>



Subtotal - All Low/Mod

Percent Low/Mod

0.00%

0

**Click "+" button to include another Activity/Project.****Part III Final Financial Interest Report**

Report all contracts executed under this CDBG-DR contract that are valued at or above \$2,000.

**Contracts with no subcontractors**

Type of Services	Business Name	Contract Amount			Qtr Executed
		CDBG-DR Funds	Other Funds	Total Dollars	

☐ At least one contract executed under this CDBG-DR contract includes subcontracts valued at or above \$10,000.☐ No contracts executed under this CDBG-DR contract include subcontracts valued at or above \$10,000.

**CITY OF HOUSTON****BUYOUT PROGRAM PERFORMANCE STATEMENT**

Subrecipient shall carry out the following housing activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Buyout Program Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

**Project Description**

The Subrecipient will provide a Buyout Program to remove homes from the housing stock that are in areas with a high risk of flooding or in areas at a high risk of flooding for Low- to Moderate-Income ("LMI") individual households affected by Hurricane Harvey. The Subrecipient may offer buyouts to Low- to Moderate Income individual households under the Low- to Moderate Buyout (LMB) or Low- to Moderate Income Housing Incentive (LMHI) or urgent need (UN), thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery and Administration costs, as defined in the State of Texas Plan for Disaster Recovery, enacted May 1, 2018, as amended, will not exceed ten percent (10%) and two percent (2%), respectively, of the total grant allocation. An environmental review must be conducted at all locations prior to the execution and commencement of work.

Eligible activities for the funds are as listed in HCDA section 105(a)(1), 105(a)(7-9) 105(a)(24-25), 5305(a)(8), 24 CFR 570.20(b)(4), and; 24 CFR 570.201(g) including but are not limited to Buyouts; Demolition; Relocation Assistance; Payment of Non-Federal Share; Housing incentives. A waiver eligible under FR-6066-N-01 permits housing incentives and other requirements for one-for one replacement housing, relocation, and Real property acquisition requirements.

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
Buyout Program	LMHI	100
Buyout Program	UN	100

**Buyout Program**

The Subrecipient will offer a Buyout Program that will remove approximately two hundred (200) single family or multifamily homes from areas with high flood risk. The maximum assistance provided to each property will be two hundred fifty thousand dollars (\$250,000) for buyout assistance including incentives/moving and settlement costs and other eligible project costs. The

Subrecipient will purchase residential structures that have flooded and demolish them to create park amenities, open space, or detention areas. The program is voluntary and is intended to assist residents to move out of areas that have been impacted by multiple disasters or are at high risk of flooding from future disasters. The program is also intended to reduce the impact of future disasters, while encouraging targeted revitalization efforts and the creation of open space.

The Subrecipient may work with subrecipients, such as the Harris County Flood Control District or other City Departments to implement this program. If a designee of the Subrecipient is selected, the Subrecipient will work with the designee to choose buyout project locations. Buyouts under this program may be part of a larger City or County buyout strategy, in accordance with a long-term plan for the property to become future open space or detention, to avoid removing a viable property from the housing market. It may include the buyout of impacted single and multifamily housing. Buyout property will be maintained in perpetuity as greenspace, as applicable to buyouts.

To be eligible for Assistance the Residential Structure Homeowner Properties must be Owner-occupied at the time of the storm; served as homeowner's primary residence; sustained damage from Hurricane Harvey; the property is environmentally cleared; and the property is located in a Disaster Risk Reduction Area (DRRA), repetitive flood risk area or Floodplain. The Homeowner applicants and co-applicants must be current on payments for child support; furnish evidence that property taxes are current, under an approved payment plan, or that they have an exemption under current laws and Homeowner applicants must agree to a limited subrogation of any future awards related to Hurricane Harvey, to ensure duplication of benefits compliance.

To be eligible for assistance, the Rental Property must be Renter-occupied at the time of the storm; sustained damage from Hurricane Harvey; the property is environmentally cleared; and the property is located in DRRA, repetitive flood risk area or Floodplain. The Rental Property owners must furnish evidence that property taxes are current, they are under an approved payment plan, or that they have an exemption under current laws.

Buyout Program guidelines will detail applicant or project eligibility requirements, application process, compliance with Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) regulations, and other information.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**



**City of Houston**  
**Buyout Program Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Housing Guidelines	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**City of Houston**  
**Buyout Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_MI_BP-LMI_CityofHouston	Buyout Program – LMHI	\$18,360,000	\$0	\$18,360,000
18-###-###_MI_BP-UN_CityofHouston	Buyout Program - UN	\$18,360,000	\$0	\$18,360,000
18-###-###_MI_BP-LMI_CityofHouston	Project Delivery- BP-LMHI	\$2,040,000	\$0	\$2,040,000
18-###-###_MI_BP-UN_CityofHouston	BP-Project Delivery - UN	\$2,080,000	\$0	\$2,080,000
	<b>TOTAL</b>	<b>\$40,800,000</b>	<b>\$0</b>	<b>\$40,800,000</b>

**CITY OF HOUSTON****ECONOMIC REVITALIZATION PROGRAM PERFORMANCE STATEMENT**

Subrecipient shall carry out the following economic revitalization activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Program Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

**Project Description**

The Subrecipient will provide an Economic Revitalization Program to help create job for Low to Moderate Income ("LMI") individuals and to improve the economic viability of areas affected by Hurricane Harvey in order to meet the National Objective of benefiting low- to moderate-income persons, thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery costs will be not exceed six percent (6%).

Economic Revitalization activities that are eligible for funding are listed in HCDA section 105(a)(17), 105(a)(19), 105(a)(22). Economic revitalization activities must contribute to the long-term recovery and restoration of housing. A waiver eligible under FR-6066-N-01 permits other national objective documentation and public benefit standards.

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
Economic Revitalization Program	LMI	813 jobs created/ retained

**Economic Revitalization Program**

The Subrecipient will offer an Economic Revitalization Program, which will support a comprehensive recovery by creating or retaining eight hundred thirteen (813) jobs at or below fifty thousand (\$50,000) per job created or retained for low and moderate-income persons through the provision of capital, credit and technical assistance to businesses, including microenterprises. Assistance may be provided through loans or grants, and assistance may be part of a revolving loan fund. It is intended that this program will support small businesses that include, but is not limited to, those providing housing construction services, to work with and complement the housing programs funded with Community Development Block Grant-Disaster Recovery funds. Economic revitalization activities must contribute to the long-term recovery and restoration of housing. The Subrecipient may utilize public and private nonprofit agencies, authorities, or

organizations and for-profit organizations to carry out the program. The application or Notice of Funding Availability/ Request for Proposal (NOFA/ RFP) process will clearly establish the process and acceptance period, threshold criteria, and the award process. Selection criteria will likely include: the need for program, cost reasonableness and effectiveness, activity management and implementation, and experience/past performance. Eligible subrecipients include public or private nonprofit agencies, authorities, or organizations and for-profit organizations.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**



**City of Houston**  
**Economic Revitalization Program Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Project Delivery Funds	Cumulative Billing Cap by Benchmark for Project Delivery Funds
Approval of Notice Housing Guidelines, or NOFA/RFP.	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**City of Houston**  
**Economic Revitalization Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_MI_ER-LMI_CityofHouston	Economic Revitalization - LMI	\$28,448,944	\$0	\$28,448,944
18-###-###_MI_ER-LMI_CityofHouston	ER-Project Delivery-LMI	\$1,815,890	\$0	\$1,815,890
	<b>TOTAL</b>	<b>\$30,264,834</b>	<b>\$0</b>	<b>\$30,264,834</b>

## CITY OF HOUSTON

## HOMEBUYER ASSISTANCE PROGRAM PERFORMANCE STATEMENT

Subrecipient shall carry out the following housing activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Homebuyer Assistance Program Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

Project Description

The Subrecipient will provide a Homebuyer Assistance Program to provide funds for down payment, closing cost, principal buydown, and other direct financial assistance for Low- to Moderate-Income ("LMI") individual households and households earning between eighty percent (80%) and one hundred twenty percent (120%) Area Median Income (AMI), in order to meet the dual National Objectives of benefiting low- to moderate-income persons and meeting an urgent need, thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery and Administration costs, as defined in the State of Texas Plan for Disaster Recovery, enacted May 1, 2018, as amended, will not exceed ten percent (10%) and two percent (2%), respectively, of the total grant allocation for both Non-Rental and Rental Activities. An environmental review must be conducted at all locations prior to the execution and commencement of work.

This activity is eligible for Community Development Block Grant – Disaster Recovery funds as listed in 24 CFR 570.201(n) and HCDA section 105(a)(24). A waiver eligible under FR-6066-N-01 permits Homeownership assistance for households earning up to one hundred twenty percent (120%) Area Median Income and down payment assistance for up to one hundred percent (100%) of the down payment.

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
Homebuyer Assistance Program	LMI	200
Homebuyer Assistance Program	UN	452

Homebuyer Assistance Program

The Subrecipient will provide a Homebuyer Assistance Program, which will assist eligible applicant households earning up to one hundred twenty percent (120%) of the area median income (AMI) to purchase a home. The program will assist approximately six hundred fifty-two (652) eligible households, of which it is estimated two hundred (200) will be low to moderate income households. The Homebuyer Assistance Program will prioritize households that were impacted by Hurricane Harvey, to facilitate the movement of low to moderate income households into new homes after their homes were damaged by Hurricane Harvey. Assistance may include down payment assistance, closing cost assistance, principal buydown, and other direct financial assistance to homebuyers to finance the purchase of a home. Direct homeownership assistance under 570.201(n) allows the Subrecipient to pay up to one hundred percent (100%) of the down payment amount required by the lender. The City may also utilize other forms of direct homebuyer assistance such as subsidizing interest rates and mortgage principal amounts, including making grants to reduce the effective interest rate on the amount needed by the eligible household to achieve an affordable mortgage payment level. The maximum amount per unit is thirty thousand dollars (\$30,000). Refer to the Homebuyer Assistance Program Guidelines for additional technical guidance.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**



**City of Houston**  
**Homebuyer Assistance Program Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Homebuyer Assistance Guidelines	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**City of Houston**  
**Homebuyer Assistance Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_MI_HBA-LMI_CityOfHouston	Homebuyer Assistance Program - LMI	\$6,000,000	\$0	\$6,000,000
18-###-###_MI_HBA-UN_CityOfHouston	Homebuyer Assistance Program - UN	\$13,567,170	\$0	\$13,567,170
18-###-###_MI_HBA-UN_CityOfHouston	HBA-Project Delivery-LMI	\$666,667	\$0	\$666,667
18-###-###_MI_HBA-UN_CityOfHouston	HBA-Project Delivery-UN	\$1,507,463	\$0	\$1,507,463
	<b>TOTAL</b>	<b>\$21,741,300</b>	<b>\$0</b>	<b>\$21,741,300</b>

## CITY OF HOUSTON

### HOMEOWNER ASSISTANCE PROGRAM PERFORMANCE STATEMENT

Subrecipient shall carry out the following housing activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Homeowner Assistance Program Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

#### Homeowner Assistance Program (HoAP)

The Subrecipient will provide City Managed Rehabilitation, Elevation and Reconstruction, Reimbursement, Acquisition, Homeowner Managed Rehabilitation, and Interim Mortgage Assistance. Activities are for Low to Moderate Income ("LMI") individual households and non-Low to Moderate Income individuals that were affected by Hurricane Harvey in order to meet the dual National Objectives of benefiting low-to moderate-income persons and meeting an Urgent Need, thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery and Administration costs, as defined in the State of Texas Plan for Disaster Recovery, enacted May 1, 2018, as amended, will not exceed ten (10%) and two percent (2%), respectively, of the total grant allocation. An environmental review must be conducted at all locations prior to the execution and commencement of work.

Eligible housing activities allowed under CDBG-DR; HCDA Section 105(a)(1), 105(a)(3-4), 105(a)(8) 105(a)(11), 105(a)(18), and 105(a)(25), 24 CFR 570.201(g) include but are not limited to single family owner-occupied rehabilitation and reconstruction; Hazard mitigation; Relocation assistance; demolition only; other activities associated with the recovery of impacted single family housing stock; payment of non-federal share. A waiver eligible under FR-6066-N-01 permits housing incentives and other requirements for one-for-one replacement housing, relocation, and Real property acquisition requirements. A modification to the limitation on emergency grant payments for interim mortgage assistance will also be used as stated in the same Federal Register.

The following estimated activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
City Managed Rehabilitation	LMI	1,348
City Managed Rehabilitation	UN	67
Reimbursement	LMI	177
Reimbursement	UN	1,519



Acquisition	LMI	35
Homeowner Managed Rehabilitation	LMI	221
Homeowner Managed Rehabilitation	UN	259
Interim Mortgage Assistance	LMI	353
Interim Mortgage Assistance	UN	88
Total		4,067

The City of Houston will be performing the following housing activities as part of the Homeowner Assistance Program (HoAP) within the city limits of Houston. Refer to the Homeowner Assistance Program Guidelines for further technical guidance regarding each program. Guidelines must be posted on the Subrecipient's website.

City Managed, Elevation, Rehabilitation and Reconstruction

The Subrecipient will provide homeowner rehabilitation and reconstruction assistance activities for an estimated one thousand four hundred fifteen (1,415) households of which it is anticipated that one thousand three hundred forty-eight (1,348) will be Low to Moderate Income households. The City will manage and complete the construction process for the rehabilitation or reconstruction of damaged homes on behalf of homeowners. The City anticipates contracting with a firm(s) to provide design and construction services for the rehabilitation or reconstruction of damaged properties.

Subrecipient must ensure that, upon completion, the rehabilitated, repaired, or reconstructed portion of each property complies with local building codes, and that the entire structure complies with local health and safety codes and standards and all applicable federal, state, and local building codes, the City's Minimum Property Standards (MPS), and compliance with one of the Green Building Standards as required by the Harvey Federal Register.

All reconstructed and newly constructed housing units must comply with the universal design features in new construction, as established by the GLO's Construction Standards, RESCHECK Certification, the International Residential Codes, as required by Subchapter G, Chapter 214, Local Government Code and one of the following Specifications, such as Energy Standards verified by a U.S. Department of Energy Building Energy Codes Program. All replacement housing, including manufactured housing units or modular homes, must comply with Housing and Urban



Development (HUD), program guidelines, construction standards and state, local, or regional building codes, as applicable.

Subrecipient shall conduct at a minimum a 50% inspection and final inspection as required by the GLO rehabilitation and reconstruction standards to meet the International Residential Code 2012, or the Local, County, State, or Federal Code, whichever is most stringent. If any Housing Units are located within a Catastrophe Area, as defined in Section 2210.005 of the Texas Insurance Code and suffer damage due to windstorms and/or hail, Subrecipient obtain certificates of completion from the Texas Department of Insurance pursuant to the requirements of Section 2210.2515 of the Texas Insurance Code and City's permitting office.

#### Reimbursement

The Subrecipient will offer a reimbursement option to an estimated one thousand six hundred ninety-six (1,696) households of which it is estimated that one hundred seventy-seven (177) will be Low to Moderate Income households. The assisted households will have completed partial or full repairs on their home before applying to the program. Households may be eligible for reimbursement of eligible expenses incurred, prior to application to the program, for work performed to minimum program standards, following an environmental clearance. Xactimate or a similar industry standard tool will be used to ensure cost reasonableness and the work will be verified through an on-site inspection by subrecipient or subrecipient's designee.

Subrecipient must ensure that, upon completion, the rehabilitated, repaired, or reconstructed portion of each property complies with local building codes, and that the entire structure complies with local health and safety codes and standards and all applicable federal, state, and local building codes, including the City's Minimum Property Standards (MPS).

Subrecipient shall conduct a final inspection (site inspection verifying completion of repairs).

#### Homeowner Managed Rehabilitation, Elevation and Reconstruction

The Subrecipient will provide a Homeowner Managed Rehabilitation option for four hundred eighty (480) households of which it is estimated that two hundred twenty-one (221) will be Low to Moderate Income households. The Subrecipient will assist homeowners to manage their own rehabilitation process and will provide construction advisory services for homeowners. The program will allow homeowners who have started the process and are under contract with a contractor at the time of application but need financial assistance to complete repairs. Homeowners will select their own licensed and insured contractor(s) and contract verifications, subject to approval and verification by the Subrecipient. Xactimate® or similar industry standard tools will be used to ensure cost reasonableness and the work will be validated through an on-site inspection. Homeowner managed rehabilitation, elevation, and reconstruction will only be available to homeowners who have initiated the repair process and are under contract with a contractor at the time of application.

Subrecipient must ensure that, upon completion, the rehabilitated, repaired, or reconstructed portion of each property complies with local building codes, and that the entire structure complies with local health and safety codes and standards and all applicable federal, state, and local building codes, including the City's Minimum Property Standards (MPS)

Subrecipient shall conduct progress inspections to verify repairs are completed and requirements are satisfied.

#### Acquisition

The Subrecipient may elect to voluntarily acquire single family homes for rehabilitation or reconstruction. The home acquired may then be reconstructed through the Single-Family Development Program or rehabilitated or reconstructed by partners. These homes would then be offered for sale to Low to Moderate homebuyers or to another homeowner with a damaged home. It is estimated that the Acquisition option may acquire an estimated thirty-five (35) homes. Assistance will be provided to homeowners located in a floodplain or residing in a repetitive flood area that agree to relocate outside of the floodplain. The Relocation incentive assistance will be offered. Applicant may receive post-disaster fair market value, which may include incentives. However, incentives may not be given to applicants that move into disaster-impacted floodplains.

#### Interim Mortgage Assistance

The Subrecipient will offer interim mortgage assistance for an estimated four hundred forty-one (441) households of which it is estimated that three hundred fifty-three (353) will be Low to Moderate Income households. Assistance will be provided to homeowners being served under the Homeowner Assistance Program who are making both a mortgage payment on their storm-damaged home and making a rental payment for their temporary home. These homeowners may be eligible to receive up to twenty (20) months of assistance based on the lesser of their monthly mortgage and temporary rental housing payments. This option may be considered when the rehabilitation or reconstruction of a home extends beyond three (3) months, during which mortgage payments may be due, but the home remains uninhabitable. Determination of reasonable and necessary award amounts, including duplication of benefits calculation, retroactive eligibility, and specific performance milestones for the rehabilitation/reconstruction of homes, will be established in the program guidelines.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**City of Houston**  
**Homeowner Assistance Program Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Housing Guidelines	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**



**City of Houston**  
**Homeowner Assistance Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
City Managed Rehabilitation	Rehabilitation & Reconstruction - LMI	\$156,382,597	\$0	\$156,382,597
City Managed Rehabilitation	Rehabilitation & Reconstruction - UN	\$5,345,649	\$0	\$5,345,649
Reimbursement	Reimbursement -LMI	\$14,138,260	\$0	\$14,138,260
Reimbursement	Reimbursement -UN	\$121,553,039	\$0	\$121,553,039
Acquisition	Acquisition - LMI	\$7,069,130	\$0	\$7,069,130
Homeowner Managed Rehabilitation	Homeowner Managed Rehabilitation - LMI	\$17,672,825	\$0	\$17,672,825
Homeowner Managed Rehabilitation Option	Homeowner Managed Rehabilitation - UN	\$20,691,298	\$0	\$20,691,298
Interim Mortgage Assistance	Interim Mortgage Assistance Option - LMI	\$8,482,956	\$0	\$8,482,956
Interim Mortgage Assistance	Interim Mortgage Assistance Option - UN	\$2,120,739	\$0	\$2,120,739
Project Delivery	HoAP - Project Delivery - LMI	\$22,778,307	\$0	\$22,778,307
Project Delivery	HoAP - Project Delivery - UN	\$16,494,636		\$16,494,636
	<b>TOTAL</b>	<b>\$392,729,436</b>	<b>\$0</b>	<b>\$392,729,436</b>

**City of Houston**  
**Administration and Planning Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_ MI_Admin- CityOfHouston	Administration Program	\$20,835,088	\$0	\$20,835,088
18-###-###_ MI- Plan- CityofHouston	Planning Program	\$23,100,000	\$0	\$23,100,000
	<b>TOTAL</b>	<b>\$43,935,088</b>	<b>\$0</b>	<b>\$43,935,088</b>

**CITY OF HOUSTON****MULTIFAMILY RENTAL PROGRAM PERFORMANCE STATEMENT**

Subrecipient shall carry out the following housing activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Multifamily Rental Program Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

Project Description

The Subrecipient will repair multifamily properties and build new multifamily developments for Low- to Moderate Income ("LMI") individual households affected by Hurricane Harvey, in order to meet the National Objective of benefiting low- to moderate income persons, thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery and Administration costs, as defined in the State of Texas Plan for Disaster Recovery, enacted May 1, 2018, as amended, will not exceed ten percent (10%) and two percent (2%), respectively, of the total grant allocation. An environmental review must be conducted at all locations prior to the execution and commencement of work.

Eligible activities include rehabilitation, reconstruction, new construction, and acquisition. HCDA Section 105 (a)(1), 105(a)(3-4), 105(a)(7-8), 105(a)(11), and 105(a)(14-15). A waiver eligible under FR-6066-N-01 permits new housing construction.

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
Multifamily Rental Program	LMI	1,530

Multifamily Rental Program

The Subrecipient will offer a Multifamily Rental Housing program to provide an additional one thousand five hundred thirty (1,530) affordable units for low- to moderate-income households within the City of Houston. The program will include new construction, the acquisition and/or rehabilitation of multifamily rental housing, and strategic land acquisition for multifamily developments. The program will address the affordable housing shortage and meet the needs of disaster impacted rental households, including those in public housing. This program will also provide housing designed to meet the needs of special populations. Subrecipient will prioritize transactions leveraged with housing tax credits, conventional equity, conventional debt, tax exempt debt, deferred developer fees, seller notes, in-kind equity and other potential funding sources. The maximum award is forty million dollars (\$40,000,000) per development. The eligibility criteria include the following:

- i. Project must meet Community Development Block Grant-Disaster Recovery eligibility requirements



- ii. Development must be located within the city limits of Houston, except in certain cases where the City and County partner on projects that provide housing
- iii. At a minimum, fifty-one percent (51%) of the units rehabilitated or developed will be reserved for a lien period for low to moderate income households earning eighty percent (80%) or less of the Area Median Family Income (AMFI) at affordable rents. For rehabilitation or reconstruction, the lien period will be a minimum of fifteen (15) years, and for new construction, the lien period will be a minimum of twenty (20) years.
- iv. Any substantial rehabilitation, as defined by 24 CFR 5.100, or new construction of a building with more than four rental units will include installation of broadband infrastructure, as required.
- v. Property owners receiving disaster assistance that triggers the flood insurance purchase requirement have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance in writing and to maintain such written notification in the documents evidencing the transfer of the property, and the transferring owner may be liable if he or she fails to do so.
- vi. Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for "repair, replacement, or restoration" for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. No disaster assistance may be provided for the repair, replacement, or restoration of a property to a person who has failed to meet this requirement.

Refer to the approved Multifamily Rental Program Guidelines for further technical guidance.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**City of Houston**  
**Multifamily Rental Program Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Multifamily Rental Program Guidelines	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**City of Houston**  
**Multifamily Rental Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_MI_R-Multi-LMI_CityOfHouston	Multifamily Rental Program - LMI	\$289,150,722	\$0	\$289,150,722
18-###-###_MI_R-CityOfHouston	Multi-Project Delivery-LMI	\$32,127,858	\$0	\$32,127,858
	<b>TOTAL</b>	<b>\$321,278,580</b>	<b>\$0</b>	<b>\$321,278,580</b>

**CITY OF HOUSTON****PUBLIC SERVICES PERFORMANCE STATEMENT**

Subrecipient shall carry out the following public services activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Public Services Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

**Project Description**

The Subrecipient will provide public services to approximately three hundred thousand (300,000) low- and moderate-income ("LMI") persons affected by Hurricane Harvey to support residents to find housing, remedy housing issues, or to become more resilient in future disasters in order to meet the National Objective of benefiting low- to moderate-income persons, thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery and Administration costs, as defined in the State of Texas Plan for Disaster Recovery, enacted May 1, 2018, as amended, will not exceed ten percent (10%) for housing activities and 6% for non-housing activities and two percent (2%), respectively, of the total grant allocation for both Non-Rental and Rental Activities. An environmental review must be conducted on all projects prior to the execution and commencement of work. Eligible activities include the provision of public services as listed in HCDA Sec. 105(a)(8).

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
Public Services	LMI	300,000

**Public Services Program**

The Subrecipient will provide public services to approximately three hundred thousand (300,000) low to moderate income persons. The program will provide a comprehensive approach to recovery for Houstonians. These services will support residents to find housing, remedy housing issues, and/or become more resilient in future disasters, creating a stronger, more prepared community. Services will be made accessible to individuals with wide-ranging barriers through varying outreach strategies, partnerships with organizations serving people with disabilities, and making accommodations, as needed.

Services may include housing counseling, legal assistance, transportation services, fair housing services, health/mental health services, employment training, workforce development, and other services to address the needs of those impacted by Hurricane Harvey. To address the needs of those impacted who have become homeless or are at risk of becoming homeless. Housing



counseling and legal assistance services will assist in furthering fair housing by addressing housing barriers and allowing residents greater choice to move to neighborhoods with higher opportunity. Employment training and workforce development programs, including those that support housing recovery and housing construction, will address the need for job skills to support recovery. In addition, workforce development will help boost long-term recovery by supplying residents of impacted communities with the necessary skills and opportunities to increase household income. To address the needs of those impacted who have become homeless or are at risk of becoming homeless, services may include subsistence payments, rental housing subsidies, security deposits, and other services to assist in housing and/or rehousing this population.

The provision of public services is also intended to assist residents in preparing and qualifying for housing programs offered by the Subrecipient. Remedying title or tax issues through legal services and providing housing counseling for low to moderate income communities may prepare more residents to become eligible for programs such as the Subrecipients Homeowner Assistance and Homebuyer Assistance Programs.

Refer to the approved Public Services Guidelines for further technical guidance.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**City of Houston**  
**Public Services Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Public Services Guidelines	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**City of Houston**  
**Public Services Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_MI_Public-LMI_CityofHouston	Public Service - LMI	\$56,760,000	\$0	\$56,760,000
18-###-###_MI_Public-LMI_CityofHouston	Public-Project Delivery-LMI	\$3,240,000	\$0	\$3,240,000
	<b>TOTAL</b>	\$60,000,000	\$0	\$60,000,000

**CITY OF HOUSTON****SINGLE FAMILY DEVELOPMENT PROGRAM PERFORMANCE STATEMENT**

Subrecipient shall carry out the following housing activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Single Family Development Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

**Project Description**

The Subrecipient will provide new affordable single family homes for Low- to Moderate-Income ("LMI") individual households affected by Hurricane Harvey, in order to meet the National Objective of benefiting low- to moderate-income persons, thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery and Administration costs, as defined in the State of Texas Plan for Disaster Recovery, enacted May 1, 2018, as amended, will not exceed ten (10%) and two percent (2%), respectively, of the total grant allocation for both Non-Rental and Rental Activities. An environmental review must be conducted at all locations prior to the execution and commencement of work.

New construction is eligible based on information provided in the Federal Register waiving the requirements of 42 U.S.C.(a) HCDA Section 105 (a)(1), 105(a)(4), 105(a)(7-8), 105(a)(11), 105(a)(14-15); A waiver eligible under FR-6066-N-01 permits new housing construction.

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
Single Family Development	LMI	1,020

**Single Family Development Program**

The Subrecipient will offer a Single Family Development Program to provide one thousand twenty (1,020) new affordable single family homes for low and moderate income homebuyers. This program will work in conjunction with other recovery programs to provide housing options for those directly impacted by Hurricane Harvey and those indirectly impacted due to the resulting shortage of available housing.

The construction cost is limited to two hundred thousand dollars (\$200,000) per home, however additional allocations, above the two hundred thousand dollars (\$200,000) threshold may be provided to address certain site-specific conditions including accessibility needs environmental



issues, resiliency/mitigation measures, municipal ordinances, and neighborhood requirements. Additional allocations may be allowed based on the submitted application, onsite inspection and additional requirements that will be outlined in the Standard Operating Procedure. The City will work with applicants who require American with Disabilities (ADA) accommodations to select properties that satisfy their ADA needs; and/or will incorporate ADA construction for new homes built on empty lots. The maximum award of assistance was estimated utilizing information from existing repair and reconstruction programs. The maximum amount of assistance for each unit constructed and inclusive of site-specific conditions shall not exceed two hundred seventy-two thousand dollars (\$272,000). Refer to the approved Single-Family Development Guidelines for further technical guidance.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**City of Houston**  
**Single Family Development Program Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Housing Guidelines	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**City of Houston**  
**Single Family Development Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_MI_SF-LMI_CityofHouston	Single Family Development Program - LMI	\$183,600,000	\$0	\$183,600,000
18-###-###_MI_SF-LMI_CityofHouston	SF Project Delivery -LMI	\$20,400,000	\$0	\$20,400,000
	<b>TOTAL</b>	<b>\$204,000,000</b>	<b>\$0</b>	<b>\$204,000,000</b>

**CITY OF HOUSTON****SMALL RENTAL PROGRAM PERFORMANCE STATEMENT**

Subrecipient shall carry out the following housing activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Small Rental Program Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

**Project Description**

The Subrecipient will rehabilitate small rental properties (one (1) to seven (7) units) for Low- to Moderate-Income ("LMI") individual households affected by Hurricane Harvey in order to meet the National Objective of benefiting low- to moderate-income persons, thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery and Administration costs, as defined in the State of Texas Plan for Disaster Recovery, enacted May 1, 2018, as amended, will not exceed ten (10%) and two percent (2%), respectively, of the total grant allocation for both Non-Rental and Rental Activities. An environmental review must be conducted at all locations prior to the execution and commencement of work.

Eligible Program activities include Rehabilitation, Reconstruction, New Construction, and Acquisition. HCDA Section 105 (a)(1), 105(a)(3-4), 105(a)(7-8), 105(a)(11), and 105(a)(14-15). A waiver eligible under FR-6066-N-01 permits new housing construction

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
Small Rental Program	LMI	600

**Small Rental Program**

The Subrecipient will provide a Small Rental Program to rebuild the affordable rental housing stock damaged by Hurricane Harvey by rehabilitating small rental properties (defined in this program as individual buildings with no more than seven (7) residential units) and create new housing stock through infill development of new small rental properties. This program, along with the Multifamily Rental Program, intends to meet the increased demand for affordable rental housing in Houston by rehabilitating or building approximately six hundred (600) units of rental housing, which will be available to low-and moderate-income households. It will provide financial assistance, through forgivable loans, to landlord applicants who serve a low- to moderate-income market. Refer to the approved Small Rental Program Guidelines for further technical guidance.



Property owner applicants must provide proof that the property taxes are current, have an approved payment plan, or have an approved property tax exemption in place. Applicants must agree to a limited subrogation of any future awards related to Hurricane Harvey according to duplication of benefits requirements and agree to lien period and lien requirements.

Properties must not be in a floodway and have an environmental clearance.

Developments must meet Community Development Block Grant- Disaster Recovery eligibility requirements and be located within the city limits of Houston (except in certain cases where the City and County partner on projects that provide housing).

If a single-family unit is rehabilitated or developed, it must be reserved for low to moderate income households. At least two (2) units in a duplex or triplex must be reserved for low to moderate income households. Any substantial rehabilitation, as defined by 24 CFR 5.100, or new construction of a building with more than four (4) rental units will include installation of broadband infrastructure, as required. Developments may include more than one (1) property, such as with a scattered site rental development.

Property owners receiving disaster assistance that triggers the flood insurance purchase requirement have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance in writing and to maintain such written notification in the documents evidencing the transfer of the property, and the transferring owner may be liable if he or she fails to do so. Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for "repair, replacement, or restoration" for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. No disaster assistance may be provided for the repair, replacement, or restoration of a property to a person who has failed to meet this requirement.

Applicable elevation requirements will apply to development and rehabilitation.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**City of Houston**  
**Small Rental Program Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Small Rental Program Guidelines	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**City of Houston**  
**Small Rental Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_MI_R-Small-LMI_CityofHouston	Small Rental Program - LMI	\$55,084,590	\$0	\$55,084,590
18-###-###_MI_R-Small-LMI_CityofHouston	Small - Project Delivery- LMI	\$6,120,510	\$0	\$6,120,510
	<b>TOTAL</b>	<b>\$61,205,100</b>	<b>\$0</b>	<b>\$61,205,100</b>



**AMENDMENT No. 1 TO  
GLO CONTRACT No. 19-076-008-B357**

THE GENERAL LAND OFFICE (the "GLO") and CITY OF HOUSTON ("Subrecipient"), each a "Party" and collectively "the Parties" to GLO Contract No. 19-076-008-B357 (the "Contract"), desire to amend the Contract.

WHEREAS, the Parties desire to replace Subrecipient's DUNS Number with its Texas Identification Number (TIN); and

WHEREAS, the Parties desire to revise or replace certain language in the Contract to correct certain administrative errors; and

WHEREAS, the Parties desire to revise the Performance Statement, Budget, and Benchmarks for Infrastructure Projects;

NOW, THEREFORE, the Parties agree as follows:

1. Subrecipient's DUNS Number **145057811** is deleted from the Contract and replaced with the Texas Identification Number (TIN) **17460011640**.
2. ATTACHMENT A to the Contract, **Performance Statements, Budget, and Benchmarks for Housing Projects**, is deleted in its entirety and replaced with the **Revised Performance Statement, Budget, and Benchmarks for Housing Projects**, attached hereto and incorporated herein in its entirety for all purposes as **ATTACHMENT A-1**.
3. SECTION 8.28 of the Contract is deleted in its entirety and replaced with the following:

**"8.28 STATEMENTS OR ENTRIES**

**WARNING: ANY PERSON WHO KNOWINGLY MAKES A FALSE CLAIM OR STATEMENT TO HUD MAY BE SUBJECT TO CIVIL OR CRIMINAL PENALTIES UNDER 18 U.S.C. § 287, 18 U.S.C. § 1001, AND 31 U.S.C. § 3729.**

Except as otherwise provided under federal law, any person who knowingly and willfully falsifies, conceals, or covers up a material fact by any trick, scheme, or device; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document despite knowing the writing or document to contain any materially false, fictitious, or fraudulent statement



or entry shall be prosecuted under Title 18, United States Code, § 1001.

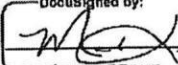
**Under penalties of 18 U.S.C. § 287, 18 U.S.C. § 1001, and 31 U.S.C. § 3729, the undersigned Subrecipient representative hereby declares that he/she has examined this Contract and Attachments and, to the best of his/her knowledge and belief, any statements, entries, or claims made by Subrecipient are true, accurate, and complete."**






4. This Amendment shall be effective upon the date of the last signature.
5. The terms and conditions of the Contract not amended herein shall remain in force and effect.

**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE FOR AMENDMENT No. 1 TO  
GLO CONTRACT No. 19-076-008-B357**

**GENERAL LAND OFFICE**

DocuSigned by:  
  
Mark A. Havens, Chief Clerk/  
Deputy Land Commissioner  
Date of execution: 4/29/2020

OGC		_____
PM		_____
SDD		_____
DGC		_____
GC		_____

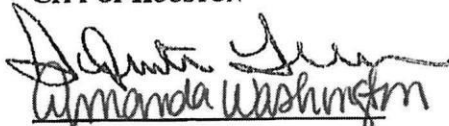
**ATTACHED TO THIS AMENDMENT:**

**ATTACHMENT A-1** Revised Performance Statement, Budget, and Benchmarks for Housing Projects

**CITY OF HOUSTON SIGNATURE PAGE FOLLOWS**

**CITY OF HOUSTON SIGNATURE PAGE FOR AMENDMENT NO. 1 TO  
GLO CONTRACT NO. 19-076-008-B357**

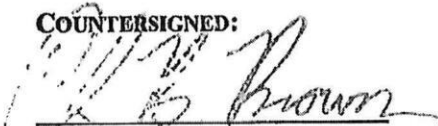
**CITY OF HOUSTON**

  
**MAYOR**

4-8-2020  
**DATE**

  
**CITY SECRETARY Assistant**


**COUNTERSIGNED:**

  
**CITY CONTROLLER**  
*Leroy P. Brown*

**DATE OF COUNTERSIGNATURE:**

4-14-2020

**APPROVED:**

DocuSigned by:  
  
4/7/2020  
**DIRECTOR, HOUSING AND  
COMMUNITY DEVELOPMENT  
DEPARTMENT**

**APPROVED AS TO FORM:**

DocuSigned by:  
  
4/8/2020  
**SENIOR ASSISTANT CITY ATTORNEY**



**SUBRECIPIENT NAME: CITY OF HOUSTON**

**HOUSING PERFORMANCE STATEMENT**

Subrecipient shall carry out the following housing activities in the City of Houston area in strict accordance with the terms of Subrecipient's or GLO's approved Housing Guidelines (where applicable), Contract, and all Attachments, whether attached physically or incorporated by reference.

Project Description

Subrecipient will fund the purchase of multifamily properties, assist with the relocation of residents, and demolish structures to reduce density in vulnerable areas. The proposed Activities will remove housing from the floodplain and prevent residential flooding in the future. This is a voluntary program and eminent domain will not be used. The City and/or a subrecipient, such as the Harris County Flood Control District, will carry out the program. Properties will be returned to green space to help absorb water and mitigate street and residential flooding in the future. Only properties impacted by a 2016 flood event are eligible. Properties will be dedicated and maintained in perpetuity for use that is compatible with open space. Subrecipient will remove approximately 3 properties from the floodplain and/or high flood risk areas. The City of Houston will utilize assessments provided with Harris County MOD and FEMA data to identify areas or homes that are at risk of flooding again and were impacted by the 2016 flood events. The program will benefit an area where at least 51% of residents are low- and moderate-income (LMI) households, as well as arrange for the demolition of dilapidated structures and conversion of property to open space. An environmental review must be conducted at all locations prior to the execution and commencement of work.

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Properties
Buyout	LMI	3

Buyout Program (BP-LMI)

Subrecipient will remove approximately 3 of properties from high flood risk areas.

Subrecipient must ensure that, upon completion, the acquired (buyout) property will be dedicated and maintained in perpetuity for use that is compatible with open space. The locations of these properties have not been determined at this time.

Subrecipient will offer relocation assistance for up to an estimated 3 properties. Assistance will be provided to residents located in a floodplain that agree to relocate outside of the floodplain. The properties acquired with funds provided under this Contract may be used for green space or as recreational area.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**CITY OF HOUSTON**  
**HOUSING BENCHMARKS**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Housing Guidelines (where applicable)	15%	15%
15% of Project Funds drawn by subrecipient	15%	30%
25% of Project Funds drawn by subrecipient	15%	45%
50% of Project Funds drawn by subrecipient	15%	60%
75% of Project Funds drawn by subrecipient	15%	75%
100% of Project Funds drawn or Activities closed by subrecipient	20%	95%
Closeout of grant accepted	5%	100%

**CITY OF HOUSTON**  
**HOUSING BUDGET**

HUD Activity Type	Program Activity Type	Grant Award	Other Funds	Total
Acquisition - buyout of residential properties	Buyout Program – LMI	\$22,178,653	\$0	\$22,178,653
Acquisition - buyout of residential properties	Buyout Program – Project Delivery– LMI	\$838,312	\$0	\$838,312
Administration	Buyout Program - Admin- LMI	\$469,733	\$0	\$469,733
<b>TOTAL</b>		<b>\$23,486,698</b>	<b>\$0</b>	<b>\$23,486,698</b>



**LEASING AGREEMENT**  
**EXHIBIT "B"**  
**FEDERAL REQUIREMENTS**

## **FEDERAL REQUIREMENTS**

### **NONEXCLUSIVE LIST OF APPLICABLE LAWS, RULES, AND REGULATIONS**

If applicable to a Program or Activity, Provider must be in compliance with the following laws, rules, and regulations; and any other state, federal, or local laws, rules, and regulations as may become applicable throughout the term of the Contract, and Provider acknowledges that this list may not include all such applicable laws, rules, and regulations.

**Provider and is deemed to have read and understands the requirements of each of the following, if applicable to the Project under this Contract:**

#### **GENERALLY**

The Acts and Regulations specified in this Contract;

Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Public Law 115-56);

The Housing and Community Development Act of 1974 (12 U.S.C. § 5301 *et seq.*);

The United States Housing Act of 1937, as amended, 42 U.S.C. § 1437f(o)(13) (2016) and related provisions governing Public Housing Authority project-based assistance, and implementing regulations at 24 C.F.R. Part 983 (2016);

Cash Management Improvement Act regulations (31 C.F.R. Part 205);

Community Development Block Grants (24 C.F.R. Part 570);

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Disaster Recovery Implementation Manual;

GLO Housing Guidelines; and

State of Texas Plan for Disaster Recovery: Hurricane Harvey – Round 1, dated April 6, 2018, as amended.

#### **CIVIL RIGHTS**

Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d *et seq.*); 24 C.F.R. Part 1, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e, *et seq.*);

Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. § 3601, *et seq.*), as amended;

Executive Order 11063, as amended by Executive Order 12259, and 24 C.F.R. Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063"; The failure or

refusal of Provider to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;

The Age Discrimination Act of 1975 (42 U.S.C. § 6101, *et seq.*); and

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794.) and "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development", 24 C.F.R. Part 8. By signing this Contract, Provider understands and agrees that the activities funded shall be performed in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, *et seq.*), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system.

#### **LABOR STANDARDS**

The Davis-Bacon Act, as amended (originally, 40 U.S.C. §§ 276a-276a-5 and re-codified at 40 U.S.C. §§ 3141-3148); 29 C.F.R. Part 5;

The Copeland "Anti-Kickback" Act (originally, 18 U.S.C. § 874 and re-codified at 40 U.S.C. § 3145); 29 C.F.R. Part 3;

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (originally, 40 U.S.C. §§ 327A and 330 and re-codified at 40 U.S.C. §§ 3701-3708);

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act) (29 C.F.R. Part 5); and

Federal Executive Order 11246, as amended.

#### **EMPLOYMENT OPPORTUNITIES**

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u); 24 C.F.R. §§ 135.3(a)(2) and (a)(3);

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. § 4212);

Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1688); and

Federal Executive Order 11246, as amended.

#### **GRANT AND AUDIT STANDARDS**

Single Audit Act Amendments of 1996, 31 U.S.C. § 7501;

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Uniform Grant and Contract Management Act (Texas Government Code Chapter 783) and the Uniform Grant Management Standards, issued by Governor's Office of Budget and Planning; and

Title 1 Texas Administrative Code § 5.167(c).

#### **LEAD-BASED PAINT**



Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831(b)).

#### **HISTORIC PROPERTIES**

The National Historic Preservation Act of 1966 as amended (16 U.S.C. § 470, *et seq.*), particularly sections 106 and 110 (16 U.S.C. §§ 470 and 470h-2), except as provided in §58.17 for Section 17 projects;

Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 C.F.R., 1971-1975 Comp., p. 559, particularly section 2(c);

Federal historic preservation regulations as follows: 36 C.F.R. Part 800 with respect to HUD programs; and

The Reservoir Salvage Act of 1960, as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. § 469, *et seq.*), particularly section 3 (16 U.S.C. § 469a-1).

#### **ENVIRONMENTAL LAW AND AUTHORITIES**

Environmental Review Procedures for Recipients assuming HUD Environmental Responsibilities (24 C.F.R. Part 58, as amended);

National Environmental Policy Act of 1969, as amended (42 U.S.C. §§ 4321-4347); and

Council for Environmental Quality Regulations for Implementing NEPA (40 C.F.R. Parts 1500-1508).

#### **FLOODPLAIN MANAGEMENT AND WETLAND PROTECTION**

Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 C.F.R., 1977 Comp., p. 117, as interpreted in HUD regulations at 24 C.F.R. Part 55, particularly Section 2(a) of the Order (For an explanation of the relationship between the decision-making process in 24 C.F.R. Part 55 and this part, see § 55.10.); and

Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 C.F.R., 1977 Comp., p. 121 particularly Sections 2 and 5.

#### **COASTAL ZONE MANAGEMENT**

The Coastal Zone Management Act of 1972 (16 U.S.C. § 1451, *et seq.*), as amended, particularly sections 307(c) and (d) (16 U.S.C. § 1456(c) and (d)).

#### **SOLE SOURCE AQUIFERS**

The Safe Drinking Water Act of 1974 (42 U.S.C. §§ 201, 300(f), *et seq.*, and 21 U.S.C. § 349) as amended; particularly section 1424(e)(42 U.S.C. § 300h-3(e)); and

Sole Source Aquifers (Environmental Protection Agency-40 C.F.R. part 149.).

#### **ENDANGERED SPECIES**

The Endangered Species Act of 1973 (16 U.S.C. § 1531, *et seq.*) as amended, particularly section 7 (16 U.S.C. § 1536).

#### **WILD AND SCENIC RIVERS**

The Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271, *et seq.*) as amended, particularly sections 7(b) and (c) (16 U.S.C. § 1278(b) and (c)).

#### **AIR QUALITY**

The Clean Air Act (42 U.S.C. § 7401, *et seq.*) as amended, particularly sections 176(c) and (d) (42 U.S.C. §7506(c) and (d)).

Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency-40 C.F.R. Parts 6, 51, and 93).

**FARMLAND PROTECTION**

Farmland Protection Policy Act of 1981 (7 U.S.C. § 4201, *et seq.*) particularly sections 1540(b) and 1541 (7 U.S.C. §§ 4201(b) and 4202); and

Farmland Protection Policy (Department of Agriculture-7 C.F.R. part 658).

**HUD ENVIRONMENTAL STANDARDS**

Applicable criteria and standards specified in HUD environmental regulations (24 C.F.R. Part 51)(other than the runway clear zone and clear zone notification requirement in 24 C.F.R. § 51.303(a)(3); and

HUD Notice 79-33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979.

**ENVIRONMENTAL JUSTICE**

Executive Order 12898 of February 11, 1994—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (59 FR 7629), 3 C.F.R., 1994 Comp. p. 859.

**SUSPENSION AND DEBARMENT**

Use of debarred, suspended, or ineligible contractors or subrecipients (24 C.F.R. § 570.609);

General HUD Program Requirements; Waivers (24 C.F.R. Part 5); and

Nonprocurement Suspension and Debarment (2 C.F.R. Part 2424).

**OTHER REQUIREMENTS**

Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58).

**ACQUISITION / RELOCATION**

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601, *et seq.*), 24 C.F.R. Part 42, and 24 C.F.R. § 570.606.

**FAITH-BASED ACTIVITIES**

Executive Order 13279 of December 12, 2002 - Equal Protection of the Laws for Faith-Based and Community Organizations, (67 FR 77141).

**EXHIBIT "C-1"**  
**OPERATING BUDGET**



Applian Way - 3200 N MacGregor  
Pro Forma Budget\*

	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21
Revenue	\$45,190	\$45,190	\$45,190	\$45,190	\$45,190	\$45,190	\$45,190	\$40,671	\$31,633	\$18,076	\$9,038	\$4,519	\$0
Expenses													
Utilities	\$6,977	\$6,977	\$6,977	\$6,977	\$6,977	\$6,977	\$6,977	\$6,279	\$4,884	\$2,791	\$1,395	\$698	\$0
Insurance	\$2,170	\$2,170	\$2,170	\$2,170	\$2,170	\$2,170	\$2,170	\$0	\$0	\$0	\$0	\$0	\$0
Property Management Fees	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900
Office Salary	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700
Office Rent	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400
Trash	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350
Office Internet and Phone	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300
Advertising and Promotion	\$220	\$220	\$220	\$220	\$220	\$220	\$220	\$0	\$0	\$0	\$0	\$0	\$0
Software Costs	\$150	\$150	\$150	\$150	\$150	\$150	\$150	\$150	\$150	\$150	\$150	\$150	\$150
Pest Control	\$90	\$90	\$90	\$90	\$90	\$90	\$90	\$81	\$63	\$36	\$18	\$9	\$0
Maintenance	\$2,260	\$2,260	\$2,260	\$2,260	\$2,260	\$2,260	\$2,260	\$2,034	\$1,862	\$904	\$452	\$226	\$0
Net Operating Income	\$28,674	\$28,674	\$28,674	\$28,674	\$28,674	\$28,674	\$28,674	\$27,477	\$20,304	\$9,545	\$2,373	(\$1,214)	(\$4,800)

\*Estimate based on Effective Date of November 2020 with Feasibility of 90 Days with two 30 Day Extensions. Estimated closing in May 2021. Wind down period from June 2021 to November 2021

## SCHEDULE 1

### VOLUNTARY ACQUISITION – INFORMATIONAL NOTICE

**[EXECUTED TO BE INSERTED]**

VOLUNTARY ACQUISITION – - Informational Notice - (Agencies with Eminent Domain Authority)

Grantee or Agency Letterhead

### NOTICE OF INTEREST

January 8, 2020

Dear Mr. Wood:

City of Houston, is interested in acquiring property you own at 3200 North MacGregor Way, Houston Texas 77004 for a proposed project which may receive funding assistance from the U.S. Department of Housing and Urban Development (HUD) under the Multi Family Buyout Program. Federal funds are administered by the City's Housing and Community Development Department.

Please be advised that the City of Houston possess eminent domain authority to acquire property, however, in the event you are not interested in selling your property, or if we cannot reach an amicable agreement for the purchase of your property, we will not pursue its acquisition under eminent domain. Your property is not a necessary part of the proposed project and is not part of an intended, planned, or designed project area where substantially all of the property within the area is to be acquired.

The fair market value is estimated to be \$5,580,000.00 to purchase your property. However, since this transaction is voluntary; current or future negotiations may result in a different price that may be the same, or higher or lower than this amount. Please contact us at your convenience if you are interested in selling your property.

The property must be evaluated in accordance with the environmental regulations at 24 C.F.R. Part 58 and the National Environmental Policy Act (NEPA) at 40 C.F.R. Parts 1500-1508, as applicable. If the information found indicates that the property is not compliant with an applicable law or authority, the Seller(s) and Buyer(s) must be provided the opportunity to withdraw from the agreement without penalty.

In accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), owner-occupants who move as a result of a voluntary acquisition are not eligible for relocation assistance. However, tenant-occupants displaced as a result of voluntary acquisition may be entitled to URA relocation assistance and must be informed in writing as soon as feasible.

If you have any questions about this notice or the proposed project, please contact

Rupa Sen, Real Estate Manager  
2100 Travis Street, 9<sup>th</sup> FL | Houston, Texas 77002  
832-394-6217 | [rupa.sen@houstontx.gov](mailto:rupa.sen@houstontx.gov)

Very truly yours,

DocuSigned by:  
Tom McCasland  
B0424304870F48F...

Tom McCasland, Director

**SELLER'S RECEIPT AND ACKNOWLEDGMENT OF NOTICE OF INTEREST**

DocuSigned by:  
Kevin Wood  
1D92200FE04E4DA...

11/2/2020

Name:  
Title: Managing Member

Date

Name:  
Title:

Date



## SCHEDULE 2

### TEXAS DISCLOSURES

1.1 **Notice Required by Chapter 49, Water Code.** If all or any part of the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services pursuant to Chapter 49 of the Texas Water Code, then Seller shall deliver to Purchaser, and Purchaser shall execute, the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district prior to or concurrently with the execution and delivery of this Agreement.

1.2 **Notice Required by § 13.257, Water Code.** Pursuant to Section 13.257 of the Texas Water Code, please be advised as follows: "The real property, described above, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property." Purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of this Agreement for the purchase of the Land and improvements described herein.

1.3 **Annexation Notice.** To the extent Section 5.011 of the Texas Property Code is applicable to all or any portion of the Property or this transaction, Purchaser hereby acknowledges and agrees that Seller delivered the following notice to Purchaser prior to execution of this Agreement:

#### "NOTICE REGARDING POSSIBLE ANNEXATION

If the property that is the subject of this Agreement is located outside the limits of a municipality, the property may now or later be included in the extraterritorial jurisdiction. To determine if the property is located within a municipality's extraterritorial jurisdiction or is likely to be located with a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the property for further information. The foregoing notice has been given solely in order to comply with Section 5.011 of the Texas Property Code and Seller makes no representation whether and to what extent the property may already be located within the limits of a municipality."

#### 1.4 **STATUTORY NOTICE REGARDING POSSIBLE LIABILITY FOR ADDITIONAL TAXES.**

**"STATUTORY NOTICE REGARDING POSSIBLE LIABILITY FOR ADDITIONAL TAXES.** If for the current ad valorem tax year the taxable value of the land that is the subject of this Agreement is determined by a

special appraisal method that allows for appraisal of the land at less than its market value, the person to whom the land is transferred may not be allowed to qualify the land for that special appraisal in a subsequent tax year and the land may then be appraised at its full market value. In addition, the transfer of the land or a subsequent change in the use of the land may result in the imposition of an additional tax plus interest as a penalty for the transfer or the change in the use of the land. The taxable value of the land and the applicable method of appraisal for the current tax year is public information and may be obtained from the tax appraisal district established for the County in which the land is located."

1.5 **Intentionally Deleted.**

1.6 **Additional Texas Statutory Notices.**

1.6.1 **. INTENTIONALLY DELETED**

1.6.2 **Notice of Property Located in an Agricultural Development District.** If the Property is located in an agricultural development district, then in accordance with § 60.063 of the Texas Agricultural Code: (1) Seller shall give to Purchaser a written notice that the Property is located in such a district at least one (1) business day prior to the expiration of the Option Period; (2) Purchaser agrees to acknowledge receipt of the notice in writing once received; and (3) at the Closing, a separate copy of the notice with current information about the district will be executed by Seller and Purchaser and recorded in the deed records of the county in which the Property is located.

1.6.3 **Public Improvement Districts.** If the Property is in a public improvement district, §5.014 of the Texas Property Code, requires Seller to notify Purchaser as follows: As a Purchaser of this Property, Purchaser is obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372 of the Texas Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Purchaser's failure to pay the assessments could result in a lien on and the foreclosure of the Property.

1.6.4 **Propane Gas System Service Area.** If the Property is located in a propane gas system service area owned by a distribution system retailer, Seller must give Purchaser written notice as required by § 141.010 of the Texas Utilities Code, which notice shall be given at least one (1) business day prior to the expiration of the Option Period.

## ACKNOWLEDGMENT RECEIPT OF EARNEST MONEY

GF: CTT20717782A

Date: February 12, 2021

Closer: RUDY RUIZ

**EXECUTION (IF APPLICABLE) OF THE ATTACHED CONTRACT BY CHICAGO TITLE IS SUBJECT TO THE TERMS AND PROVISIONS OF TEXAS BOARD OF INSURANCE PROCEDURAL RULE P-35.**

The undersigned, CHICAGO TITLE, acknowledges receipt of the earnest money mentioned in the attached contract, in the sum of \$60,000.00 and represented by: Wire Transfer on February 12, 2021.

In the event said sum is represented by any check or checks, the undersigned does not assume any liability for the disbursement of said sum to any person, firm or corporation until all said checks have been paid by the bank or other institution upon which they are drawn.

The undersigned does not agree to pay any portion of said sum to any person, firm or corporation unless written authority is given to the undersigned by the parties to the contract whose signatures appear on the foregoing contract, or their duly authorized agent.

In the event the earnest money receipted for herein is released because the transaction contemplated by the foregoing contract is not closed, CHICAGO TITLE may deduct from such earnest money any direct expenses incurred by it or for which it has been billed, such as tax certificates, recording fees, delivery charges, copies, attorney's fees for preparation of closing documents, surveyor fees, etc.

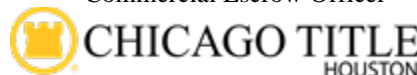
Regardless of the terms of the earnest money contract, CHICAGO TITLE is not responsible for placing said sums in any interest bearing accounts without express written authorization from the purchaser; such authorization to be in a form and manner acceptable to CHICAGO TITLE. The parties to this escrow acknowledge that the maintenance of escrow accounts with some depository institutions may result in Escrow Holder or its affiliates being provided with bank services, accommodations or other benefits by the depository institution. Escrow Holder or its affiliates also may elect to enter into other business transactions with or obtain loans for investment or other purposes from the depository institution. All such services, accommodations and other benefits shall accrue to Escrow Holder or its affiliates, and Escrow Holder or its affiliates shall have no obligation to account to the parties to the escrow for the value of such services, accommodations or other benefits.

**NOTICE OF OPPORTUNITY:** You have the opportunity to earn interest on your escrowed funds by requesting Escrow Holder to set up an interest bearing account on your behalf. Escrow Holder will inform you of any fees it will charge to establish the account. Interest earned is dependent upon the amount of the deposit, the time of deposit and the prevailing interest rate at the time.

No other conditions, stipulations or obligations which may be set out in the foregoing contract shall be binding on the undersigned if such be in conflict with the provisions of this endorsement or in violation of rules and regulations governing title insurance companies in the State of Texas.

By: \_\_\_\_\_

Rudy Ruiz  
Vice President  
Commercial Escrow Officer





4600016319  
2021-0066

### AGREEMENT FOR OPTION TO PURCHASE REAL PROPERTY

This Agreement for Option to Purchase Real Property (this "Agreement") is made and entered into by and between **APPIAN WAY OPPORTUNITY FUND, LLC**, a Texas limited liability company ("Seller"), and the **CITY OF HOUSTON, TEXAS**, a municipal corporation situated in Harris, Fort Bend and Montgomery Counties, Texas ("Purchaser"). Seller and Purchaser shall sometimes hereinafter collectively be referred to as the "**parties**" and each as a "**party**". This Agreement shall be effective on the date that it is countersigned by the City Controller of the City of Houston, Texas (the "Effective Date").

**WHEREAS**, Purchaser is a subrecipient of Hurricane Harvey Community Development Block Grant – Disaster Recovery ("CDBG-DR") funds administered by the U.S. Department of Housing and Urban Development ("HUD") through the Texas General Land Office ("GLO"); and

**WHEREAS**, Purchaser desires to utilize CDBG-DR funds to purchase that certain Property, as defined in Section 1 of this Agreement, and to fund certain related CDBG-DR-eligible expenses related to the purchase thereof, for the purpose of meeting the CDBG-DR National Objective of benefitting low- and moderate-income ("LMI") persons by creating an LMI Area benefit through the expansion of greenspace and/or detention, which will benefit at least 51% of the LMI residential service area; and

**WHEREAS**, in consideration of the Option Fee (as defined herein), Seller desires to grant to Purchaser the exclusive option to purchase the Property on the terms and conditions outlined herein;

**NOW, THEREFORE**, Seller and Purchaser hereby agree as follows:

**1. Option to Purchase.** Purchaser has the exclusive option and right (the "Option") to purchase and accept from Seller, for the Purchase Price (as hereinafter defined) and subject to the terms and conditions of this Agreement, the following tract or parcel of land generally known as 3200 N. MacGregor Way, Houston, Texas, 77004:

A tract or parcel of land containing approximately 1.092 acres (47,890 square feet) of land conveyed to Appian Way Opportunity Fund LLC, a Texas limited liability company, by deed dated June 18, 2019, recorded June 19, 2019, under Clerk's File No. RP-2019-259594, Official Public Records, Harris County, Texas,

being more particularly described in **Exhibit "A"** and being made a part of this Agreement (the "Land"), together with all improvements thereon (including approximately 37,138 square feet of multi-family residential improvements) and all fixtures permanently attached thereto, including but not limited to plumbing and wiring (but excluding Chattels, as that term is defined in Section 10 of this Agreement), all rights and interests appurtenant to the above-described Land, including all of Seller's rights, title and interest, if any, in and to adjacent streets, alleys, rights-of-way, easements, any adjacent strips or gores of land (collectively, the "Improvements"). The Land and Improvements are collectively referred to in this Agreement as the "Property". Notwithstanding the legal description for the Land contained in this Agreement, the parties agree that for purposes of conveyance of the Land, the final location, acreage, and metes and bounds description of the Land shall be determined by the New/Updated Survey described in Section 6.d. of this Agreement, which will be attached as the legal description to include in the Deed referred to in Section 8.b. of this Agreement. The Property shall be conveyed to Purchaser at Closing (as defined in Section 8.b. of this

Agreement), in its entirety, free and clear of all liens, claims, easements and encumbrances whatsoever, except for the Permitted Encumbrances (as defined in Section 6.g.ii. of this Agreement).

2. **Purchase Price.** The price for which Seller agrees to sell and convey the Property to Purchaser, and which Purchaser agrees to pay to Seller, subject to the terms of this Agreement, is in the amount of **SIX MILLION FIFTY THOUSAND DOLLARS AND 00/100 (\$6,050,000.00)**. Purchaser shall pay the Purchase Price to Seller by wire of such amount in immediately available funds to an account designated by the Title Company (as defined in Section 5.a. of this Agreement) on the Closing Date (as defined in Section 8.b. of this Agreement), subject to any adjustments provided for in this Agreement.

3. **Seller's Representations, Warranties and Covenants.** Seller hereby represents and warrants to, and covenants with Purchaser that:

a. Seller will have, as of the Closing Date, good and indefeasible title in fee simple to the Property, subject only to the Permitted Encumbrances, and free and clear of all liens;

b. As of the Closing Date, there will be no leases, franchises, licenses, occupancy agreements, or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to the Property, or any prepaid rents or deposits, security or otherwise, made by tenants, other than as has been disclosed in writing to Purchaser;

c. There are no, and, as of the Closing Date, there will be no actions, suits, claims, assessments that are past due, or proceedings pending or, to the actual knowledge of Seller, threatened that could materially adversely affect the ownership, operation, or maintenance of the Property or Seller's ability to perform under this Agreement, other than as has been disclosed in writing to Purchaser;

d. The Property is located: within the city limits of the City of Houston, Texas; in a targeted buyout area under the City's Hurricane Harvey CDBG-DR Multi-family Voluntary Buyout Program (the "Program"); and in the 100-year floodplain; and the Property was substantially damaged by Hurricane Harvey;

e. From the Effective Date of this Agreement until the Closing Date, Seller shall use good faith efforts to promptly notify, in writing, Purchaser of any material change with respect to the Property or with respect to any information respecting the Property and obtained by seller prior to or after the Effective Date;

f. From the Effective Date of this Agreement until the Closing Date, Seller shall:

(i) maintain and operate the Property in a good and business-like manner in accordance with good and prudent business practices, and not commit or consent to be committed any waste to the Property;

(ii) not enter into any agreement, instrument, or covenant or take any action that would constitute an encumbrance of the Property, that would bind Purchaser or the Property, or that would be

outside the normal scope of maintaining and operating the Property, without the prior written consent of Purchaser; and

(iii) afford Purchaser and its representatives the continuing right to enter, inspect, and perform tests on the Property at reasonable hours and upon reasonable notice, and provide for inspection to Purchaser any and all books, records, contracts, and other documents or data pertaining to the ownership, insurance, operation, or maintenance of the Property.

g. All bills, property taxes, and other payments due from Seller with respect to the ownership, operation, and maintenance of the Property through the Closing Date have been (or by the Closing Date will be) paid by Seller and no liens, delinquent property taxes, or other claims for the same have been (or by the Closing Date will be) filed or asserted against any part of the Property;

h. Seller has full right, power and authority to execute, deliver, and perform this Agreement without obtaining any consents or approvals from, or the taking of any other actions with respect to, any third parties (or if any such consents, approvals, or other actions are required, the same will be accomplished prior to the Seller's execution of this Agreement and Purchaser's submission of this Agreement to the City Council of the City of Houston, Texas for its approval), and this Agreement, when executed and delivered by Seller and Purchaser, in the manner and subject to the approvals described herein, will constitute the valid and binding agreement of Seller, enforceable against Seller in accordance with its terms;

i. Seller is not a "foreign person" (as defined in Internal Revenue Code Section 1445(f)(3) and its appurtenant regulations);

j. Seller (i) is not in receivership or dissolution, (ii) has not made any assignment for the benefit of creditors, (iii) has not admitted in writing their inability to pay their debts as they mature, (iv) has not been adjudicated a bankrupt, (v) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law, or any other similar law or statute of the United States or any state, or (vi) does not have any such petition described in (v) filed against Seller;

k. Seller is not "debarred" as cited on federal and state debarment lists in accordance with 24 C.F.R. Section 570.609 or other applicable law;

l. Seller is not indebted to the City nor in default of, or the subject of any negative collection actions relating to, any financial obligation to the City of Houston, Texas, any other public agency, or private lender;

m. Seller does not discriminate based on ethnicity, race, color, creed, religion, gender, national origin, age, disability, marital status, sexual orientation, gender identity, or Veteran's discharge status; and

n. Seller is aware that Purchaser is relying on the representations and warranties contained in this Agreement, and that but for such representations and warranties by Seller, Purchaser would not enter into this Agreement.

**4. Purchaser's Representations, Warranties, and Covenants.**  
Purchaser hereby represents and warrants to, and covenants with, Seller that:



a. Purchaser has full right, power, and authority to execute, deliver, and perform this Agreement, subject to approval of this Agreement by the City Council of the City of Houston, Texas, the signature of the Mayor of the City of Houston, Texas, and the countersignature of the City Controller of the City of Houston, Texas, but otherwise without obtaining any consents or approvals from, or the taking of any other actions with respect to, any third parties, except for such consents, approvals and actions outlined herein, which consents, approvals, or other actions must be accomplished prior to the expiration of the Option Period (as defined in Section 8.a. of this Agreement).

b. The Purchaser's ability to proceed to Closing is subject to the availability and approval of federal funds, including CDBG-DR funds, to purchase the Property, prior to the expiration of the Option Period.

c. The Purchaser's exercise of the Option is subject to the Purchaser's determination during the Option Period on the desirability of the Property as a result of the Purchaser's completion of due diligence investigations regarding the Property, including environmental review of the Property in accordance with the applicable law and the terms of this Agreement.

d. This Agreement, when executed and delivered by Seller and Purchaser, in the manner and subject to the approvals described in this Section 4, will constitute the valid and binding agreement of Purchaser, enforceable against Purchaser in accordance with its terms. Purchaser is aware that Seller is relying on the representations and warranties contained in this Agreement, and that but for such representations and warranties by Purchaser, Seller would not enter into this Agreement.

#### 5. Option Fee.

a. The option fee for this Agreement is **SIXTY THOUSAND AND 00/100 DOLLARS (\$60,000)** (the "Option Fee"). The Option Fee shall be deposited in escrow with Chicago Title Insurance Company (the "Title Company") within fifteen (15) days following the Effective Date. The Title Company shall acknowledge receipt of the Option Fee and shall hold the Option Fee in an interest-bearing account.

Escrow Officer:

Mr. Rudy Ruiz  
Chicago Title Company  
3700 Buffalo Speedway Suite 1100  
Houston, TX 77098  
Telephone: (713)-418-7032  
E-mail: rudy.ruiz@ctt.com

b. A portion of the Option Fee in the initial amount of **THIRTY THOUSAND AND 00/100 DOLLARS (\$30,000)** shall be non-refundable and forfeited to Seller as earnest money if Purchaser terminates the Agreement during the initial ninety (90) days of the Option Period due to inability to obtain HUD or GLO environmental clearance for the Property or any other reason, provided that the amount of the Option Fee that is non-refundable (the "Non-Refundable Option Deposit") will increase in the event of an extension of the Option Period, as detailed in Section 5.c., and the Title Company shall release the Non-Refundable Option Deposit to Seller within five (5) business days after the Agreement is terminated. At Closing (as defined in Section 8.b. of this Agreement), the Non-Refundable Option Deposit shall be applied to the Purchase Price.

c. Purchaser shall have the right to elect to extend the initial ninety (90)-day Option Period (as defined below) by exercising up to three (3) extension rights of thirty (30) days each by delivering written notice of such election to exercise an extension right (each, an "Extension Notice") to Seller and the Title Company not later than by 5:00 p.m. Central Time on the date which is three (3) business days prior to the expiration of the then-current Option Period.

(i) For the first extension of the Option Period, the Non-Refundable Option Deposit shall be increased by **TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00)** for a total Non-Refundable Option Deposit of **FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000.00)**.

(ii) For the second extension of the Option Period, the Non-Refundable Option Deposit shall be increased by **FIVE THOUSAND AND 00/100 DOLLARS (\$5,000.00)** for a total Non-Refundable Option Deposit of **FIFTY-FIVE THOUSAND AND 00/100 DOLLARS (\$55,000.00)**.

(iii) For the third extension of the Option Period, the Non-Refundable Option Deposit shall be increased by **FIVE THOUSAND AND 00/100 DOLLARS (\$5,000.00)** for a total Non-Refundable Option Deposit of **SIXTY THOUSAND AND 00/100 DOLLARS (\$60,000.00)**.

The Option Fee shall be applied to the Purchase Price if Purchaser elects to exercise the Option and proceed to Closing. If Purchaser fails to issue an Extension Notice to extend the Option Period, this Agreement shall automatically terminate, in which event the Title Company shall release the Non-Refundable Option Deposit to Seller, and neither party hereto shall have any further rights, duties, obligations or liabilities hereunder except those provisions hereof that expressly survive such termination.

## **6. Option Period.**

a. Within ten (10) days following the Effective Date, Seller shall provide to Purchaser the following items in Seller's possession or in the possession of a third party who is controlled by Seller or who had or is under a contract with Seller with respect to the Property: (i) copies of all tax bills and government assessments relating to the Property for the past three (3) years, if any; (ii) copies of all documents, if any, indicating compliance or noncompliance with all governmental entities with jurisdiction of any sort over the Property; (iii) copies of all soil, engineering and environmental reports and environmental testing, inspection or remediation services with respect to the Property, if any.; (iv) a copy of any existing survey (the "Existing Survey") of the Property; (v) copies of any contracts not cancelable in thirty (30) days; (vi) copies of all current leases, licenses, and other agreements granting any third party any rights to possess or use any portion of the Property, and any other agreements affecting the Property that would survive Closing; and (vii) any income statements and balance sheets.

b. Commencing on the Effective Date and ending at the expiration of ninety (90) days, plus any extension period authorized under Section 5.d. of this

Agreement (collectively, the "Option Period"), in accordance with Section 8.a. of this Agreement, by Purchaser exercising the Option, Purchaser shall have the right to enter the property during the Option Period to conduct a due diligence investigation of the Property at Seller's sole cost and expense (but subject to reimbursement at Closing as provided in Section 8.c.(i).(5)), including but not limited to analyzing any land use or regulatory issues affecting the Purchaser's proposed development of the Property, reviewing Seller's environmental reports, if any, conducting tests and surveys, and undertaking such other reviews and activities as Purchaser, in its sole but reasonable discretion, may deem necessary, and to obtain required third party approvals necessary to proceed with the purchase of the Property, including, but not limited to, conducting and completing an environmental review, as required by the CDBG-DR regulations, which environmental review may not exceed the scope of what is required under applicable federal regulations without Seller's consent, which shall not be unreasonably withheld. All environmental activities and reports must conform with the CDBG-DR regulations including, without limitation, the regulations at 24 C.F.R. Parts 50, 58, and 570, as applicable. Prior to the expiration of the Option Period, should Seller withhold consent to complete any environmental review or additional testing that exceeds the scope of what is required under applicable federal laws and regulations, Purchaser may provide Seller with written notice of its election to terminate this Agreement, in which event the Title Company shall release the Non-Refundable Option Deposit to Seller, and neither Purchaser nor Seller shall have any further right, obligations or liabilities under this Agreement except those provisions hereof that expressly survive such termination.

c. In the event that Purchaser's environmental testing reveals the presence of any environmental contamination in levels requiring remediation under state, federal or local statutes, laws, regulations, rules or ordinances, Purchaser shall immediately provide Seller written notice with a copy of all environmental assessments and reports evidencing the environmental conditions of the Property that require remediation. Upon issuance of the written notice, Purchaser may provide Seller with written notice of its election to terminate this Agreement, in which event the Title Company shall release the Non-Refundable Option Deposit to Seller and neither party to this Agreement shall have any further rights, duties, obligations or liabilities under this Agreement except those provisions hereof that expressly survive such termination. Alternatively, Seller and Purchaser may enter into good faith negotiations to mutually agree on how to address matters relating to environmental remediation of the Property, which may include the timing for remediation, the party responsible for remediation, and adjustments to the Purchase Price relating to the remediation. In the event Seller and Purchaser enter into good faith negotiations to mutually agree on how to address matters relating to environmental remediation of the Property, the terms of the remediation will be evidenced in writing and any deadline in this Agreement may be extended by up to thirty (30) calendar days to allow Seller and Purchaser to finalize the transaction contemplated hereunder. Purchaser shall bear no liability for the environmental testing, except that Purchaser shall be responsible for repairing any damage to the Property for which Seller can produce objective documentation evidencing that Purchaser's testing activities caused the damage.

d. During the Option Period, Seller, at its sole cost and expense (but subject to reimbursement at Closing as provided in Section 8.c.(i).(5)), will obtain a new survey or an update to the Existing Survey (the "New/Updated Survey"), prepared by a Registered Professional Land Surveyor licensed by the State of Texas and acceptable to the Title Company and approved by Houston Public Works – Construction Branch – Survey/ROW/Mapping. The New/Updated Survey shall comply with the current requirements of the Texas Society of Professional Surveyors Standards and



Specifications for a Category 1A Condition II Land Title Survey and contain such other information as Purchaser may reasonably request.

e. During the Option Period, Seller, at its sole cost and expense, shall cause the Title Company to issue a commitment to issue title insurance (the "Title Commitment") accompanied by copies of all recorded documents relating to easements, rights-of-way, and all other matters of record affecting the Property together with Owner's Policy of Title Insurance at Closing. Seller shall pay the basic premium of the Owner's Policy of Title Insurance, but Purchaser shall pay the additional premium for the area and boundary deletion and any other endorsements requested by Purchaser.

f. Following the receipt of the New/Updated Survey and the Title Commitment, Purchaser shall have thirty (30) days to examine and specify to Seller those items affecting the Property that Purchaser finds objectionable (each an "Encumbrance" and collectively, "Encumbrances"). Seller shall have ten (10) days to cure such objections. Items shown in the Title Commitment or New/Updated Survey and not objected to by Purchaser in its written objections within such period shall be deemed items that Purchaser will accept title subject to (the "Permitted Encumbrances"). The Title Company shall deliver an amended Title Commitment reflecting the cure of the Encumbrances at or prior to the Closing Date. Any liens affecting the Property shall be Encumbrances, whether so specified in any notice by Purchaser, and Seller shall cause the same to be released at or prior to Closing.

g. If Seller fails or is unwilling to cause all of the Encumbrances to be removed or cured by the Closing Date, or if the Title Commitment or New/Updated Survey indicates that Seller does not own indefeasible fee simple title to the Property, Purchaser shall have the following rights, as its sole and exclusive remedies:

(i) to terminate this Agreement by giving Seller written notice of termination, in which event the Title Company shall release the Non-Refundable Option Deposit to Seller and neither party hereto shall have any further rights, duties, obligations or liabilities under this Agreement except those provisions hereof that expressly survive such termination; or

(ii) to elect to waive the Encumbrances not so removed or cured and close the purchase and sale contemplated by this Agreement without any reduction in the Purchase Price in accordance with the remaining terms and provisions, whereupon the Encumbrances not so removed or cured shall become a "Permitted Encumbrance", to be treated in the manner provided herein for Permitted Encumbrances.

h. On or prior to the expiration of the Option Period, Purchaser may notify Seller in writing of Purchaser's desires to terminate this Agreement if: (i) Purchaser, in its sole discretion, determines that the Property is not suitable for purchase by Purchaser for Purchaser's purposes; (ii) Purchaser is unable to obtain the approval from HUD, GLO or Houston City Council to use CDBG-DR funds to purchase the Property or such other approvals to use United States Department of Housing and Urban Development ("HUD") funds as may be required to purchase the Property; or (iii) Purchaser is unable to obtain approval from the GLO of the *City of Houston Harvey Buyout Program Guidelines*. The Option Period may be further extended for up to twelve (12) months thereafter, by written agreement between Purchaser and Seller, if Purchaser has not obtained the requisite HUD or GLO approvals for the purchase of the Property described in this subsection. If Purchaser and Seller do not agree on an extension of the Option Period, then this Agreement shall automatically terminate at the

end of the Option Period. In the event of termination under this subsection, the Title Company shall release the Non-Refundable Option Deposit to Seller, and neither party hereto shall have any further rights, duties, obligations or liabilities hereunder, except for those provisions hereof that expressly survive such termination.

**7. As-Is, Where-Is.** Purchaser and its representatives, prior to the date of Closing, will have been afforded the opportunity to make such inspections of the Property and matters related thereto as Purchaser and its representatives desire. Purchaser acknowledges and agrees that the Property is to be sold and accepted by Purchaser in an "as-is" condition, with all faults except for (a) Seller's representations, warranties and covenants set forth in Section 3, and (b) the warranty of title in the Deed referred to in Section 8.b.

**8. Option Period and Closing.**

a. The Option under this Agreement shall be exclusively available to and exercisable by Purchaser from the Effective Date until the expiration of the Option Period, as may be extended in accordance with Section 5 of this Agreement. Unless otherwise terminated or expired in accordance with the terms of Section 7 of this Agreement, the Option Period shall terminate on the date on which Purchaser exercises the Option.

b. The consummation and closing of the sale by Seller to Purchaser of the Property contemplated by this Agreement (the "Closing") shall take place on or before the thirtieth (30<sup>th</sup>) day after expiration of the Option Period (the "Closing Date"), with the exact time, date and location of Closing to be specified in a written notice from Purchaser to Seller at least seven (7) days in advance of such Closing Date. The time, date or location of Closing may be modified by agreement of the parties.

c. At the Closing, the following (which are mutually concurrent conditions) shall occur:

(i). Purchaser, at its sole cost and expense, shall deliver or cause to be delivered to Seller, through the Title Company:

(1) The balance due for the Purchase Price such amount to be paid in immediately available funds;

(2) Evidence satisfactory to Seller and the Title Company that the person executing the Closing documents on behalf of Purchaser has full right, power, and authority to do so;

(3) Such other instruments duly executed by Purchaser as are customarily executed in Harris County, Texas to effectuate the conveyance of property similar to the Property, as may be reasonably required by the Title Company.

(4) Purchaser shall pay, in addition to any other costs to be paid by Purchaser as provided elsewhere in this Agreement: (a) the additional premium for area and boundary deletion and any endorsements to the Owner's Policy of Title Insurance requested by Purchaser; (b) if applicable, any costs of Purchaser's remediation of the Property; (c) incidental expenses described in 49 C.F.R. 24.106; (d) the cost to record the Deed; and (e) Purchaser's attorneys' fees. The Purchaser will reimburse the Seller the full amount of the cost of the New/Updated Survey and the full amount of the Seller's costs incurred for any environmental reports and activities

conducted on Purchaser's behalf pursuant to Section 6.b.-c. and evidenced by reasonable supporting documentation, at Closing.

(ii). Seller, at its sole cost and expense, shall deliver or cause to be delivered to Purchaser, through the Title Company, the following:

(1) A Special Warranty Deed in form and substance substantially equivalent to the form shown on **Exhibit "B"** attached hereto and incorporated herein, fully executed and acknowledged by Seller, conveying to Purchaser good and indefeasible fee simple title in and to the Property, subject only to the Permitted Encumbrances, which shall be set forth in an exhibit thereto and attached prior to recordation of such instrument;

(2) Evidence satisfactory to Purchaser and the Title Company that the person executing the Closing documents on behalf of Seller has full right, power, and authority to do so;

(3) An executed and acknowledged affidavit that Seller is not a "foreign person" as described in Section 3.i.;

(4) A certificate, executed and sworn to by Seller, confirming that there are no unpaid bills, claims, debts, or liens relating to the Property arising through or under Seller as of the Closing Date, except with respect to specified bills, claims, debts, or liens;

(5) The Chattel Inventory; and

(6) Such other instruments duly executed by Seller as are customarily executed in Harris County, Texas to effectuate the conveyance of property similar to the Property, as may be reasonably required by the Title Company with the effect that, after the Closing, Purchaser will have succeeded to all of the rights, titles and interests of Seller related to the Property and Seller will no longer have any rights, titles or interests in and to the Property.

(7) Seller shall pay, in addition to any other costs to be paid by Seller as provided elsewhere in this Agreement: (a) the cost to record any releases of Encumbrances that will be filed in the real property records of Harris County, Texas at Closing; (b) if applicable, any costs of remediation of the Property; (c) Seller's own attorneys' fees; and, (d) the basic premium of the Owner's Policy of Title Insurance.

d. Any escrow fees and delivery fees charged by the Title Company, and any other routine closing fees, shall be allocated equally between Seller and Purchaser (except for amounts paid by Purchaser as incidental expenses in accordance with Section 6.j.). Except as provided above, all normal and customarily pro-ratable items, including but not limited to real estate and personal property taxes, rents, and utility bills, if any, shall be prorated as of the Closing Date, Seller being charged and credited for all of the same up to such date and Purchaser being charged and credited for all of same on and after such date. If the actual amounts to be prorated are not known at the Closing Date, the prorations shall be made on the basis of the best evidence available, and thereafter, when actual figures are received, a cash settlement will be made between Seller and Purchaser. Seller hereby acknowledges that Purchaser is not subject to ad valorem taxes.

**9. Lease-back to Seller.** In the event the Property is not vacant on the Closing Date, the Seller and Purchaser shall execute a lease agreement substantially



in the form attached hereto as **Exhibit "C"** ("Lease Agreement") providing for the Seller's continued occupancy and management of the Property for a period commencing on the effective date of the Lease Agreement and expiring on the date that is thirty (30) days after the date the last tenant vacates the Property ("Lease Term"), which Lease Term may not extend beyond the date that is twelve (12) months from the Closing Date, unless extended in accordance with the terms and conditions of the Lease Agreement. The Lease Agreement shall not operate to assign to Purchaser any tenant leases existing on the Closing Date. The Seller shall retain the contractual obligations and responsibilities provided in all said leases at the commencement and throughout the Lease Term.

**10. Chattels.** "Chattels" means all personal property owned by Seller located upon the Property on the Closing Date and included in the inventory list provided by Seller to Purchaser at Closing ("Chattel Inventory"), including but not limited to appliances. Seller shall retain ownership of Chattels and shall remove all Chattels within thirty (30) days from the later of (i) the Closing Date, or (ii) the date on which the Post-Closing Period Expires. **The provisions of this paragraph will survive the Closing.**

**11. Notices.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same with the United States Postal Service, addressed to the party to be notified, postage prepaid and in registered or certified form, with return receipt requested, or by deposit with Federal Express for overnight delivery, or other reputable overnight courier, facsimile (with retained receipt) or email (with retained receipt). Notice given as prescribed in this Section 9 shall be effective on the date actually received at the address to which such notice was sent, or if delivery is refused or not accepted, such notice shall be effective on the date of such refusal or failure to accept delivery. Notice given in any other manner shall be effective only upon receipt by the party to whom it is addressed. For purposes of notice, the addresses of the parties shall be as follows:

If to Seller, to: Mr. Kevin Wood  
Woodbaker Investment Holdings  
2450 Louisiana St., Suite 427  
Houston, Texas 77006  
Telephone: 832-444-9284  
E-mail: kevin@stagecoachequity.com

With copy to: Kelsey W. Gray  
Telephone: 832-7414-9491  
Email: kelseywalkergray@gmail.com

If to Purchaser, to: City of Houston, Texas  
Housing and Community Development Department  
Attention: Rupa Sen  
2100 Travis Street, 9<sup>th</sup> Floor  
Houston, Texas 77002  
Telephone: (832) 393-6217  
E-mail: [rupa.sen@houstontx.gov](mailto:rupa.sen@houstontx.gov)

With copy to: City of Houston Legal Department  
900 Bagby Street, 4th Floor  
Houston, Texas 77002

Either party may change its address to another location in the continental United States, upon five (5) days' prior written notice to the other given in the manner provided above.

**12. Brokerage.** Purchaser has not engaged a broker or agent in connection with the negotiation or execution of this Agreement. In the event any agent or broker shall make a claim against Seller and Purchaser for a commission or fee, the party allegedly engaging, hiring or retaining such broker or agent shall be responsible for payment thereof.

**13. Assignment.** Except for an assignment by Purchaser to a qualified governmental entity (including a local government corporation) after giving written notice to Seller, neither Seller nor Purchaser may assign this Agreement or any right or interest under this Agreement without the prior written consent of the other party, which will not be unreasonably withheld. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding on the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

**14. Governing Law; Enforcement.**

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

b. Should any provision of this Agreement require judicial interpretation, Seller and Purchaser hereby agree and stipulate that the court interpreting or considering the same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of any rule or conclusion that a document should be construed more strictly against the party who prepared the same, it being agreed that all parties to this Agreement have participated in the preparation of this Agreement and that each party had full opportunity to consult legal counsel of its choice before the execution of this Agreement.

c. Purchaser's city attorney or its designee (the "City Attorney") shall have the right to enforce all legal rights and obligations under this Agreement without further authorization from other City of Houston officials, and Seller covenants to use commercially reasonable efforts to provide the City Attorney with all documents and records that the City Attorney reasonably deems necessary to assist in determining Seller's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

**15. Remedies.**

a. If Purchaser fails or is unable to perform its obligations pursuant to this Agreement for any reason other than Purchaser's termination hereof pursuant to a right granted to Purchaser in this Agreement to do so, or breach by Seller of its promises, representations, warranties under this Agreement, then Seller shall give Purchaser written notice of the default. If Purchaser fails to cure its default within thirty (30) days after receipt of such notice, Seller, as its sole and exclusive remedy, shall have the right to terminate this Agreement by giving Purchaser written notice thereof, in which event neither party hereto shall have any further rights, duties, obligations or liabilities hereunder except those provisions hereof that expressly survive such termination, and the Title Company shall release the Non-Refundable Option Deposit,

and any interest thereon, to Seller and shall release the remaining portion of the Option Fee, if any, and any interest thereon, to Purchaser.

b. If Seller fails or is unable to perform any of its obligations pursuant to this Agreement for any reason other than Seller's right of termination of this Agreement pursuant to a right granted to Seller in this Agreement to do so, or breach by Purchaser of its promises, representations, or warranties under this Agreement, then Purchaser shall give Seller written notice of the default. If Seller fails to cure its default within thirty (30) days after receipt of such notice, or if any of Seller's promises, representations or warranties made under this Agreement, or any of the information furnished by Seller pursuant hereto, should be either false or misleading in any material respect, then Purchaser shall have the right and option, as its sole and exclusive remedies, to:

(i) terminate this Agreement by giving Seller written notice of termination, in which event neither party to this Agreement shall have any further rights, duties, obligations or liabilities under this Agreement except those provisions that expressly survive such termination, and the Title Company shall release the Option Fee and interest thereon, save and except the Non-Refundable Option Deposit to be released to Seller, to Purchaser; or

(ii) enforce specific performance of the obligations of Seller to convey the Property to Purchaser pursuant to the terms hereof and to perform its other obligations under this Agreement, provided that, in the event that Purchaser seeks specific performance, an action seeking such remedy must be filed within six (6) months of Seller's default or alleged default, or the same shall be deemed barred and Purchaser's sole remedy shall be as set forth in (i) above.

**16. Damage or Taking Prior to Closing.** Prior to Closing, risk of loss with regard to the Property shall be borne by Seller. If, prior to Closing, the Property, or any portion of the Property, is materially damaged or becomes subject to a taking (other than by the Purchaser) by virtue of eminent domain, Purchaser shall have the option, which must be exercised by it within fifteen (15) business days (and the Closing will be automatically extended, if necessary, to provide Purchaser with such fifteen (15) business day period) after its receipt of written notice from Seller advising of such damage or taking (which Seller hereby agrees to give), to terminate this Agreement or to proceed with the Closing. If Purchaser elects to terminate this Agreement for any reason set forth in this Section, all rights, duties, obligations and liabilities created under this Agreement shall cease except those provisions hereof that expressly survive such termination, and the Title Company shall release the Non-Refundable Option Deposit to Seller and shall release the remaining portion of the Option Fee, if any, to Purchaser. If Purchaser elects to proceed with the Closing, all rights, duties, obligations and liabilities created under this Agreement shall continue, and (a) Purchaser shall be entitled to any and all insurance proceeds or condemnation awards payable as a result of such damage or taking, and (b) Seller shall assign to Purchaser at Closing all of Seller's rights to such proceeds or awards.

**17. Entire Agreement.** This Agreement is the entire agreement between Seller and Purchaser concerning the sale of the Property and no modification of this Agreement or subsequent agreement relative to the subject matter of this Agreement shall be binding on either party unless in writing and signed by both parties. This Agreement may be amended only by written instrument executed on behalf of



Purchaser (by authority of an ordinance adopted by the City Council of the City of Houston, Texas) and Seller.

**18. Exhibits and Schedules.** Attached hereto and incorporated in this Agreement by this reference for all purposes is the following exhibits and schedules:

Exhibit "A"	PROPERTY DESCRIPTION
Exhibit "B"	SPECIAL WARRANTY DEED
Exhibit "C"	LEASE AGREEMENT
Schedule 1	Voluntary Acquisition – Informational Notice
Schedule 2	Texas Disclosures

**19. Confidentiality.** Seller and Purchaser agree to use their best efforts to keep confidential price, terms, condition, and all other information that is a part of this transaction. Seller and Purchaser agree that they will disclose such matters only to such third parties as may be necessary to carry out usual and customary activities related to the transaction. Notwithstanding the foregoing, both parties acknowledge that the terms of this transaction may become known to the public when the matter is considered by the City Council of the City of Houston, Texas, or pursuant to a request under the Texas Public Information Act.

**20. Miscellaneous.**

a. The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

b. Each and every agreement contained in this Agreement is, and shall be construed as, a separate and independent agreement. If any provision of this Agreement should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected.

c. The obligations of the Agreement that cannot be performed before termination of this Agreement, or before Closing, will survive termination of this Agreement or Closing, and the legal doctrine of merger will not apply to these matters. However, if there is any express conflict between the closing documents provided pursuant to Section 8 hereinabove and this Agreement, the closing documents will control.

d. Time is of the essence in this Agreement.

e. If this Agreement is executed in multiple counterparts, all counterparts taken together will constitute this Agreement.

f. Following the execution of this Agreement by Purchaser through its Mayor and countersigned by the City of Houston Controller, the Director of the Housing and Community Development Department, City of Houston, Texas, or his designee (the "Director"), shall have the authority to act on the behalf of Purchaser in making extensions to the Closing Date or to make other minor modifications to this Agreement, in writing and in consultation with the City Attorney, for the purposes of enabling the achievement of the Purchaser's objectives to acquire the Property from Seller and which do not require further approvals by the City Council of the City of Houston, Texas. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

21. **Signature Authority.** Each party represents that the person signing this Agreement on behalf of such party 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 under this Agreement 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.

22. **Voluntary Acquisitions Program.** Seller acknowledges the following:

a. The acquisition of the Property with CDBG-DR funds is subject to the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("URA"). Specifically, 24 C.F.R. 570.606(e) requires that acquisition of the Property must comply with URA requirements at 49 C.F.R. Part 24.

b. Purchaser is interested in acquiring the Property with CDBG-DR funds for a buyout activities under the Harvey Buyout Program.

c. Seller has no obligation to sell the Property for the project, but Seller is voluntarily selling the Property to Purchaser, subject to the terms and conditions of this Agreement, and Purchaser will not use the power of eminent domain to acquire the Property. Seller has received and executed the Voluntary Acquisition – Informational Notice dated January 8, 2020, a copy of which is attached to this Agreement as Schedule 1 and incorporated herein, as well as any other written communications, as required by applicable laws, regulations and procedures.

d. In accordance with the URA, owner-occupants who move as a result of a voluntary acquisition are not eligible for relocation assistance. However, any resulting displacement of a tenant is subject to the regulations in 49 C.F.R. Part 24.

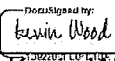
23. **Texas Disclosures.** Seller hereby makes the required notices and disclosures attached hereto as Schedule 2 to Purchaser.

***[Execution pages follow]***

**EXECUTED IN MULTIPLE ORIGINAL COUNTERPARTS**, each of which shall be an original, which together shall constitute but one and the same instrument, effective as of the date of countersignature by the City Controller of the City of Houston. 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.

SELLER

**APPIAN WAY OPPORTUNITY FUND, LLC,**  
a Texas limited liability company

By:  \_\_\_\_\_  
Name: Kevin Wood  
Title: President



PURCHASER

**CITY OF HOUSTON, TEXAS**, a  
municipal corporation

ATTEST:



Pat Jefferson-Daniel  
Interim City Secretary



Sylvester Turner  
Mayor of the City of Houston

2-5-2021

APPROVED AND RECOMMENDED:

Countersigned by:  
Tom McCasland  
02-24304370F-GC...

Tom McCasland  
Director, Housing and Community  
Development Department

COUNTERSIGNED



Chris B. Brown  
City Controller

Countersignature Date:

2-5-21

APPROVED AS TO FORM:



Assistant City Attorney  
L.D. File Number: 0292000506001

February 8, 2021

An original, fully executed copy of this Agreement has been received by the Title Company, and by execution hereof the Title Company hereby covenants and agrees to be bound by the terms of this Agreement to the extent permissible, without violation of Procedural Rule 35, as promulgated by the Texas State Board of Insurance.

CHICAGO TITLE INSURANCE COMPANY

By: 

Name: Rudy Ruiz

Title: VP, Commercial Escrow Officer

**EXHIBIT "A"**

A tract or parcel of land containing approximately 1.092 acres (47,552 square feet) of land conveyed to Appian Way Opportunity Fund LLC, a Texas limited liability company by deed dated June 18, 2019, recorded June 19, 2019 under Clerk's File No. RP-2019-259594, Official Public Records, Harris County, Texas



EXHIBIT "B"

When recorded, return to:

THE CITY OF HOUSTON  
2100 Travis, 9<sup>th</sup> Floor  
Houston, TX 77251-1562  
Attention: Real Estate Manager-Ms. Rupa Sen, Housing and Community  
Development Department

SPECIAL WARRANTY DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

\_\_\_\_\_, 2021

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

**APPIAN WAY OPPORTUNITY FUND LLC**, a Texas limited liability company ("**Grantor**"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which consideration are hereby acknowledged, by these presents does hereby Grant, Bargain, Sell, and Convey, unto the **CITY OF HOUSTON, TEXAS**, a municipal corporation situated in Harris, Fort Bend and Montgomery Counties, Texas ("**Grantee**"), for itself and its successors and assigns (i) all that real property situated in the County of Harris, State of Texas, and more particularly described on **Exhibit A** attached hereto and made a part hereof for all purposes, and (ii) together with all improvements now or hereafter situated thereon (collectively, the "**Property**"), TOGETHER with all and singular tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining thereto.

This Deed is made and accepted expressly subject to the matters set forth in **Exhibit B** attached hereto and made a part hereof for all purposes ("Permitted Encumbrances").

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances belonging in any way to the Property, unto the said Grantee, its successors and assigns forever, and Grantor binds itself and its successors and assigns to warrant and forever defend all and singular the Property to Grantee, its successors and assigns against every person lawfully claiming or to claim all or any part of the Property, by, through or under Grantor, but not otherwise.

### **COVENANTS RUNNING WITH THE PROPERTY**

WHEREAS, Community Development Block Grant – Disaster Recovery ("CDBG-DR") funding for this Agreement is appropriated to the U.S. Department of Housing and Urban Development ("HUD") under the Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Pub. L. 115-56) for activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. §5301 et. seq.) related to disaster relief long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from Hurricane Harvey, under Federal Emergency Management Agency designation "DR-4332", which are Presidentially declared major disaster areas under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. §5121, et. seq.);

WHEREAS, supplemental CDBG-DR funding was appropriated to HUD under the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Pub. Law 115-123) (together with Pub. L. 115-56, the "Appropriation");

WHEREAS, through the publication of 83 Fed. Reg. 5844 (Feb. 9, 2018) and 83 Fed. Reg. 40314 (Aug. 14, 2018), HUD allocated, from the Appropriation, \$5,676,390,000 in CDBG-DR funding (the "State Allocation") to the Texas General Land Office ("GLO");

WHEREAS, from the State Allocation, the Grantee has received a direct allocation from the GLO of \$1,275,878,041 of CDBG-DR development and implementation of programs that directly benefit the residents of the City of Houston, Texas;

WHEREAS, Grantee has created the Multi-family Voluntary Buyout Program ("MVB Program") to acquire residential properties located in a floodway or floodplain to reduce the risk of future flooding by converting the properties to greenspace or detention basins in areas in the City of Houston with at least a 51% Low- to Moderate-Income ("LMI") population; and

WHEREAS, properties acquired by Grantee pursuant to the MVB Program must be dedicated and maintained as greenspace or detention in perpetuity;

NOW, THEREFORE, in accordance with and in furtherance of the requirements set forth in 81 Fed. Reg. 83254, the conveyance of the Property is made by Grantor and accepted by Grantee subject to the following:

1. The Property shall be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or floodplain and wetlands management practices.

2. No new structure will be erected on property acquired, accepted, or from which a structure was removed under the acquisition or relocation program other than: (a) a public facility that is open on all sides and functionally related to a designated open space (e.g., a park, campground, or outdoor recreation area); (b) a rest room; or (c) a flood control structure, provided that structure does not reduce valley storage, increase erosive velocities, or increase flood heights on the opposite bank, upstream, or downstream and that the local floodplain manager approves, in writing, before the commencement of the construction of the structure.

3. No subsequent application for additional disaster assistance for any purpose or to repair damage or make improvements of any sort will be made by the recipient to any Federal entity in perpetuity.

4. The foregoing covenants and agreements are adopted for, and placed upon the Property, and shall run with the land, be binding upon all parties, now and at any time hereafter, having or claiming any right, title or interest in or to the Property or any part thereof, their heirs, legal representatives, executors, administrators, successors and assigns, regardless of the source of, or the manner in which any such right, title or interest is or may be acquired and any conveyance of any interest in the Property by Grantee or a subsequent owner must reference and incorporate the foregoing covenants and require the Property to be dedicated and maintained for compatible uses in perpetuity. The foregoing covenants may be enforced by Grantee, GLO or HUD, jointly or severally; however, failure, refusal or inability by either Grantee, GLO or HUD, jointly or severally, to enforce any of the foregoing covenants shall in no event be deemed a waiver or release of the right to do so thereafter. If one or more of the foregoing covenants shall be held unenforceable, invalid or illegal in any respect, such unenforceability, invalidity or illegality shall not affect any other provision of said covenants, which shall be construed as if such unenforceable, invalid or illegal provision had never been a part hereof.

IN WITNESS WHEREOF, the parties have executed this Special Warranty Deed to be effective as of the date first written herein.



GRANTOR:

**APPIAN WAY OPPORTUNITY FUND LLC,**  
a Texas limited liability company

By: \_\_\_\_\_  
Name: Kevin Wood  
Title: President

THE STATE OF TEXAS  
COUNTY OF HARRIS

§  
§  
§

This instrument was acknowledged before me on the \_\_\_\_ day of  
2021, by Kevin Wood, President of Appian Way Opportunity Fund LLC, a Texas  
limited liability company, on behalf of said limited liability company.

\_\_\_\_\_  
Notary Public

GRANTEE:

CITY OF HOUSTON, TEXAS, a  
municipal corporation

ATTEST:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Sylvester Turner  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney  
L.D. File Number: 0292000506001

THE STATE OF TEXAS

§  
§  
§

COUNTY OF HARRIS

This instrument was acknowledged before me on the \_\_\_\_ day of  
2021, by Sylvester Turner, Mayor of the City of Houston, Texas, a municipal  
corporation, on behalf of said municipal corporation.

\_\_\_\_\_  
Notary Public

Grantee's Address:

City of Houston  
2100 Travis, 9<sup>th</sup> Floor  
Houston, TX 77251-1562  
Attention: Real Estate Manager-Ms. Rupa Sen, Housing and Community  
Development Department

EXHIBIT A  
Legal Description

A tract or parcel of land containing approximately 1.092 acres (47,552 square feet) of land conveyed to Appian Way Opportunity Fund LLC, a Texas limited liability company by deed dated June 18, 2019, recorded June 19, 2019 under Clerk's File No. RP-2019-259594, Official Public Records, Harris County, Texas



## EXHIBIT B

### Permitted Encumbrances

The conveyance of the Property is made subject and subordinate to the following terms, provisions, conditions and restrictions (collectively, the "Permitted Encumbrances"):

- a. Rights of tenants in possession, as tenants only, under unrecorded lease agreements.
- b. An easement five (5) feet wide along the south property line and an aerial easement adjoining thereto five feet wide from a plane twenty feet above the ground upward as shown by the recorded plat and dedication set out in Volume 998, Page 379, Deed Records, Harris County, Texas and recorded in Volume 1083, Page 172 affected by Volume 1130, Page 414, Deed Records, Harris County, Texas.
- c. Terms, conditions and provisions contained in that certain Lease Agreement, by and between Coinmach (tenant) and Bayou Crest Investments, L.P., dba Bayou View Gardens Apartments (landlord), a Memorandum of which is filed under Clerk's File No. W817887, Official Public Records, Harris County, Texas.
- d. Royalty interest in and to all coal, lignite, oil, gas or other mineral interest(s), together with rights incident thereto, contained in instrument dated April 15, 1924, recorded April 22, 1924 at Volume 569, Page 599, Deed Records, Harris County, Texas. Reference to which instrument is here made for full particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).
- e. The Land is located within the City of Houston or within its extra territorial jurisdiction (within 5 miles of the city limits but outside another municipality). It is subject to the terms, conditions, and provisions of City of Houston Ordinance No. 85-1878, pertaining to among other things, the platting and replatting of real property and to the establishment of building lines (25 feet along major thoroughfares and 10 feet along other streets). A certified copy of said ordinance was filed August 1, 1991, at Clerk's File No. N253886.

**EXHIBIT "C"**  
**Lease Agreement**

## **LEASE AGREEMENT**

### **APPIAN WAY APARTMENTS**

THIS LEASE AGREEMENT (this "Agreement") is made by and between the CITY OF HOUSTON, TEXAS, a municipal corporation situated in Harris, Fort Bend and Montgomery Counties (the "City"), and APPIAN WAY OPPORTUNITY FUND, LLC, a Texas limited liability company ("Agent"), and is effective as of the date of the City Controller's countersignature (the "Effective Date").

### **RECITALS**

WHEREAS, the City purchased certain real property containing a multifamily housing development, located at 3200 N. MacGregor Way, Houston, TX 77004, together with all improvements, appurtenances, and equipment located thereon, commonly known as APPIAN WAY APARTMENTS (collectively, the "Property") pursuant to the Agreement for Option to Purchase Real Property signed by Agent and the City (the "Option Agreement");

WHEREAS, the City purchased the Property from Agent in connection with the City's Disaster Recovery (DR-17) Multifamily Voluntary Buyout Program with the purpose of demolishing the improvements on the Property and reducing the risk of future flooding by converting the Property into greenspace and/or detention;

WHEREAS, pursuant to the Option Agreement, the City and Agent agreed to execute a lease agreement providing for Agent's continued operation and management of the Property if any Rental Units were not vacated prior to the closing date stated in the Option Agreement (the "Closing Date");

WHEREAS, as of the Closing Date, less than 100% of the Rental Units were vacant, and additional time is needed to relocate the existing Tenants; and

WHEREAS, while the Tenants are being relocated, the City will lease the Property to Agent so that Agent can continue to operate and manage the Property during the relocation process, subject to the terms and provisions of this Agreement, and Agent agrees to perform such services in exchange for the Lease-back Fee provided herein;

NOW, THEREFORE, the City and Agent, in consideration of the sum of \$1.00 paid by the City to Agent, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby mutually covenant and agree as follows:



## **ARTICLE I**

### **GRANTING CLAUSE**

The City hereby demises and leases to Agent, and Agent hereby rents, accepts and takes from the City, the Property to have and to hold said Property for the Lease Term, and pursuant to the terms, provisions, covenants, agreements and conditions set forth in this Agreement.

## **ARTICLE II**

### **DEFINITIONS**

As used in this Agreement:

**"Additional Flow Down Provisions"** shall have the meaning in Section 18.12(b).

**"Auditing Documents"** shall have the meaning set forth in Section 7.02(e).

**"Auditing Entities"** shall have the meaning set forth in Section 7.01.

**"Automatic Renewal"** shall have the meaning set forth in Article III.

**"City Attorney"** means the City Attorney of the City of Houston, or his designee.

**"City Controller"** means the City Controller of the City of Houston, or his designee.

**"Condemnation Award"** means the amount of money awarded by special commissioners, judge, or jury, through settlement, for the whole Property or part Taken and any remainder damages. The term shall also include relocation monies.

**"Condemnation Proceedings"** means any action brought for any Taking of the Property, or any part thereof, or any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Property), by a governmental authority or entity as a result of the exercise of its power of eminent domain, including a voluntary sale to such authority or entity either under the threat of condemnation or while such action or proceeding is pending.

**"Director"** means the Director of the City of Houston's Housing and Community Development Department, or his designee.

**"Force Majeure"** means any contingency or cause beyond the reasonable control of a party including, without limitation: acts of God or the public enemy, war, riot, civil commotion, insurrection, acts of superior governmental or military authority, fires, explosions, epidemics, pandemics, and floods. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn, strikes, or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical.

**"GLO Agreement"** means the subrecipient agreement between the City and the Texas General Land Office ("GLO"), GLO Contract No. 19-147-001-B489, Community Development Block Grant Disaster Recovery Program Projects Non-Research & Development Harvey Round 1 Funding ("CDBG-DR17 Program") countersigned by the City Controller on January 4, 2019 and approved by City of Houston Ordinance No. 2019-10 and No. 2019-904, and any amendments thereto.

**"Hazardous Material"** means any chemical, substance, material or waste or component thereof which is now or hereafter listed, defined or regulated as a hazardous or toxic chemical, substance, material or waste or component thereof by any federal, state or local governing or regulatory body having jurisdiction, or which would trigger any employee or community "right-to-know" requirements adopted by any such body.

**"Lease"** means any written or oral agreement between Agent and Tenant that establishes or modifies the terms, conditions, rules, or other provisions regarding the use and occupancy of a Rental Unit.

**"Lease Term"** shall have the meaning set forth in Article III.

**"Notice of Appeal"** shall have the meaning set forth in Section 7.05(a).

**"Operating Account"** shall have the meaning set forth in Section 8.012.

**"Operating Budget"** means the operating budget for the Lease Term, attached hereto as **Exhibit "C"** and incorporated herein, which will be prepared by Agent and approved by the Director, as may be amended from time to time in writing by Agent.

**"Original Allocation"** shall have the meaning set forth in Section 8.04(b)(ii).

**"Relocation Requirements"** means the federal relocation requirements set forth in the Uniform Relocation Assistance Act and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1894 (codified at 42 U.S.C. §§ 4601-4655, as amended, and Section 104(d) of Housing and Community Development Act of 1974, Pub. L. 93-383, 88 Stat. 633-2 (codified as amended at 42 U.S.C. §§ 5301-5321), as applicable.

**"Renewal Term"** shall have the meaning set forth in Article III.

**"Rent"** means the monthly amount that a Tenant is obligated to pay Agent pursuant to the terms of a Lease.

**"Rental Unit"** means one or more rooms rented for use as a permanent residence at the Property, under a single Lease to one or more Tenants.

**"Supplemental Allocation"** shall have the meaning set forth in Section 8.04(b)(ii).

**"Taking" or "Taken"** means the date the governmental authority or other person deposits money into the registry of the court for purposes of obtaining title to the Property, or any part thereof, or

any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Property), pursuant to a Condemnation Proceeding, or the date of execution and delivery of a deed-in-lieu of condemnation.

**"Temporary Taking"** shall have the meaning set forth in Section 12.04.

**"Tenant(s)"** means a person who is authorized by a Lease to occupy a Rental Unit at the Property, to the exclusion of others, and who is obligated under the Lease to pay Rent.

**"Tenant Deposit"** means any advance of money, other than a rental application deposit or an advance payment of rent, that is intended primarily to secure performance under a Lease.

### **ARTICLE III**

#### **TERM AND AUTOMATIC RENEWAL**

This Agreement shall commence on the Effective Date and shall expire on the earlier of (i) the date that is thirty (30) days after the date the last Tenant vacates the Property; or (ii) the date that is twelve (12) months from the Effective Date (the "Lease Term"). This Agreement shall operate in full force and effect for the duration of the Lease Term, unless terminated by the City or Agent in accordance with Article X.

In the event that all Tenants have not vacated the Property at the expiration of the Lease Term, this Agreement shall automatically renew (the "Automatic Renewal") for one (1) additional twelve (12)-month term, or until thirty (30) days after the date the last Tenant vacates the Property, whichever is sooner ("Renewal Term").

### **ARTICLE IV**

#### **SERVICES OF AGENT**

**Section 4.01 Standard of Conduct.** Agent shall provide all labor, material and supervision necessary to perform the services described in this Agreement. Agent represents that it is experienced in professional operation and management multifamily rental properties similar to the Property, and Agent shall operate and manage the Property in accordance with industry standards for multifamily rental properties of the Property's type.

**Section 4.02 Collection of Rents and Other Receipts.** Agent shall collect, when due, all Rents, charges, and other amounts receivable from Tenant(s) and shall deposit said funds into the Operating Account in accordance with the provisions of Section 8.02(a). Under no circumstances shall the funds be commingled with Agent's other funds not derived from the Rents, charges, and other amounts collected under this Agreement.

**Section 4.03 Lease Enforcement.**

(a) **Lease Enforcement.** Agent shall ensure each Tenant abides by his Lease. Agent shall properly assess and collect from each Tenant or, the Tenant Deposit as the case



may be, the cost of repairing any damages to a Rental Unit arising during Tenant's occupancy. Agent shall also disburse Tenant Deposits in accordance with the terms of each Lease and Chapter 92 of the Texas Property Code, as may be amended from time to time.

(b) Relocation of Tenants. Agent shall comply with all Relocation Requirements. Agent shall emphasize a Tenant's voluntary compliance with Relocation Requirements and counsel Tenants and make referrals to community agencies in cases of financial hardship or under other circumstances deemed appropriate by the Director and Agent to avoid any involuntary termination of tenancies to the maximum extent consistent with sound management of the Property.

(c) Termination of Lease and Attorneys' Fees.

(i) Agent may, and shall, if requested by the Director, lawfully terminate any tenancy when, in Agent or the Director's judgment, sufficient cause for termination occurs under the terms of Tenant's Lease. To determine if a tenancy should be terminated, Agent shall request from the Director, in writing, the ability to consult with legal counsel. If authorized to do so, Agent may consult with legal counsel selected by Agent and approved by the City Attorney to determine appropriateness of bringing an eviction action, executing notices to vacate and/or filing other relevant judicial proceedings against a Tenant. Agent shall keep the Director informed of any and all legal actions and shall abide by any and all directions to proceed or refrain from proceeding issued by the Director and/or the City Attorney.

(ii) Reasonable attorneys' fees and other actual and necessary costs incurred in connection with such actions, as determined by the Director, and supported by invoices, are to be paid out of the Operating Account, but shall not exceed \$5,000.00 in the aggregate, without written, advance permission from the Director and/or the City Attorney. Such expenses are subject to the expenditure provisions in Section 8.03.

**Section 4.04 Maintenance, Repairs and Capital Improvements.** Agent shall maintain the Property in a decent, safe, and sanitary condition. Additionally, Agent shall maintain the Property in a condition acceptable to the Director and in compliance to industry standards for a multifamily development of similar type. Incident thereto, the following provisions shall apply:

(a) No later than ten (10) days after the Effective Date, Agent shall submit a preventative maintenance plan for the Lease Term to the Director for approval and adhered to by Agent.

(b) Agent shall contract with qualified independent contractors for the maintenance and repair of major mechanical systems and for the performance of extraordinary repairs beyond the capability of regular maintenance personnel. Prior to commencement of any work, Agent shall provide the Director with all contractors' current

insurance certificates that satisfy the City's standard requirements for insurance coverage according to the work to be performed.

(c) Agent shall promptly investigate all service requests from Tenants, take appropriate action to remedy the request, if justified, and keep records of the transactions. Excluding emergencies, the prior written approval of the Director shall be required for any service expenditure that exceeds Five Hundred and No/100 Dollars (\$500.00), per instance. Upon Agent's receipt of any emergency requests, including requests regarding heating, cooling, plumbing, and/or flooding, Agent shall (i) promptly report to the Director the pricing of all costs associated with the request, (ii) service the request within twenty-four (24) hours of the request, or as is standard based on best business practices of the industry, and (iii) after completion of the service, provide the Director with a service report, including total costs incurred by Agent and details on the issue and resolution. Agent shall pay standard prices for all emergency costs and be responsible for demonstrating to the Director the reasonableness and necessity of all emergency costs. Any costs incurred above the amount of emergency costs approved by the Director shall be borne by Agent. Additionally, during the Lease Term, Agent shall take all necessary actions related to exercising all rights provided by guarantees and warranties associated with repairs performed on the Property.

(d) Except as otherwise provided in this Section, subject to expenditure provisions in Section 8.03, Agent is authorized to purchase, using funds from the Operating Account, any needed materials, equipment, tools, appliances, supplies, and services necessary for proper maintenance and repair of the Property, of which Agent is not already in possession of. The prior written approval of the Director is required for any expenditure for labor, maintenance and/or materials not outlined on the Operating Budget that exceeds One Thousand and No/100 Dollars (\$1,000.00), per instance. Agent shall secure all discounts, rebates, and/or commissions obtainable with respect to purchase, service contracts, and all other transactions made by Agent on the City's behalf.

(e) In the event of emergency repairs involving manifest danger to persons or property or requiring the suspension of any necessary service to the Property, Agent shall notify the Director of the facts promptly and in no event later than twenty-four (24) hours after the occurrence of the event. Such emergency expenditures shall not exceed Two Thousand and No/100 Dollars (\$2,000.00), per instance, without the prior written approval of the Director. Such expenses are subject to the expenditure provisions provided in Section 8.03.

(f) Within ten (10) days after the date a Tenant vacates the Property, Agent shall conduct a final inspection of the Tenant's Rental Unit, remove all chattel from the Rental Unit, secure the Rental Unit and submit a move-out inspection report for the Rental Unit to the Director.

**Section 4.05 Utilities and Services.** Agent shall maintain water, electricity, gas, sewage, trash disposal, vermin extermination, laundry facilities, telephone services, and other necessary services in connection with the Property as may be outlined in the Tenant Lease.

**Section 4.06 Personnel.** Agent shall hire and employ all necessary personnel to operate, manage, and maintain the Property in accordance with the provisions of the Agreement. All property management personnel, including maintenance and custodial workers, shall be contracted service providers or employees of Agent. Such property management personnel are not the City's employees, agents, contractors, or subcontractors for any purpose whatsoever, and Agent shall have no authority to employ City personnel.

(a) Agent shall employ an adequate amount of properly trained employees or contractors to provide efficient service to the Tenants. The City reserves the right to monitor Agent's employees' customer service quality, and, should such service become unacceptable, the Director will notify Agent of the deficiency in writing and outline required corrective action. Agent agrees to promptly review the Director's suggestions and immediately take corrective action.

(b) Agent shall keep accurate records of the names, addresses, and other legal identification of employees to assure proper identification and legal working status of employment at any time required by the City or any other proper agency.

**Section 4.07 Licenses and Permits.** Agent is required to obtain and maintain all permits required by the City or any other governmental agency with authority to regulate the Property as well as perform, or allow to be performed, any periodic inspections that are required by any such governmental agency. Agent shall also acquire and abide by all licenses and permits required for the operation of the Property as rental housing.

**Section 4.08 Records and Reports.** Agent shall follow recognized, modern business practices to provide efficient and adequate services to the Tenants. Accurate, prompt, and timely reporting is of the essence, and the Agent's failure to do so shall constitute a default subject to the notice and cure rights and remedies outlined in Article X. The Director may require audited statements of Agent's operations under this Agreement for any period of time during the Lease Term with such expense being borne by Agent. In addition to any requirements specified in this Agreement, Agent has the following responsibilities with respect to records and reports:

(a) Agent shall establish and maintain a system of records, books, and accounts in a manner that is satisfactory to the Director and the City Controller. All records, books, and accounts are subject to audit and examination by the Director and the City Controller at reasonable hours upon reasonable notice to Agent.

(b) Agent shall prepare monthly reports in a form satisfactory to the Director, along with any other reports that are requested by the Director that are consistent with Agent's duties hereunder, containing and including at least the following:

(i) a statement of income and expenses and accounts receivable and payable for the preceding month, including an itemized list of all delinquent Rents for the month and a report of actions taken on the delinquent accounts by Agent;

(ii) rent roll/cash receipts from the previous month;



(iii) a disbursement summary for the previous month, including paid invoices and evidence of payment of insurance premiums;

(iv) a statement comparing budgeted revenues and expenses to actual revenues and expenses, including any indication that the actual annual net operating income is anticipated to be more than five percent (5%) less than budgeted in the Operating Budget;

(v) current bank statements of the Operating Account with a detailed report on any financial deficits experienced during the reported period, including the deficit amounts and any out-of-pocket expenses incurred by Agent in reconciling such deficits;

(vi) a narrative of any unusual actions taken or emergencies responded to by Agent;

(vii) a full report of any accidents, claims, and potential claims for the previous month; and

(viii) any other information required by the Director.

Agent shall submit each report to the Director on or before the tenth (10<sup>th</sup>) day of each month.

(c) All bookkeeping, data processing services, and management overhead expenses are to be paid for by Agent.

(d) Agent shall furnish whatever additional information (including monthly occupancy reports) requested from time to time by the Director within the time period provided in the request with respect to the leasing and financial, physical, or operational condition of the Property.

(e) Agent shall establish and maintain Tenant files containing copies of all Leases, certification forms, notices, and other documentation required by the Director. Said files shall be easily accessible to the Director upon request.

**Section 4.09 City Communications.** Agent shall be available for communications with the Director and inform the Director of items materially affecting the Property within twenty-four (24) hours after the occurrence of the material event.

## ARTICLE V

### MANAGEMENT AUTHORITY

#### Section 5.01 Authority.

(a) Agent's authority is expressly limited to the provisions contained herein as they may be amended in writing from time to time in accordance with the provisions of this Agreement.

(b) The City expressly withholds from Agent any power or authority to undertake the following actions:

(i) make any structural change in or to the Property or to make any other major alterations or additions in or to the Property or fixtures or equipment therein;

(ii) execute or promise any new Leases or Lease renewals, or approve any sublets or assignments;

(iii) implement or enforce any Rent increases in accordance with a Lease that would take effect during the Lease Term;

(iv) enter into any agreement, instrument or covenant or take any action that would:

1) constitute an encumbrance on the Property;

2) bind the City or the Property;

3) be outside a normal, reasonable, and necessary act needed to perform Agent's duties under this Agreement; or

4) have a term that will exceed the Lease Term or that cannot be terminated with thirty (30) days' notice;

(v) incur any expense not outlined in the Operating Budget without the prior written consent of the Director; and/or

(vi) commit or allow Tenant to commit waste on or to the detriment of the Property.

(c) Agent is an independent contractor and shall perform the services provided for in this Agreement in that capacity.

**Section 5.02 Delegation of Duties.** Agent has the right to engage independent contractors for performance of Agent's duties hereunder as Agent deems necessary, but Agent has the responsibility of supervising the performance of those duties. All contracts with independent

contractors are subject to the prior written consent of the Director. Expenses associated with the delegation of Agent's duties will be the sole financial responsibility of Agent.

**Section 5.03 Compliance with Law.** Agent shall take all necessary actions to comply with any and all statutes, laws, ordinances, orders and requirements of federal, state, county, and municipal authorities having jurisdiction over the Property, including orders of any insurance companies and other similar bodies, relative to the leasing, use, operation, repair, and maintenance of the Property. Upon receiving notice of any violation, Agent shall promptly remedy any violation of any law, ordinance, rule, or regulation, and shall notify the Director in writing by the end of the next business day of the violation and how and when the violation has been or will be remedied.

## ARTICLE VI

### INSURANCE AND INDEMNIFICATION

**Section 6.01 Liability of Agent.** Agent shall be personally liable for its breaches of this Agreement and for uninsured damages and costs (including reasonable attorneys' fees) resulting from Agent's negligence or misconduct and Agent's employees and contractors' negligence and misconduct.

**Section 6.02 Insurance.**

(a) Agent shall at all times during the Lease Term, at its own expense, keep and maintain, the following insurance policies having at least the following minimum limits:

(i) Commercial General Liability, including Contractual Liability, Bodily Injury and Property Damage, Personal & Advertising Injury, and Products and Completed Operations, with at least the following limits:

General Aggregate Limit	\$2,000,000
Personal and Advertising Injury Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000

(ii) Texas Statutory Workers' Compensation, including Employer's Liability with at least the following limits:

Each Accident	\$1,000,000
Each Employee	\$1,000,000
Policy Limit	\$1,000,000

(iii) Business Automobile Liability, covering (a) any auto or (b) all owned, hired and non-owned autos with at least the following limits:

Combined Single Limit	\$1,000,000
-----------------------	-------------



(iv) Commercial Umbrella or Excess Liability to provide excess liability limits over the underlying Commercial General Liability and Business Auto Liability policies. Coverage terms must "follow from" or be broader than the underlying policies. Any combination of underlying and Umbrella or Excess limits can be used to provide total liability limits of at least:

Per Occurrence	\$10,000,000
General Aggregate	\$10,000,000

(iii) Pollution Liability with at least the following limits:

Per Occurrence	\$2,000,000
Aggregate per 12-month period	\$4,000,000

(iv) Crime policy, which shall include but not be limited to coverage for the following: losses arising out of or in connection with fraudulent or dishonest acts committed by the employees of Agent, acting alone or in collusion with others, including the property and funds of others in their care, custody or control; employee theft; counterfeit money; computer fraud coverage; funds transfer coverage; forgery or alteration coverage; money and securities coverage; and theft per loss coverage. The Crime Policy coverage shall also include an extension for property of others.

Per Occurrence	\$100,000.00
----------------	--------------

(c) General Provisions. Prior to beginning performance under this Agreement, at any time upon the Director's request, or each time coverage is renewed or updated, Agent and its contractors shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Agent and its contractors shall be responsible for and pay (i) all premiums and (ii) any claims or losses to the extent of any deductible amounts. Agent and its contractors waive any claim they may have for premiums or deductibles against the City, its officers, agents, or employees. If any insurance policy required hereunder does not have a flat premium rate and such premium has not been paid in full, such policy must have a rider or other appropriate certificate or waiver sufficient to establish that the issuer is entitled to look only to Agent and its contractors for any further premium payment and has no right to recover any premiums from the City. Agent and its contractors shall also require all subcontractors or consultants whose subcontracts exceed \$100,000.00 to provide proof of insurance coverage meeting all requirements stated above except the amount must be commensurate with the amount of the subcontract, but no less than \$500,000.00 per claim.

(k) Form of Insurance. The insurance form 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 Article, or (ii) waive or estop the City from asserting its rights to terminate this Agreement. The policy issuer shall (1) have a certificate of authority to transact insurance business in the State of Texas issued by the Texas Board of Insurance, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+. The policy issuer shall have a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide.

(d) Required Coverage. The City shall be an additional insured under this Agreement, and all policies, except workers' 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. Agent and its contractors waive any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Agent's and its contractors' insurance policies. Each policy, except workers' compensation, 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.

(e) Notice. AGENT AND ITS CONTRACTOR SHALL GIVE THIRTY (30) DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED. Within the 30-day period, Agent and its contractors shall provide other suitable policies in order to maintain the required coverage. If Agent or its contractors fails to comply with this requirement, the Director, at his sole discretion, may immediately terminate this Agreement, suspend Agent and its contractors from any further performance under this Agreement, and begin procedures to terminate for default.

(f) Certificates of Insurance. The insurance coverages may be represented in one or more certificates of insurance. It is agreed, however, that nothing included within or omitted from the insurance certificates shall relieve Agent from its duties to provide the required coverage.

(g) Deductibles. A policy may contain deductible amounts as approved by Agent and its contractors. Agent and its contractors shall assume and bear any claims or losses to the extent of such deductible amounts, and waive any claim they may ever have for the same against the City, its officers, agents or employees with respect to such deductible amounts.

(h) Blanket Policies. Agent and its contractors shall be entitled to purchase and maintain the insurance required under this Article under so called "blanket" policies, provided the coverage thereunder is at least equal to the levels contained herein and is otherwise adequate in keeping with prudent underwriting standards.

(i) Policies. At the Director's request, copies of all policies referred to above, certified by the agent or attorney-in-fact issuing them, together with written proof that the premiums have been paid, shall be deposited by Agent with the Director. If the Director fails to request copies of such policies, Agent shall provide certificates of insurance, in lieu

of policies, reflecting that the terms of this Section have been met, with such certificates to be provided before the Agent begins any work in, on or about the Property. Along with such policies or certificates, Agent shall provide the Director with a list of any claims paid out against the aggregate total of any such policy.

(j) WAIVER OF RIGHT OF RECOVERY. ANYTHING TO THE CONTRARY IN THIS AGREEMENT NOTWITHSTANDING, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE CITY AND AGENT EACH WAIVE ALL RIGHTS OF RECOVERY, CLAIMS, ACTIONS OR CAUSES OF ACTION OR SUBROGATION AGAINST THE OTHER AND THE OTHER'S AFFILIATES AND THEIR RESPECTIVE PARTNERS, AGENTS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES OR REPRESENTATIVES FOR ANY DAMAGE TO THE PROPERTY AND/OR THE IMPROVEMENTS, TO THE EXTENT THAT SUCH DAMAGE IS DUE TO AN INSURED CASUALTY RISK REGARDLESS OF CAUSE OR ORIGIN, INCLUDING NEGLIGENCE OF THE CITY, AGENT, THEIR AFFILIATES OR THEIR PARTNERS, AGENTS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES OR REPRESENTATIVES.

**Section 6.03 Cooperation.** Agent shall furnish whatever readily available information is requested by the Director for the purpose of obtaining insurance coverage and shall aid and cooperate in every reasonable way with respect to the insurance and any loss thereunder.

**Section 6.04 Contractor's Insurance.** Agent shall require that every contractor working on the Property maintain, at the contractor's own expense, commercial general liability, workers' compensation, business automobile liability, and commercial umbrella or excess liability insurance in the amounts stated in Section 6.02. Agent must be notified promptly if the Director waives any of the requirements in this Section.

**Section 6.05 Standard of Care.** In the performance of its duties and obligations under this Agreement, Agent shall diligently and in good faith seek to protect the property rights and interests of the City, to protect the best economic interests of the City in its ownership and operating of the Property, and to manage the Property in accordance with normal and accepted industry standards.

**Section 6.06 Release.** AGENT AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY FOR THIS SECTION, 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. AGENT HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELEASED BY AGENT UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.



## ARTICLE VII

### AUDIT, INSPECTION AND MAINTENANCE OF RECORDS

**Section 7.01** City representatives (including without limitation the Director and the City Controller), State of Texas and Federal Government authorized representatives (collectively "Auditing Entities") may perform (1) audits of Agent's books and records or (2) inspections of the Property. Agent shall retain its books and records (including without limitation any documentation required under 2 C.F.R. Part 200, Subpart D) to be available for City representatives to review for at least (i) three (3) years after the General Land Office's ("GLO") closeout of the CDBG-DR17 program that is the subject of the GLO Agreement; (ii) the time period required by 2 C.F.R. § 200.333 (retention requirements for records) in the event this Agreement is wholly or partially federally funded; or (iii) seven (7) years after this Agreement terminates, whichever is longer. If the books and records are located outside of Harris County, Texas, Agent shall make them available in Harris County, Texas.

**Section 7.02** Within twenty-four (24) hours of Agent's receipt of written notice, Auditing Entities have the right to audit and inspect Agent's books, documents, papers, and records, both written and electronic, that pertain to the Property, Rental Units, or services provided under this Agreement. Such documents may include, but are not limited to:

- (a) payroll and personnel records, such as salaries, benefits and bonuses;
- (b) subcontractor agreements, records and invoices;
- (c) any and all records pertaining to the Property saved within Agent's accounting or management systems;
- (d) records and information saved on all computers or servers on which the City information is stored; and
- (e) all documents or records evidencing costs and expenses, direct and indirect, relating to Agent's operation and maintenance of the Property (collectively, "Audited Documents").

**Section 7.03** Agent shall permit Auditing Entities to reproduce or copy and retain any and all Audited Documents.

**Section 7.04** Agent shall provide Auditing Entities access to the Property during regular business hours.

**Section 7.05** **Audit Findings of Disallowed Disbursements or Expenditures.**

- (a) Audit Findings by the City. Within thirty (30) days of the Director's request, Agent shall refund the City a sum equivalent to the amount of any disallowed disbursements made by the City to Agent or Agent's expenditures, in the event the City,

through the review of a monthly financial report(s) and/or audit(s), monitoring finding, or other action, determines that the disbursement or expenditure of any funds disbursed under this Agreement was not made in compliance with this Agreement, applicable law, or applicable regulations. If Agent intends to appeal the disallowance, then no later than five (5) business days after receiving the Director's request, Agent shall provide the Director with written notice to appeal the disallowance ("Notice of Appeal"), which shall explain the reasons supporting Agent's appeal. Agent's Notice of Appeal shall include bank statements, time sheets, receipts, and any other documentation reasonably requested by the Director. Within ten (10) business days of receiving Agent's Notice of Appeal, the Director shall render a decision to accept or deny Agent's appeal of a disallowance. The Director's decision shall be final. Within thirty (30) days of receiving a denial of the Notice of Appeal, Agent shall pay the City the amount disallowed.

(b) Audit Findings by Other Auditing Entities. If any audit or inspection performed by an Auditing Entity, other than the City, results in the disallowance, recapture, repayment, refund, return and/or reimbursement of Federal funds used by the City to reimburse Agent for fees and/or expenses related to the operation and maintenance of the Property, Agent shall cooperate with the Director and/or the City Controller to support the City's responses to any applicable Auditing Entity's repayment requests. If the City is unable to satisfy repayment findings, Agent shall reimburse the City for all such Federal fees and/or expenses required to be repaid by the City to an applicable Auditing Entity. Agent shall pay any adjustments or payments that were determined as a result of any such audit or inspection of the Agent's performance under the Agreement, including invoices or records, within thirty (30) days from presentation of the written findings by the Director to Agent.

**Section 7.06** Agent has been advised that the City is a party to the GLO Agreement.

**Section 7.07** **Correction of Discrepancies.** If the Director discovers any discrepancies in Agent's records and/or documents, the Director may, in his discretion, require Agent to immediately correct said discrepancies and provide the Director with the corrected records and/or documents within ten (10) business days.

## ARTICLE VIII

### OPERATING BUDGET AND REMITTANCE OF FUNDS

#### **Section 8.01** **Operating Budget.**

(a) Initial Operating Budget. Agent has prepared, and the Director has approved, the initial Operating Budget, as attached herein as **Exhibit "C"**.

(b) Revisions to Operating Budget. If the total expenditures accrued under this Agreement are less than the budgeted expenditures or revenues are higher than budgeted for the Lease Term, Agent shall revise the estimated cost of the affected line items in the

Operating Budget. Such revisions for decreased expenditures or increased revenues does not require a formal amendment of this Agreement and is evidenced by a revised Operating Budget submitted by Agent to the Director within three (3) business days of the budget revision. Any excess funds remaining after revising the affected line items in the Operating Budget are subject to reallocation to other line items in the Operating Budget, projects and/or contracts related to the Property at the Director's sole discretion. Any revisions for a variance of 15% of expenditures higher or revenues lower than budgeted under this Agreement must be approved by the Director.

**Section 8.02      Operating Account.** On or before the Effective Date, Agent shall establish a new bank account, solely in the Agent's name, to be used for revenue deposits and Property operation and maintenance expenditures (the "Operating Account"). The City shall not be named as an authorized user of the Operating Account, nor shall the City have signature authority on the account. Disbursements from the Operating Account are to be made in accordance with the Operating Budget, or as otherwise approved in writing by the Director.

(a) Deposit of Funds into Operating Account. Upon receipt, Agent shall immediately deposit all Rents and other funds collected from the operation of the Property into the Operating Account.

(b) Expense Payments from Operating Account. Expenses shall be paid out of the Operating Account in accordance with the Operating Budget, or as otherwise approved in writing by the Director. Expenses not included in the Operating Budget shall be subject to the terms and conditions set forth in Article IV. Upon expenditure of funds out of the Operating Account, Agent shall include in the monthly financial report, described in subsection (c), an itemization of the expenditures funded by the Operating Account, for the Director's review and approval.

(c) Monthly Financial Reporting. Agent shall provide the Director a monthly financial report in accordance with Section 4.08(b). The Director shall approve the financial report if, in the Director's opinion, Agent expended funds in accordance with this Agreement.

(d) Minimum Reserve Amount for Tenant Deposits. All existing Tenant Deposits shall be transferred to the Operating Account within ten (10) days after the Effective Date. At all times, the Operating Account shall maintain a minimum reserve amount equal to the total amount of Tenant Deposits owed to Tenants. Agent shall maintain detailed records of all Tenant Deposits, and the records must be open for inspection by the Director at all times. The required minimum reserve amount shall only decrease in direct correlation to reimbursed Tenant Deposits, as required by Texas Property Code Section 92.103, during the Lease Term. Agent shall document each Tenant Deposit reimbursed during the Lease Term and designate such reimbursement as a line item in the monthly financial report required under Section 4.08(b).



### **Section 8.03            Expenditures.**

(a)    Expenditure Reimbursements to Agent. If Agent incurs any out-of-pocket expenses in reconciling any financial deficits detailed in Section 4.08(b), Agent shall submit requests for expenditure reimbursements to the Director for review and approval. Requests for expenditure reimbursements shall include:

- (i)     an itemized invoice(s) that sufficiently describes the charge(s) so that financial reporting can be achieved as described in Section 4.08(b);
- (ii)    a receipt(s) evidencing payment of the invoice(s); and
- (iii)   any additional documentation as may be requested by the Director and/or the City Controller.

After the Director's approval, the City will reimburse Agent for such out-of-pocket expenses in accordance with the Operating Budget, or as otherwise approved in writing by the Director, and the Texas Private Prompt Payment Act, Chapter 28 of the Texas Property Code.

(b)    Advanced Payments Made by Agent. Agent may, but is not obligated to, make any advance payment to the Operating Account or to pay any amount except out of funds in the Operating Account, and Agent is not obligated to incur any extraordinary liability or obligation outside of the Operating Budget unless the Director approves of such liability or obligation and the Director furnishes Agent with the necessary funds for the discharge thereof.

**Section 8.04            Insufficient Funds in Operating Account.** If the balance in the Operating Account is at any time insufficient to pay expenses due and payable under this Agreement, Agent shall promptly inform the Director of the insufficiency and the City may then remit sufficient funds to Agent to cover the deficiency. Agent is required to notify the Director of an insufficient balance in the Operating Account when the balance in the Operating Account is or is expected to be less than 100% of the allowable expenses for the following month, as established by the Operating Budget and other expenses approved in accordance with this Agreement. Agent must immediately notify the Director of such insufficiency, including the estimated percentage of funds available in the Operating Account to cover the allowable expenses, but no later than twenty-four (24) hours after Agent's determination of the insufficiency.

(a)     If Agent determines that the Operating Account has funds available to cover at least 90% of the allowable expenses, Agent shall cover the deficiency with its own funds and request reimbursement from the City for incurring such out-of-pocket expenses. Such reimbursements shall be subject to the terms provided in Section 8.03(a).

(b)     If Agent determines that the Operating Account has funds available to cover less than 90% of the budgeted monthly expenses, Agent shall request payment from the Director to cover such deficiency in the notice required in this Section. To request

payment, Agent shall submit the invoice(s) that will not be paid with funds from the Operating Account due to insufficient funds. Within 30 days of the Director's review and approval of such invoice(s), the City shall remit funds to cover the payment of such invoice(s).

(viii) The City's duty to pay Agent under this Agreement or make any payments in connection with this Agreement, including without limitation, into the Operating Account due to insufficient funds in the Operating Account, is limited in its entirety by the provisions of this Section and the Operating Budget, as may be amended from time to time.

(ix) 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 up to \$100,000.00 to pay Agent under this Agreement or make any payments in connection with this Agreement, including without limitation, into the Operating Account due to insufficient funds in the Operating Account during the Lease Term (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Section of the Agreement (the "Supplemental Allocation"), but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

5) The City has not allocated supplemental funds or made a Supplemental Allocation for this Agreement unless the City has issued to Agent 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 the City Council.

#### **NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS**

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

§

6) The Original Allocation plus all Supplemental Allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Section in excess of the Allocated Funds. Agent must

assure itself that sufficient allocations have been made to pay disbursement due and payable under this Section. If Allocated Funds are exhausted, Agent'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 City and no right to damages of any kind.

**Section 8.05 Taxes.** The City is exempt from payment of federal excise and transportation tax and Texas limited sales and use tax. Agent's invoices to the City must not contain assessments of any of these taxes. The City will furnish the City's exemption certificate and federal tax identification number to Agent if requested.

## ARTICLE IX

### COMPENSATION

**Section 9.01 Lease-back Fee.** The City will compensate Agent \$49,500.00 (the "Lease-back Fee") for its services under this Agreement in twelve (12) monthly payments, in accordance with the monthly schedule below, to be treated as an operating expense and paid out of the Operating Account. The monthly fee will be payable on the first (1st) day of each month during the term of the Agreement with respect to the services performed during the prior month. The Lease-back Fee shall be paid monthly as follows:

<u>Month</u>	<u>Lease-back Fee</u>	<u>Cumulative Total Lease-back Fees</u>
1	\$12,000.00	\$12,000.00
2	\$10,000.00	\$22,000.00
3	\$8,000.00	\$30,000.00
4	\$3,000.00	\$33,000.00
5	\$3,000.00	\$36,000.00
6	\$3,000.00	\$39,000.00
7	\$3,000.00	\$42,000.00
8	\$1,500.00	\$43,500.00
9	\$1,500.00	\$45,000.00
10	\$1,500.00	\$46,500.00
11	\$1,500.00	\$48,000.00



12

\$1,500.00

\$49,500.00

The parties agree that Agent shall not receive any amount exceeding the Lease-back Fee or any other additional compensation from the City if this Agreement extends into the Renewal Term.

**Section 9.02 Early Termination.** If the Agreement terminates prior to the expiration of the Lease Term, Agent shall be entitled to payment of the remaining unpaid portion of the Lease-back Fee so long as such termination did not occur pursuant to Article X. Agent shall receive payment of the remaining unpaid portion of the Lease-back Fee no later than sixty (60) days after the termination of this Agreement.

## ARTICLE X

### DEFAULT AND TERMINATION; REMEDIES; INDEMNIFICATION

#### Section 10.01 Termination.

(a) Termination for Convenience by the City. The City may terminate this Agreement at any time by giving thirty (30) days' written notice to Agent. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future. On receiving the notice, Agent 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. The City shall (i) pay Agent any unpaid Lease-back Fee pro rata as to the days services were provided by Agent during the month in which termination occurs; and (ii) reimburse Agent for any Property expenditures incurred in performing the services, but not already reimbursed, in the same manner as prescribed in Section 8.03

RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE AGENT'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. AGENT 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.

(b) Default by Agent; Termination for Cause by the City. If Agent defaults under this Agreement, the City may either terminate this Agreement or require Agent to cure the default as provided below. The City's right to terminate this Agreement for Agent's default is cumulative of all rights and remedies which exist now or in the future. Default by Agent occurs if:

(i) Agent fails to operate the Property as a residential multi-family rental facility;

(ii) there is a (i) filing of a voluntary petition in bankruptcy on Agent's behalf; (ii) adjudication of Agent as a bankrupt; (iii) filing of any petition or other pleading in any action seeking reorganization, rearrangement, adjustment, or composition of, or in respect of, Agent under the United States Bankruptcy Code or any other similar state or federal law dealing with creditors' rights generally, unless within ninety (90) days after such filing such proceeding is stayed or discharged; or (iv) appointment of a receiver, trustee or other similar official of Agent;

(iii) Agent fails to reasonably correct within a reasonable period any hazardous condition, caused by Agent after written notice of such condition was provided by the City. In the event Agent does not promptly remedy the hazardous condition, the City may exercise all of its rights under this Agreement, including the right of the City to perform Agent's obligations as set forth in this Agreement; or

(iv) Agent fails to keep, observe or perform any of the terms, covenants or agreements contained in this Agreement to be kept, performed or observed by Agent. If (i) such failure is not remedied by Agent within thirty (30) days after written notice from the Director of such default or (ii) in the case of any such default which cannot with due diligence and good faith be cured within thirty (30) days, Agent fails to commence to cure such default within thirty (30) days after written notice from the Director of such default or Agent fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith; it being intended that, in connection with any such default which is not susceptible of being cured with due diligence and in good faith within thirty (30) days, the time within which Agent is required to cure such default shall be extended for such additional period as may be necessary for the curing thereof with due diligence and in good faith.

If a default occurs, the Director shall deliver a written notice to Agent describing the default and the termination date. The Director, at his or her sole option, may extend the termination date to a later date. If the Director allows Agent to cure the default and Agent does so to the Director's satisfaction before the termination date, then the termination is ineffective. If the Director allows Agent to cure and Agent 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.

**Section 10.02 Remedies Cumulative.** Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

**Section 10.03 Final Accounting and Closing Operations.** Within thirty (30) days after the termination or expiration of this Agreement, Agent shall transfer to the City the following:

- (a) Any outstanding balance remaining in the Operating Account;
- (b) All certificates of deposits, if any;
- (c) Any money belonging to the City held by Agent on the City's behalf;
- (d) All records, contracts, Leases, keys, receipts for deposits, unpaid bills, as authorized under the Operating Budget or otherwise in writing by the Director, and other papers, files, documents, books and records relating to the Property; and
- (e) All reports required under this Agreement hereof to the date of the termination.

Within three (3) days of the City's request, Agent shall assign to the City all contracts requested by the City concerning the Property, to the extent permitted by the contracts, and shall cooperate with the City in connection with the transition to a new manager, if necessary.

**Section 10.04 Indemnification.**

(a) AGENT AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY FOR THIS SECTION, 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:

(i) AGENT AND/OR ITS AGENTS', EMPLOYEES, OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS (i)-(iii), "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

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

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



(b) AGENT'S FOREGOING INDEMNIFICATION OBLIGATION SHALL APPLY DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THIS AGREEMENT TERMINATES. AGENT'S FOREGOING INDEMNIFICATION IS LIMITED TO \$1,000,000 PER OCCURRENCE. AGENT SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

(c) SUBCONTRACTOR'S INDEMNITY. AGENT 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.

(d) INDEMNIFICATION PROCEDURES.

(i) Notice of Claims. If the City or Agent receives notice of any claim or circumstances which could give rise to an indemnified or non-indemnified loss, the receiving party shall give written notice to the other party within five (5) days. For an indemnified loss, the notice must include the following:

- (1) a description of the indemnification event in reasonable detail;
- (2) the basis on which indemnification may be due; and
- (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 Director does not provide this notice within the required 5-day period, it does not waive any right to indemnification except to the extent that Agent is prejudiced, suffers loss, or incurs expense because of the delay.

(ii) Defense of Claims.

(1) Assumption of Defense. Agent may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City Attorney. Agent 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 be unreasonably withheld. Within five (5) days after receiving written notice of the indemnification request, Agent must advise the Director as to whether or not it will defend the claim. If Agent does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

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

(3) Non-indemnified Claims. The party in receipt of a non-indemnified claim notice shall promptly give to the other party all pertinent information and reasonable assistance in the defense or other disposition thereof, at its sole expense.

(e) Survival of Indemnity Obligations. The indemnity obligations contained in this Agreement will survive the termination of this Agreement.

## ARTICLE XI

### DAMAGE OR DESTRUCTION

**Section 11.01 Occurrence of Casualty and Use of Insurance Proceeds.** If all or any part of the Property is materially damaged or destroyed, Agent will immediately notify the Director as to the nature and extent of such damage or destruction. Agent shall assign to the City all insurance proceeds received with respect to any material damage or destruction to the Property.

**Section 11.02 Repairs.** Promptly upon the City's receipt of any insurance proceeds relating to damage or destruction to the Property, Agent shall consult with the Director in determining the next appropriate steps regarding any repairs conducted on the Property.

**Section 11.03 Property at Agent's Risk.** Agent's supplies and all merchandise, effects, and other property of every kind, nature, and description belonging to Agent, which may be on or in the Property during the Lease Term shall be at the sole risk and hazard of Agent; and if the whole or any part thereof shall be destroyed or damaged for any reason, the City shall not be liable or responsible.

**Section 11.04 Destruction of Properties under Contract.** If the Property is destroyed or materially damaged to such extent that the Director determines that the Property is wholly unfit, in whole or a material part, for use by Agent in its operations, the City may terminate this Agreement.

## ARTICLE XII

### EMINENT DOMAIN

**Section 10.01 Efforts to Prevent Taking.** The City shall use reasonable efforts to cause all other governmental authorities and/or entities with the power of eminent domain to refrain from instituting any Condemnation Proceedings or exercising any other powers of eminent domain with respect to the Property, or any interest in any of the foregoing during the Lease Term.

**Section 10.02 Entire Taking.** If all or at least 75% of the square footage of the Property is Taken in Condemnation Proceedings, Agent shall have the right to terminate this

Agreement in accordance with Article X effective as of the date of such Taking, and from and after such date Agent and the City shall not have any further obligations under this Agreement with respect to the portion of the Property so Taken, provided the City has fully complied with its obligations under this Section.

**Section 10.03          Partial Taking.**

(a) If less than 75% of the square footage of the Property is Taken in Condemnation Proceedings, after the Taking, Agent and the City shall not have any further obligations under this Agreement with respect to the portion of the Property so Taken.

(b) If, following any partial Taking, Agent exercises any right of termination under this Agreement as to the Property, then Agent may vacate the Property and, after vacation, Agent and the City shall not have any other obligations under this Agreement with respect to the Property, provided the City has fully complied with its obligations under this Section.

(c) If Agent does not elect to vacate the Property upon any partial Taking thereof, then the Property shall be reduced by the portion Taken in the Condemnation Proceeding.

**Section 10.04          Temporary Taking.** A Taking shall be considered temporary if the Taking will only affect the Property for a period of three (3) months or less ("Temporary Taking"). If any portion of the Property is subject to a Temporary Taking, Agent and the City's obligations under this Agreement shall be abated for the affected portion of the Property for the duration of the Temporary Taking. Once the Temporary Taking has expired, Agent and the City's obligations under this Agreement will resume as to the affected portion of the Property and shall continue for the duration of the Term.

**Section 10.05          Condemnation Award.**

(a) At any time within one hundred eighty (180) days after a Taking, following which Agent vacates the Property or a portion thereof, the Director or Agent may terminate this Agreement by delivering a written termination notice to the other party specifying the effective date of such termination, in which event this Agreement shall terminate as to the Property or a portion thereof as of the date specified by the Director or Agent in such notice, and the entire condemnation award attributable to such Taking shall be paid to the City.

(b) In the event all or any portion of the Property is not terminated from the scope of this Agreement in connection with a Taking as provided above, the Condemnation Award shall be paid to the City. Should the Condemnation Award be deposited into the registry of the court, the City shall withdraw the money from the registry of the court with no objections from the Agent.

**Section 10.06          Survival.** The provisions contained in this Article shall survive the expiration or earlier termination of this Agreement, but only insofar as such provisions relate to



any Condemnation Proceedings or condemnation awards that arose prior to the expiration or termination of this Agreement.

## **ARTICLE XI**

### **ENVIRONMENTAL RESTRICTIONS**

**Section 11.01 Hazardous Material.** Neither the City nor Agent shall transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any Hazardous Material upon or about the Property, nor permit their employees, agents, and contractors to engage in such activities upon or about the Property. However, the foregoing provisions shall not prohibit the transportation to and from, and use, storage, maintenance and handling within, the Property of substances customarily used in owning, managing, repairing, leasing, or operating real estate similar to the Property; provided (i) such substances shall be used and maintained only in such quantities as are reasonably necessary and in accordance with applicable law and the manufacturers' instructions therefor and (ii) such substances may be disposed of, released or discharged at the Property if permitted by and in compliance with applicable laws, and shall be transported to and from the Property in compliance with all applicable laws.

**Section 11.02 Notification.** Each party shall promptly notify the other party upon the notifying party becoming aware of: (i) any enforcement, cleanup, or other regulatory action taken or threatened against either party by any governmental or regulatory authority with respect to the presence of any Hazardous Material on the Property, (ii) any demands or claims made or threatened by any party against the City or Agent relating to any loss or injury resulting from any Hazardous Material, (iii) any unlawful release, discharge or nonroutine, improper or unlawful disposal or transportation of any Hazardous Material on or from the Property, and (iv) any matters where the party is required by law to give a notice to any governmental or regulatory authority respecting any Hazardous Materials on the Property.

**Section 11.03 Clean up and Removal.** If any Hazardous Material is released, discharged or disposed of by Agent or its employees, agents or contractors, on or about the Property in violation of the foregoing provisions, Agent shall immediately, properly and in compliance with all applicable laws and ordinances, clean up and remove the Hazardous Material from the Property and any other affected property, at Agent's sole cost and expense. Such clean up and removal work shall be subject to the Director's prior written approval, and shall include, without limitation, any testing, investigation and/or preparation and implementation of any remedial action plan required by any governmental body having jurisdiction. If Agent shall fail to comply with the provisions of this Section within five (5) days after written notice by the Director, or such shorter time as may be required by law, the City may terminate this Agreement.

## **ARTICLE XIV**

### **ASSIGNMENT; SUBLETTING; NON-DISTURBANCE**

Except with regard to an assignment to a related entity to Agent for which Director approval is obtained, Agent shall not assign this Agreement, or sublet or assign any of the Property, in whole or in part, at any time.

## **ARTICLE XV**

### **SMALL BUSINESS, MINORITY AND WOMEN BUSINESS ENTERPRISES; NON-DISCRIMINATION**

**Section 15.01 Business Opportunity.** Agent 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. Agent shall make good faith efforts to award subcontracts or supply agreements in at least 25% of the value of this Agreement to MWBEs. Agent 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.

**Section 15.02 Non-Discrimination.** Agent shall not discriminate in its employment practices, service provision, or in any other manner in the management and/or operation of the Property or in the exercise of the rights and privileges granted by this Agreement because of sex, race, color, ethnicity, national origin, age, familial status, marital status, religion, disability, sexual orientation, genetic information, gender identity, pregnancy, ancestry, handicap, or religion.

**Section 15.03 Minority Hiring Encouragement.** Agent will encourage the hiring of minorities and women employees, and seek contracts with small, minority, and disadvantaged business enterprises.

## **ARTICLE XVI**

### **AGENT'S REPRESENTATIONS AND WARRANTIES**

Agent hereby represents and warrants as follows:

(a) Existence. Agent is registered in the State of Texas as a limited liability company.

(b) Authority. Agent has all requisite power and authority to operate its business, enter into this Agreement and consummate the transactions herein contemplated, and by proper action has duly authorized the execution and delivery of this Agreement and the consummation of the transactions herein contemplated.

(c) Binding Obligations. This Agreement is a valid and binding obligation of Agent and is enforceable against Agent in accordance with its terms.

(e) Consents. No permission, approval or consent by third parties or any other governmental authority is required in order for Agent to enter into this Agreement or perform the obligations of Agent hereunder, other than those consents which have been obtained.

(uu) Proceedings. There are no actions, suits or proceedings pending or, to the best knowledge of Agent, threatened or asserted against Agent which could reasonably be expected to affect or impair Agent's ability to enter into this Agreement or to perform its obligations hereunder, at law or in equity or before or by any governmental authority.

## ARTICLE XII

### NOTICES

Any notice or other communications required or permitted hereunder shall be sufficiently given if sent by electronic mail or United States certified or registered mail, postage prepaid, and addressed as follows. Notice shall be deemed to have been given as of the date emailed, or three (3) days from the date mailed:

If to City:                      City of Houston, Texas  
Housing and Community Development Department  
Attn.: Tom McCasland, Director  
c/o Rupa Sen, Real Estate Manager  
2100 Travis Street, 9th Floor  
Houston, Texas 77002  
Telephone: (832) 394-6217  
Email: [rupa.sen@houstontx.gov](mailto:rupa.sen@houstontx.gov)

With a copy to:                City of Houston Legal Department  
Attn.: City Attorney  
900 Bagby Street, 4th Floor  
Houston, Texas 77002  
Email: [ronald.lewis@houstontx.gov](mailto:ronald.lewis@houstontx.gov)

City of Houston Legal Department  
Attn.: Disaster Recovery Section  
900 Bagby Street, 3rd Floor  
Houston, Texas 77002  
Email: [Brnilda.Santiago@houstontx.gov](mailto:Brnilda.Santiago@houstontx.gov)



If to Agent: Mr. Kevin Wood  
Woodbaker Investment Holdings  
2450 Louisiana St., Suite 427  
Houston, Texas 77006  
Telephone: 832-444-9284  
E-mail: kevin@stagecoachequity.com

With a copy to: Kelsey W. Gray  
Telephone: 832-714-9491  
Email: kelseywalkergray@gmail.com

The above addresses may be changed by the appropriate party giving written notice of the change to the other party.

### **ARTICLE XIII**

#### **MISCELLANEOUS**

**Section 18.01 Inspection.** Agent shall permit the City and its agents, at all reasonable times and without interfering with the operation being conducted upon the Property, to enter into and upon the Property during normal business hours for the purpose of inspecting the same, provided that such entry and inspection by the City does not interfere with the quiet enjoyment of the Property by Agent or any Tenant.

**Section 18.02 Special Power of Attorney.** The City authorizes Agent as attorney-in-fact for the City to collect Rents and other funds due the City in Agent's name on the City's behalf, to appear on behalf of the City in proceedings related to tenancy if requested by the City, and to establish and make deposits into and withdrawals from the Operating Account in accordance with the terms of this Agreement.

**Section 18.03 Not a Property Interest; Amendments.** This Agreement is not intended to convey any interest in real property. This Agreement constitutes the entire agreement between Agent and the City, and no alteration, modification, or addition to this Agreement will be valid or enforceable unless expressed in writing and signed by the Director and Agent.

**Section 18.04 Headings.** All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provisions of this Agreement.

**Section 18.05 Waiver.**

(a) Limitations. The waiver of any of the terms and conditions of this Agreement on any occasion or occasions is not to be deemed as waiver of those terms and conditions on any future occasion. No waiver by the City of any breach of this Agreement is to be deemed a waiver of any other or subsequent breach.

(b) Written Documentation. No party shall have or be deemed to have waived any default under this Agreement by the other party unless such waiver is embodied in a document signed by the waiving party that describes specifically the default that is being waived. Further, no party shall be deemed to have waived its rights to pursue any remedies under this Agreement, unless such waiver is embodied in a document signed by such party that describes specifically any such remedy that is being waived.

(c) Governmental Immunity. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement shall constitute a waiver by the City of any provisions of any law relating to governmental immunity or limitations of liability of a governmental entity.

**Section 18.06 Interpretation.** Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partnership, joint venture or any association between the parties hereto, it being understood and agreed that none of the provisions contained herein or any acts of the parties in the performance of their respective obligations hereunder shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

**Section 18.07 Addenda.** The following addenda are attached to this Agreement and incorporated herein:

- (a) **Exhibit "A"** – GLO Agreement
- (b) **Exhibit "B"** – Federal Contract Requirements
- (c) **Exhibit "C"** – Operating Budget

In the event of conflicts or inconsistencies between this Agreement and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: 1) any and all applicable federal and state laws, rules, and regulations; 2) this Agreement; 3) GLO-approved guidelines; and 4) exhibits to this Agreement: **Exhibit "A"**, **Exhibit "B"**, and **Exhibit "C"**.

**Section 18.08 Enforceability.** If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**Section 18.09 Exercise of Remedies.** The City's remedies under this Agreement are cumulative, and the exercise of one remedy is not to be deemed an election of remedies or a foreclosure of the exercise of the City's other remedies. The failure of a party to seek redress for violation of this Agreement, or to insist upon the strict performance of this Agreement, shall not constitute a waiver of any covenant, agreement, provision or condition of this Agreement.

**Section 18.10 Successors and Assigns.** This Agreement inures to the benefit of and constitutes a binding obligation on the City and Agent and their respective successors and assigns; provided, however, that Agent may not assign this Agreement or any of its duties hereunder without the prior written consent of the City.

**Section 18.11 Federal Requirements.** The Parties acknowledge that the City may seek reimbursement from the U.S. Department of Housing and Urban Development ("HUD") for costs incurred under this Agreement. Agent shall comply with all Community Development Block Grant – Disaster Recovery ("CDBG-DR") program requirements outlined in **Exhibit "A"** and made a part hereof. Agent shall abide by the Federal requirements outlined in **Exhibit "B"** as may be applicable. Notwithstanding the previous sentence, the parties acknowledge that the Federal Government is not a party to this Agreement and is therefore not obligated to perform any actions under this Agreement. Agent shall comply with and shall perform services in compliance with all GLO/HUD requirements outlined in this Agreement and otherwise applicable to the services performed, any subsequent audit by the GLO, HUD, or any other reviewing agency, and reimbursement, if any, from the GLO, HUD, or any other federal agency for the costs incurred under this Agreement.

**Section 18.12 Flow-Through Provisions.**

(a) The City is a party to the GLO Agreement that contains the provisions set out in **Exhibit "A"** to this Agreement. Agent shall comply with the applicable terms set out in **Exhibit "A"** and any amendments thereto as if it were the City, except to the extent this Agreement specifically addresses a topic also covered in **Exhibit "A"**, in which case the terms of this Agreement shall apply. In the event Agent believes a term or condition of the GLO Agreement is inapplicable, Agent must seek clarification from the Director. The Director, in his sole but reasonable discretion, shall determine which terms are applicable to this Agreement and the services provided thereunder. If the parties fail to reach an agreement, Agent may submit a dispute in accordance with Section 18.13 of this Agreement. Agent may utilize the Section 18.13 dispute resolution process under this Section regardless of whether the dispute involves a question of law.

(b) In the event the City is a recipient or subrecipient of other grant, federal, or state funds or the City otherwise uses restricted funds to pay Agent for services or expenses provided under this Agreement, Agent shall agree, in writing, to be bound by the same contract or grant terms and conditions, laws, and regulations as the City, to the extent relevant to Agent's scope of work ("Additional Flow Down Provisions"). Agent's agreement to the Additional Flow Down Provisions must be in writing, signed by Agent and the Director and approved by the City Attorney. Such written agreement does not require amendment of this Agreement but shall be incorporated into this Agreement as if



3 3

fully referenced herein. If within a reasonable time after receipt of a written request from the Director (not to exceed fifteen (15) business days), the parties are unable to reach a written agreement on the relevant Additional Flow Down Provisions following good faith negotiations, the Director, at his or her sole discretion may (i) immediately suspend Agent from any further performance, or (ii) terminate this Agreement. Under no circumstances may Agent's service or construction contracts contain a percentage mark-up provision.

**Section 18.13 Dispute Resolution.** Except as may otherwise be provided by law, a dispute that (1) arises during the performance of this Agreement; and (2) is not resolved between the City and Agent must be handled as described below:

(a) The property manager shall put his decision in writing and mail or otherwise furnish Agent with a copy. Agent may abide by the decision or may appeal the decision to the Director.

(b) If Agent desires to appeal a decision of the property manager, Agent must submit a written appeal to the Director. Agent must file its written appeal within seven (7) days following receipt of the property manager's original decision. The Director shall provide Agent with a written response to the appeal within fourteen (14) days following its receipt. The decision of the Director is final.

**Section 18.14 Estoppel Certificates.** Agent and the City shall, at any time and from time to time upon not less than twenty (20) days prior written request by the other party, execute, acknowledge and deliver to the City and Agent, as the case may be, a statement certifying (a) the ownership interest of the City or Agent (as the case may be), (b) that this Agreement is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (c) the dates to which any charges required hereunder have been paid, and (d) that, to the best knowledge of the City or Agent, as the case may be, no default hereunder on the part of the other party exists (except that if any such default does exist, the certifying party shall specify such default).

**Section 18.15 Written Cancellation or Termination.** Upon request of Agent, the City will execute and deliver a written cancellation and termination of this Agreement upon the cancellation or termination of this Agreement.

**Section 18.16 Force Majeure.**

(a) 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 Agent. 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.

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

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

(ii) provides the other party with prompt written notice of the cause and its anticipated effect.

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

(d) 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.

(e) If the Force Majeure continues for more than fifteen (15) days from the date performance is affected, the Director may terminate this Agreement by giving seven (7) days' written notice to Agent. This termination is not a default or breach of this Agreement. **AGENT 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.**

**Section 18.17 City's Right to Perform Agent's Covenants.** If Agent fails to perform any of the covenants, obligations or agreements contained in this Agreement, and such failure shall continue without Agent curing or commencing to cure such failure within all applicable grace and/or notice and cure periods, the City may perform the same on behalf of, and at the expense of Agent, and the amount of any payment made or other reasonable expenses (including reasonable attorneys' fees) incurred by the City in curing such default, together with interest thereon at the rate of ten percent (10%) per annum, shall be payable by Agent to the City within thirty (30) days of request of payment. This provision is not in lieu of, but is in addition to, any other rights or remedies the City may have with respect to Agent's failure to perform.

**Section 18.18 Applicable Law and Venue.** 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.

**Section 18.19 Brokerage Commission.** The City and Agent represent and warrant one to the other that no broker commission, finder's fees or similar compensation is due to any party claiming by, through or under the City or Agent as applicable.

**Section 18.20 Survival.** Covenants in this Agreement providing for performance after termination of this Agreement shall survive the termination of this Agreement.

**Section 18.21      Entire Agreement.** This Agreement and the documents referenced in this Agreement constitute the entire agreement between the City and Agent regarding the subject matter thereof. There are no representations, promises or agreements of either the City or Agent, one to the other, regarding the subject matter of this Agreement not contained in this Agreement or the documents referenced in this Agreement.

**Section 18.22      Covenants Running with the Land.** The parties hereto covenant and agree that all of the conditions, covenants, agreements, rights, privileges, obligations, duties, specifications and recitals contained in this Agreement, except as otherwise expressly stated herein, shall during the Lease Term be construed as covenants running with title to the Property, and the leasehold estate hereunder, respectively, which shall extend to, inure to the benefit of and bind the City, Agent, and their respective permitted successors and assigns to the same extent as if such successors and assigns were named as original parties to this Agreement, such that this Agreement shall during the Lease Term bind the owner and holder of any fee or leasehold interest in or to the Property, or any portion thereof, and shall bind predecessors thereof except as otherwise expressly provided herein.

**Section 18.23      Non-Merger of Estates.** The interests of the City and Agent in the Property shall at all times be separate and apart and shall in no event be merged, notwithstanding the fact that this Agreement or the leasehold estate created hereby, or any interest therein, may be held directly or indirectly by or for the account of the same person who shall own the fee title to the Property or any portion thereof; and no such merger of estates shall occur by operation of law, or otherwise, unless and until all persons at the time having any interest in the Property or under this Agreement join in the execution and recordation of a written instrument effecting such merger of estates.

**Section 18.24      City Council Approvals and Appropriations.** This Agreement is subject to all applicable terms and provisions of the Charter and the Code of Ordinances of the City, and is subject to approval by the City Council, and shall not be effective until signed by the Mayor and countersigned by the City Controller. Notwithstanding anything contained in this Agreement to the contrary, this Agreement does not, nor shall it be construed to, foreclose or waive the application of all lawful requirements under the applicable laws of the State of Texas for (i) the appropriation and payment of funds by the City, or (ii) the approval or issuance of future agreements, permits or licenses by the City. Any provision of this Agreement which contemplates (x) the payment of money by the City, which payment would require the appropriation of funds over and above any sums appropriated prior to the Effective Date in connection with this Agreement or (y) any other future action, decision, agreement, waiver or approval which by its nature must be approved by the City Council, including without limitation, the issuance of permits or licenses, shall be subject to the approval of any subsequent City Council to which such matter is presented and to the appropriation by such City Council of the required funds, in the exercise of its legislative discretion.

**Section 18.25      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. Agent has reviewed Executive Order



1-56, as revised, and shall comply with its terms and conditions as they are set out on the Effective Date. Agent shall notify the City's Chief Procurement Officer, the City Attorney, and the Director of any information regarding possible violation of such Executive Order by the Agent or its subcontractors providing services or goods under this Agreement.

**Section 18.26**      **Anti-Boycott of Israel.** Agent certifies that Agent 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.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

[Remainder of page intentionally left blank]

33

**EXECUTED IN MULTIPLE ORIGINAL COUNTERPARTS**, each of which shall be an original, which together shall constitute but one and the same instrument, effective as of the date of countersignature by the City Controller of the City of Houston. 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.

**CITY OF HOUSTON, TEXAS**, a municipal corporation

ATTEST:

\_\_\_\_\_  
Pat Jefferson-Daniel  
Interim City Secretary

\_\_\_\_\_  
Sylvester Turner  
Mayor of the City of Houston

APPROVED AND RECOMMENDED:

COUNTERSIGNED

\_\_\_\_\_  
Tom McCasland  
Director, Housing and Community  
Development Department

\_\_\_\_\_  
Chris B. Brown  
City Controller

Countersignature Date:

\_\_\_\_\_  
APPROVED AS TO FORM:  
Assistant City Attorney  
File No. 0292000506001



AGENT

**APPIAN WAY OPPORTUNITY FUND, LLC,**  
a Texas limited liability company

By: \_\_\_\_\_  
Kevin Wood, President  
Tax I.D. No. \_\_\_\_\_

**LEASING AGREEMENT**

**EXHIBIT "A"**

**GLO AGREEMENT No. 19-147-001-B489 and Amendment No. 1 of said GLO  
Agreement**



**GLO CONTRACT NO. 19-147-001-B489  
COMMUNITY DEVELOPMENT BLOCK GRANT  
DISASTER RECOVERY PROGRAM PROJECTS  
NON-RESEARCH & DEVELOPMENT  
HARVEY ROUND 1 FUNDING**

The **GENERAL LAND OFFICE** ("the GLO"), a Texas state agency, and **CITY OF HOUSTON**, DUNS No. 832431985 ("Subrecipient"), each a "Party" and collectively "the Parties," enter into this Subrecipient agreement (the "Contract") under the U.S. Department of Housing and Urban Development Community Development Block Grant Disaster Recovery ("CDBG-DR") program to provide financial assistance with funds appropriated under the Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Public Law 115-56), enacted on September 8, 2017, to facilitate disaster recovery, restoration, and economic revitalization and to affirmatively further fair housing, in accordance with Executive Order 12892, in areas affected by the Texas Hurricane Harvey (DR-4332), which are Presidentially-declared major disaster areas under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121, *et seq.*).

Through CDBG-DR Federal Award Number B-17-DM-48-0001, awarded February 9, 2018, as amended August 14, 2018, and as may be further amended from time to time, the GLO administers grant funds as Community Development Block Grants (Catalog of Federal Domestic Assistance Number 14.228, "Community Development Block Grants/State's program and Non-Entitlement Grants in Hawaii"), as approved by the Texas Land Commissioner, and limited to use for facilitating recovery efforts in Presidentially-declared major disaster areas.

**ARTICLE I - GENERAL PROVISIONS**

**1.01 SCOPE OF PROJECT AND SUBAWARD**

**(a) Scope of Project**

The purpose of this Contract is to set forth the terms and conditions of Subrecipient's participation in the CDBG-DR program. In strict conformance with the terms and conditions of this Contract, Subrecipient shall perform, or cause to be performed, the Programs listed in Attachment A, as applicable, in the City of Houston (the "Project"). Subrecipient shall conduct the Project in strict accordance with this Contract, including all Contract Documents listed in **SECTION 1.02** below, and any Amendments, Revisions, or Technical Guidance Letters issued by the GLO. The aggregate use of CDBG-DR funds shall benefit low- and moderate-income families in a manner that ensures that at least 70 percent of the Subaward



is expended for Activities that benefit such persons, unless another percentage is permitted by HUD in a published waiver as specified in the Federal Registers.

**(b) Subaward**

Subrecipient submitted a Grant Application under the CDBG-DR program. The GLO enters into this Contract based on Subrecipient's approved Grant Application.

Subject to the terms and conditions of this Contract and Subrecipient's approved Grant Application, the GLO shall issue a subaward to Subrecipient in the amount of **\$1,175,954,338.00**, payable as reimbursement of Subrecipient's allowable expenses, to be used in strict conformance with the terms of this Contract, the Program Budgets listed in **Attachment A**, and the **Performance Statements** for the Programs, attached hereto and incorporated herein for all purposes.

The GLO, in its sole discretion, may reimburse Subrecipient for allowable Project costs incurred from August 25, 2017 until the Effective Date of this Contract, in accordance with federal law, but the GLO is not liable to Subrecipient for any costs incurred prior to August 25, 2017 or after the expiration or termination of this Contract.

All funds obtained by Subrecipient from the GLO and utilized on Subrecipient's CDBG-DR Activities are subject to compliance with all Federal and State regulations governing this Contract.

**1.02 CONTRACT DOCUMENTS**

This Contract and the following Attachments, attached hereto and incorporated herein in their entirety for all purposes, shall govern this Contract:

**ATTACHMENT A:** Program Budgets

**ATTACHMENT B:** Federal Assurances and Certifications

**ATTACHMENT C:** General Affirmations

**ATTACHMENT D:** Nonexclusive List of Applicable Laws, Rules, and Regulations

**ATTACHMENT E:** Special Conditions

**ATTACHMENT F:** GLO Information Security Appendix

**ATTACHMENT G:** Program Completion Report

**PERFORMANCE STATEMENT 1:** Buyout Program

**PERFORMANCE STATEMENT 2:** Economic Revitalization Program

**PERFORMANCE STATEMENT 3:** Homebuyer Assistance Program

**PERFORMANCE STATEMENT 4:** Homeowner Assistance Program

**PERFORMANCE STATEMENT 5:** Housing Administration Program and Planning Program

**PERFORMANCE STATEMENT 6:** Multifamily Rental Program

**PERFORMANCE STATEMENT 7:** Public Services Program

**PERFORMANCE STATEMENT 8:** Single Family Development Program

**PERFORMANCE STATEMENT 9:** Small Rental Program

### 1.03 GUIDANCE DOCUMENTS

Subrecipient is deemed to have read and understood, and shall abide by, all guidance documents applicable to the CDBG-DR program, including, without limitation:

- (1) 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- (2) The Federal Registers;
- (3) The State of Texas Plan for Disaster Recovery: Hurricane Harvey – Round 1, as amended, found at <http://recovery.texas.gov/hud-requirements-reports/hurricane-harvey/index.html>; and
- (4) Federal Register publications and other relevant guidance documents posted at: <http://recovery.texas.gov/hud-requirements-reports/hurricane-harvey/index.html>.

### 1.04 DEFINITIONS

“Act” means Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. § 5301, *et seq.*).

“Activity” or “Activities” means a defined class of works or services eligible to be accomplished using CDBG-DR funds. Activities are specified in a Subrecipient Performance Statement.

“Administrative and Audit Regulations” means all applicable statutes, regulations, and other laws governing administration or audit of this Contract, including Title 2, Part 200, Code of Federal Regulations and Chapters 321 and 2155 of the Texas Government Code.

“Amendment” means a written agreement, signed by the Parties hereto, which documents alterations to the Contract other than those permitted by Technical Guidance Letters or Revisions, as herein defined.

“Application” or “Grant Application” means the information Subrecipient provided to the GLO, which is the basis for the award of funding under this Contract.

“Benchmark” means the reimbursement milestones identified in a Performance Statement required for release of Administrative and Project Delivery funding throughout the life of the Contract.

“Budget” means the budget for the Programs and Activities funded by the Contract, as specified in **Attachment A** and the **Performance Statements**, respectively.

“C.F.R.” means the United States Code of Federal Regulations.

“CDBG-DR” means the U.S. Department of Housing and Urban Development’s Community Development Block Grant Disaster Recovery program.

“Construction Documents” means the engineering specifications, construction plans, and/or architectural plans for the construction of improvements funded under the Contract.

“Contract” means this entire document, along with any Performance Statement or Attachments, both physical and incorporated by reference; and any Amendments, Revisions, or Technical Guidance Letters the GLO may issue, to be incorporated by reference herein for all purposes as they are issued and provided to Subrecipient, if any.

**“Contract Documents”** means the documents listed in **SECTION 1.02**.

**“Equipment”** means tangible personal property with a useful life of more than one (1) year and an acquisition cost of Five Thousand Dollars (\$5,000.00) or more per unit, as further defined at 2 CFR § 200.313.

**“Event of Default”** means the occurrence of any of the events set forth in **SECTION 3.03** herein.

**“Federal Assurances”** means Standard Form 424B (non-construction projects) or Standard Form 424D (construction projects), as applicable, in **Attachment B**, attached hereto and incorporated herein for all purposes.

**“Federal Certifications”** means the “Certification Regarding Lobbying – Compliant with Appendix A to 24 C.F.R. Part 87” and Standard Form LLL, Disclosure of Lobbying Activities, also in **Attachment B**, attached hereto and incorporated herein for all purposes.

**“Federal Register(s)”** means the official journal of the federal government of the United States that contains government agency rules, proposed rules, and public notices including U.S. Department of Housing and Urban Development Federal Register Docket Nos. FR-6066-N-01 and FR-6109-N-01 and any other publication affecting Hurricane Harvey – Round 1 CDBG-DR funding allocations.

**“Final Inspection Report”** means the document submitted by a housing inspector to a Subrecipient under a CDBG-DR Housing contract, indicating the completed construction of one Housing Unit (as defined herein).

**“Fiscal Year”** means the period beginning July 1 and ending June 30 each year, which is the annual accounting period for the City of Houston.

**“GAAP”** means “generally accepted accounting principles.”

**“GASB”** means accounting principles as defined by the Governmental Accounting Standards Board.

**“General Affirmations”** means the affirmations in **Attachment C**, which Subrecipient certifies by signing this Contract.

**“GLO”** means the Texas General Land Office, its officers, employees, and designees.

**“Housing”** refers to a project involving home repair, home reconstruction, new home construction, down payment assistance, and buyout and acquisition, including housing for single-family and multi-family rental units under a CDBG-DR contract.

**“Housing Unit”** means one single-family dwelling or one unit in a multi-family residential complex.

**“HUD”** means the United States Department of Housing and Urban Development.

**“Minimum Property Standards”** or **“MPS”** means the Minimum Property Standards (MPS) established in HUD Handbook 4910.1, as amended or superseded. MPS, as read in the context of this Contract, encompasses housing quality standards established by HUD to provide “decent, safe and sanitary” housing.

**“Performance Statement”** means a statement of work for each Program listed in **Attachment A**, which includes specific Benchmarks and Activities required under the



Program. The Performance Statements for this Contract are listed in Section 1.02 as **Performance Statement 1, Performance Statement 2, Performance Statement 3, Performance Statement 4, Performance Statement 5, Performance Statement 6, Performance Statement 7, Performance Statement 8, and Performance Statement 9** and are substantially the forms attached hereto and incorporated herein.

**"Program"** means each Community Development Block Grant Disaster Recovery program administered by the City of Houston and listed in **Attachment A** (collectively, the "Programs").

**"Program Completion Report"** means a report created by the GLO and included in **Attachment G**, containing an as-built accounting of all Programs completed under a CDBG-DR program, and all information required for final acceptance of deliverables and Contract closeout.

**"Program Guidelines"** means, collectively, the individual sets of guidelines adopted by Subrecipient and approved by the GLO governing the implementation of each Program under this Contract, as applicable.

**"Project"** means the work to be performed under this Contract, as described in Section 1.01(a), above and including all Programs listed in **Attachment A** and further described in the **Performance Statements**.

**"Project Manager"** means a representative of the GLO Community Development and Revitalization ("CDR") Program designated to oversee the Project.

**"Public Information Act"** or **"PIA"** means Chapter 552 of the Texas Government Code.

**"Revision"** means the GLO's written approval of changes to Benchmarks, movement of funds among budget categories, and other Contract adjustments the Subrecipient's Director of Housing and Community Development and the GLO may approve without a formal Amendment.

**"Setup"** means documentation, submitted by a Subrecipient, necessary for the GLO to determine that housing sites meet minimum eligibility criteria, resulting in approval for the Subrecipient to move forward with the projects.

**"Subrecipient"** means the City of Houston, a recipient of federal CDBG-DR funds through the GLO as the pass-through funding agency. Subrecipient may also be referred to as "Provider" herein.

**"Technical Guidance Letter"** or **"TGL"** means an instruction, clarification, or interpretation of the requirements of this Contract, issued by the GLO and provided to Subrecipient, applicable to specific subject matter pertaining to this Contract, and to which the addressed Program participants shall be subject as of a specific date.

**"U.S.C."** means the United States Code.

#### **1.05 INTERPRETIVE PROVISIONS**

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms;

- (b) The words "hereof," "herein," "hereunder," and similar words refer to this Contract as a whole and not to any particular provision, section, attachment, work order, or schedule of this Contract, unless otherwise specified;
- (c) The term "including" is not limiting, and means "including, without limitation" and, unless otherwise expressly provided in this Contract,
- (d) References to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications thereto, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract;
- (e) References to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation, as may be amended from time to time;
- (f) The captions and headings of this Contract are for convenience of reference only and shall not affect the interpretation of this Contract;
- (g) All Attachments within this Contract, including those incorporated by reference, and any Amendments, are considered part of the terms of this Contract;
- (h) This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters, which will be clearly identified in the Contract. All such limitations, regulations, and policies are cumulative and each shall be performed in accordance with its terms;
- (i) Unless otherwise expressly provided, reference to any action of the GLO or by the GLO by way of consent, approval, or waiver shall be deemed modified by the phrase "in the sole discretion of the GLO";  
Notwithstanding the preceding sentence, any approval, consent, or waiver required by, or requested of, the GLO shall not be unreasonably withheld or delayed;
- (j) All due dates and/or deadlines referenced in this Contract that occur on a weekend or holiday shall be considered as if occurring on the next business day of Subrecipient;
- (k) All time periods in this Contract shall commence on the day after the date on which the applicable event occurred, report is submitted, or request is received;
- (l) Time is of the essence in this Contract;
- (m) In the event of conflicts or inconsistencies between this contract and its attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: 1) any and all applicable federal and state laws, rules, and regulations; 2) the Contract; 3) GLO-approved Program guidelines; 4) **Performance Statements**; and 5) Attachments to the Contract: **Attachment A, Attachment B, Attachment E, Attachment C, Attachment D, Attachment F, and Attachment G.**

## **ARTICLE II – REIMBURSEMENT, ADVANCE PAYMENT, BUDGET VARIANCE, AND INCOME**

### **2.01 REIMBURSEMENT REQUESTS**

Each invoice submitted by Subrecipient shall be supported by actual receipts, cancelled checks, and/or such other documentation that, in the judgment of the GLO, allows for full substantiation of the costs incurred. The GLO shall issue and provide to Subrecipient a Technical Guidance Letter containing the GLO-established invoice submission procedures required under this Contract. Prior to the issuance of the Technical Guidance Letter, the GLO will provide Subrecipient instructions for interim invoicing processes.

**With the exception of GLO-approved allowable Project costs incurred after August 25, 2017 and before the Effective Date of this Contract, the GLO must acknowledge the successful completion by Subrecipient of a specific Benchmark, which will require the submission by Subrecipient and approval by the GLO of invoices related to said Benchmark, including invoices for expenses incurred by any subcontractor, before Subrecipient may access additional Administrative and Project Delivery funds for reimbursement as outlined in the Performance Statements.**

### **2.02 TIMELY EXPENDITURES**

In accordance with the Federal Register and to ensure timely expenditure of grant funds, Subrecipient shall submit reimbursement requests under this contract, at a minimum, quarterly.

Subrecipient shall make timely payments to its subcontractors in accordance with Chapter 2251, Texas Government Code.

Subrecipient shall submit final reimbursement requests to the GLO no later than ninety (90) days after the Contract expires or is terminated. The GLO, in its sole discretion, may deny payment and deobligate remaining funds from the Contract ninety (90) days after expiration or termination of the Contract. The GLO's ability to deobligate funds under this Section 2.02 notwithstanding, the GLO shall pay all eligible reimbursement requests.

### **2.03 VARIANCE**

Amendments to decrease or increase the subaward amount or to add or delete a Program may be made only by written agreement of the Parties, under the formal Amendment process described in Section 8.15, below. Upon completion of any Program, the GLO shall formally close out the Program by issuing a close-out letter to Subrecipient. The GLO may, in its sole discretion and in conformance with federal law, approve other adjustments required during Project performance through a Revision or Technical Guidance Letter. Such approvals must be in writing, and may be delivered by regular mail, electronic mail, or facsimile transmission.

**SUBRECIPIENT SHALL SUBMIT FINAL BUDGETS AND ACTUAL EXPENDITURES AS PART OF THE PROGRAM COMPLETION REPORTS TO THE GLO NO LATER THAN SIXTY (60) DAYS AFTER THE CONTRACT TERMINATES OR EXPIRES OR AT THE CONCLUSION OF ALL CONTRACT ACTIVITIES, WHICHEVER OCCURS FIRST. THE PROGRAM COMPLETION**



**REPORTS SHALL BE IN A FORMAT PRESCRIBED BY THE GLO AND SHALL CONFIRM COMPLETION OF ALL ACTIVITIES PERFORMED UNDER THIS CONTRACT.**

#### **2.04 PROGRAM INCOME**

In accordance with 2 C.F.R. § 200.307, Subrecipient shall maintain records of the receipt and accrual of all Program Income, as Program Income is defined at 2 C.F.R. § 200.80. Subrecipient shall report Program Income to the GLO in accordance with ARTICLE 4 of this Contract. Any GLO-authorized use of Program Income by Subrecipient shall be subject to GLO or HUD restrictions.

### **ARTICLE III - DURATION, EXTENSION, AND TERMINATION OF CONTRACT**

#### **3.01 DURATION OF CONTRACT AND EXTENSION OF TERM**

This Contract shall become effective on the date signed by the last Party ("Effective Date") and shall continue until August 16, 2024 or the Project has been fully completed and closed out, whichever date is earlier ("Contract Period"). **ANY REQUEST FOR EXTENSION MUST BE RECEIVED BY THE GLO AT LEAST SIXTY (60) DAYS BEFORE THE ORIGINAL TERMINATION DATE OF THIS CONTRACT AND, IF APPROVED, SUCH EXTENSION SHALL BE BY FORMAL WRITTEN AMENDMENT.**

**Subrecipient must meet all Program Benchmarks stated in the Performance Statements. Subrecipient's failure to meet any Benchmark may result in suspension of payment or termination under SECTION 3.02, 3.03 or 3.04 below.**

#### **3.02 EARLY TERMINATION**

In the event the State of Texas or HUD eliminates funding under this Contract or the CDBG-DR Program is assigned to another state agency, the GLO may terminate this Contract by giving written notice specifying a termination date at least thirty (30) days after the date of the notice. Upon receipt of such notice, Subrecipient shall cease work, terminate any subcontracts, and incur no further expense related to this Contract. **Such early termination shall be subject to the equitable settlement of the respective interests of the Parties, accrued up to the date of termination.**

#### **3.03 EVENTS OF DEFAULT**

Each of the following events shall constitute an Event of Default under this Contract: (i) Subrecipient fails to comply with any term, covenant, or provision contained in this Contract; (ii) Subrecipient makes a general assignment for the benefit of creditors or takes any similar action for the protection or benefit of creditors; (iii) Subrecipient makes a materially incorrect representation or warranty in a Performance Statement, a reimbursement request for payment, or any report submitted to the GLO under the Contract; or (iv) notwithstanding the GLO's option to terminate the Contract early under Section 3.02, the GLO fails to comply with any term, covenant, or provision contained in this Contract. Prior to a determination of an Event of Default, the Parties shall allow a thirty (30) day period to cure any deficiency or potential cause of an Event of Default. The Parties may extend the time allowed to cure any deficiency or potential cause of an Event

of Default. The Parties shall not arbitrarily withhold approval of an extension of the time allowed to cure a deficiency or potential cause of an Event of Default. In no event shall the amount of time allowed to cure a deficiency or potential cause of an Event of Default extend beyond the Contract Period.

### **3.04 REMEDIES; NO WAIVER**

Upon the occurrence of any Event of Default, the Parties may avail themselves of any equitable or legal remedy available to them, including without limitation, the withholding of payment, disallowing all or part of noncompliant Activities, or suspending or terminating the Contract.

The Parties' rights or remedies under this Contract are not intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this Contract, or hereafter legally existing, upon the occurrence of an Event of Default. The failure of either Party to insist upon the strict observance or performance of any of the provisions of this Contract, or to exercise any right or remedy provided in this Contract, shall not impair, waive, or relinquish any such right or remedy with respect to another Event of Default.

## **ARTICLE IV - CONTRACT ADMINISTRATION**

### **4.01 SUBMISSIONS – GENERALLY**

Except for legal notices that must be sent by specific instructions pursuant to **SECTION 8.10** of the Contract and all other reports and documentation the GLO requires, any report, form, or request required to be submitted to the GLO under this Contract shall be sent in the format prescribed by the GLO.

**If the Subrecipient fails to timely submit documentation to the GLO in the time and manner required by the Contract, the GLO may, in its sole discretion, withhold any payments pending Subrecipient's correction of the deficiency.**

#### **(a) PROGRAM GUIDELINES**

No later than the close of business sixty (60) days subsequent to the Effective Date of this Contract, Subrecipient must submit Program Guidelines to the GLO for approval.

#### **(b) FORMS**

Subrecipient must execute the forms included in **Attachment B** and certifies by the execution of this Contract to all affirmations in **Attachment C**, confirming compliance with required state and federal laws applicable to the Contract.

(i) General Affirmations are found in **Attachment C** and Subrecipient certifies by the execution of this Contract to all statements therein.

(ii) The Federal Assurances for Construction Programs (Standard Form 424D), as applicable to the Project, is found at Page 1 of **Attachment B** and must be executed by Subrecipient.

- (iii) The "Certification Regarding Lobbying – Compliant with Appendix A to 24 C.F.R. Part 87" is found at Page 3 of **Attachment B** and must be executed by Subrecipient.
- (iv) If any funds granted under this Contract have been used for lobbying purposes, Subrecipient must complete and execute Standard Form LLL, Disclosure of Lobbying Activities, found at Page 4 of **Attachment B**.

#### **4.02 MONTHLY ACTIVITY STATUS REPORTS**

Subrecipient must provide monthly Activity status reporting, in a format to be specified by the GLO for each Program identified in **Attachment A**, on or before on the fifteenth day of the month following the month in which the reported Activities were performed for the duration of the Contract. Any licenses or permits required for the work identified in the Performance Statements shall be included as a part of the monthly Activity status reports for the period during which they are obtained, pursuant to Article 8.01 herein.

### **ARTICLE V - FEDERAL AND STATE FUNDING, RECAPTURE OF FUNDS, AND OVERPAYMENT**

#### **5.01 FEDERAL FUNDING**

- (a) Funding for this Contract is appropriated under the Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Public Law 115-56), enacted on September 8, 2017, to facilitate disaster recovery, restoration, economic revitalization, and to affirmatively further fair housing in accordance with Executive Order 12892, in areas affected by the Texas Hurricane Harvey (DR-4332), which are Presidentially-declared major disaster areas under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121, *et seq.*). The fulfillment of this Contract is based on those funds being made available to the GLO as the lead administrative state agency. All expenditures under this Contract must be made in accordance with this Contract, the rules and regulations promulgated under the CDBG-DR Program and any other applicable laws. Funds disbursed under each Activity may be subject to recapture and repayment for non-compliance.
- (b) To participate in the CDBG-DR program, Subrecipient must have a data universal numbering system (DUNS) number, and a Commercial And Government Entity (CAGE) Code.
- (c) Subrecipient must report its DUNS number and CAGE Code to the GLO for use in various reporting documents. A DUNS number and CAGE Code may be obtained by visiting the Central Contractor Registration website at:

<https://www.sam.gov>

Assistance with this web site is available by calling 866-606-8220.

#### **5.02 STATE FUNDING**

- (a) This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or the GLO in violation of Article III, Section 49, of the Texas Constitution.



In compliance with Article VIII, Section 6 of the Texas Constitution, all obligations of the GLO hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the GLO may terminate this Contract. In that event, the Parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests, accrued up to the date of termination.

- (b) Any claim by Subrecipient for damages under this Contract may not exceed the amount due and owing Subrecipient under the Contract or the amount of funds appropriated for payment, but not yet paid to Subrecipient, under the annual budget in effect at the time of the breach. Nothing in this provision shall be construed as a waiver of sovereign immunity.

#### **5.03 RECAPTURE OF FUNDS**

SUBRECIPIENT SHALL CARRY OUT THE ACTIVITIES UNDER THE CONTRACT IN A MANNER THAT COMPLIES WITH THE TERMS AND CONDITIONS OF THE CONTRACT AND ALL APPLICABLE LAWS. THE GLO MAY RECAPTURE AND BE REIMBURSED BY SUBRECIPIENT FOR ANY PAYMENTS MADE BY THE GLO (I) THAT EXCEED THE MAXIMUM ALLOWABLE HUD RATE; (II) THAT ARE NOT ALLOWED UNDER APPLICABLE LAWS, RULES, AND REGULATIONS; OR (III) THAT ARE OTHERWISE INCONSISTENT WITH THIS CONTRACT, INCLUDING ANY UNAPPROVED EXPENDITURES. THIS RECAPTURE PROVISION APPLIES TO ANY FUNDS EXPENDED FOR THE PROJECT OR ANY PROGRAM OR ACTIVITY THAT DOES NOT MEET A CDBG-DR PROGRAM NATIONAL OBJECTIVE AS SPECIFIED IN EACH PERFORMANCE STATEMENT OR THAT IS NOT OTHERWISE ELIGIBLE UNDER CDBG-DR REGULATIONS.

#### **5.04 OVERPAYMENT AND DISALLOWED COSTS**

Subrecipient shall be liable to the GLO for any costs disallowed pursuant to financial and/or compliance audit(s) of funds received under this Contract. Subrecipient shall reimburse disallowed costs from funds which were not provided or otherwise made available to Subrecipient under this Contract.

#### **5.05 FINAL BENCHMARKS**

To ensure all programmatic requirements are met for each Program, the GLO shall only release the final five percent (5%) of each Program Budget upon submittal of completion and acceptance by the GLO of all Activities and Benchmarks identified in each Program's Performance Statement. The GLO shall disburse each Program's retained funds within thirty (30) days following approval of each Program Completion Report and all related closeout documentation necessary to determine that Subrecipient has completed all Activities in accordance with the terms and requirements of the Performance Statement, the Contract Documents, and all applicable laws, rules, and regulations.

## **ARTICLE VI - INTELLECTUAL PROPERTY**

### **6.01 OWNERSHIP AND USE**

- (a) Except for City Materials (as defined below in 6.01(c)), and except for any third-party proprietary intellectual property or information for which the City does not have a legal ownership right, the Parties shall jointly own all right, title, and interest in and to all reports, or other material, data, drawings, computer programs, and codes created under this Contract by either Party, and/or any copyright or other intellectual property rights, and any material or information developed and/or required to be delivered under this Contract, with each Party having the right to use, reproduce, or publish any or all of such information and other materials without obtaining permission from the other Party and without expense or charge. For any City or third-party proprietary intellectual property or information for which the City has a license to use or access, the City shall provide the GLO at least one (1) user license.
- (b) Except for City Materials, and except for any third-party proprietary intellectual property or information for which the City and/or the GLO do not have a legal ownership right, Subrecipient grants the GLO and HUD, and GLO and HUD grants to Subrecipient, a royalty free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for governmental purposes, all reports, or other material, data, drawings, computer programs, and codes created under this Contract by either Party, and/or any copyright or other intellectual property rights, and any material or information developed and/or required to be delivered under this Contract by either Party.
- (c) "City Materials" means all works of authorship, materials, information, and other intellectual property created prior to the performance of any City obligation under this Contract, plus any modifications or enhancements thereto and derivative works based thereon, unless any such modifications, enhancements, or derivative works were funded using CDBG-DR funds. For clarity, if modifications, enhancements, or derivative works were funded using CDBG-DR funds, then only the applicable modification, enhancements, or derivative works are not included in the definition of City Materials.

### **6.02 NON-ENDORSEMENT BY STATE AND THE UNITED STATES**

Subrecipient shall not publicize or otherwise circulate promotional material (such as advertisements, sales brochures, press releases, speeches, still or motion pictures, articles, manuscripts, or other publications) that states or implies the GLO, State of Texas, U.S. Government, or any government employee endorses a product, service, or position the Subrecipient represents. Subrecipient may not state or imply that the GLO, the State of Texas, or the U.S. Government approves of Subrecipient's work products or considers Subrecipient's work product to be superior to other products or services.

### **6.03 PUBLICATION DISCLAIMER REQUIRED**

Subrecipient shall include a disclaimer on all public information releases issued pursuant to this Contract stating that the funds for this Project or any Program are provided by the City of Houston and the Texas General Land Office through HUD's CDBG Program.

## **ARTICLE VII - RECORDS, AUDIT, AND RETENTION**

### **7.01 BOOKS AND RECORDS**

Subrecipient shall keep and maintain, under GAAP or GASB, as applicable, full, true, and complete records sufficient to allow the GLO, the Texas State Auditor's Office, the United States Government, and/or their authorized representatives to determine Subrecipient's compliance with this Contract and all applicable laws, rules, and regulations, including the applicable laws and regulations provided in Attachment D.

### **7.02 INSPECTION AND AUDIT**

- (a) All records related to this Contract, including records of Subrecipient and its Subcontractors, shall be subject to the Administrative and Audit Regulations. Accordingly, such records and work product shall be subject, at any time, to inspection, examination, audit, and copying at the Subrecipient's primary location or any location where such records and work product may be found, with or without notice from the GLO or other government entity with necessary legal authority. Subrecipient shall cooperate fully with any federal or state entity in the conduct of inspection, examination, audit, and copying, including providing all information requested. Subrecipient will ensure that this clause concerning federal and state entities' authority to inspect, examine, audit, and copy records and work product, and the requirement to fully cooperate with the federal and state entities, is included in any subcontract it awards.
- (b) The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. Acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. **The Office of the Comptroller General of the United States, the Government Accountability Office, the Office of Inspector General, or any authorized representative of the U.S. Government shall also have this right of inspection.** Subrecipient shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Subrecipient and the requirement to cooperate is included in any subcontract it awards.



- (c) Subrecipient will be deemed to have read and know of all applicable federal, state, and local laws, regulations, and rules pertaining to the Project, including those identified in **Attachment D**, governing audit requirements.

### **7.03 SUBRECIPIENT SELF-AUDIT AND TARGETED AUDITS**

#### **(a) Subrecipient Self-Audit**

Upon the GLO's or HUD's approval, Subrecipient may conduct an annual financial and compliance audit of funds received and performance rendered under this Contract. Subrecipient may use funds budgeted under this Contract to pay for that portion of the cost of such audit services properly allocable to the Activities funded under this Contract, provided that the GLO shall not pay the cost of such audit services until the GLO has received Subrecipient's satisfactory audit report and invoice, as determined by the GLO. The invoice submitted for reimbursement must clearly show the percentage of cost allocable to the Activities funded under this Contract relative to the total cost of the audit services. Therefore, Subrecipient shall submit an invoice showing the total cost of the audit and the corresponding prorated charge per funding source. If applicable, Subrecipient shall submit an explanation with the reimbursement request, explaining why the percentage of audit fees exceeds the prorated amount allowable.

#### **(b) Targeted Audits & Monitoring Visits**

The GLO may at any time perform, or instruct the performance of, an annual program and/or fiscal audit, or conduct a special or targeted audit of any aspect of the Subrecipient's operation, using an auditor of the GLO's choice. Subrecipient shall maintain financial and other records prescribed by the GLO or by applicable federal or state laws, rules, and regulations.

### **7.04 PERIOD OF RETENTION**

All records relevant to this Contract shall be retained for a period of three (3) years subsequent to the final closeout of the overall Project, in accordance with federal regulations set forth at 2 CFR § 200.333. **The GLO will notify all CDBG-DR program participants of the date upon which local records may be destroyed.**

## **ARTICLE VIII - MISCELLANEOUS PROVISIONS**

### **8.01 LEGAL OBLIGATIONS**

Subrecipient shall procure and maintain for the duration of this Contract any license, authorization, insurance, waiver, permit, qualification, or certification required by federal, state, county, or city statute, ordinance, law, or regulation to be held by Subrecipient to provide the goods or services required by this Contract. Subrecipient shall pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Subrecipient shall pay any such government obligations not paid by its subcontractors during performance of this Contract. **Subrecipient shall include copies of such licenses and permits as a part of the monthly Activity status reports for the period during which they are obtained.**

## 8.02 INDEMNITY

To the extent permitted under the law, except for damages directly or proximately caused by the gross negligence of the GLO, Subrecipient shall indemnify and hold harmless the State of Texas, the GLO, and the officers, representatives, agents, and employees of the State of Texas and the GLO from any losses, claims, suits, actions, damages, or liability (including all costs and expenses of defending against all of the aforementioned) arising in connection with:

- (a) This Contract;
- (b) Any negligence, act, omission, or misconduct in the performance of the services referenced herein; or
- (c) Any claims or amounts arising or recoverable under federal or state workers' compensation laws, the Texas Tort Claims Act, or any other such laws.

Subrecipient shall be responsible for the safety and well-being of its employees, customers, and invitees. These requirements shall survive the term of this Contract until all claims have been settled or resolved and suitable evidence to that effect has been furnished to the GLO. The provisions of this Section shall survive termination of this Contract. Subrecipient has not appropriated any money for payment under this Contract and nothing in this provision requires that funds be assessed or collected or that a sinking fund be created for any Claims arising under this Contract.

## 8.03 INSURANCE AND BOND REQUIREMENTS

- (a) Unless Subrecipient is a self-insured governmental entity pursuant to Chapter 2259 of the Texas Government Code to self-insure, Subrecipient shall carry insurance for the duration of this Contract in types and amounts necessary and appropriate for the Project.
- (b) Subrecipient shall require all contractors, subcontractors, vendors, service providers, or any other person or entity performing work described in **Attachment A** to carry insurance for the duration of the Project in the types and amounts customarily carried by a person or entity providing such goods or services. Subrecipient shall require any person or entity required to obtain insurance under this Section to complete and file the declaration pages from the insurance policies with Subrecipient whenever a previously identified policy period expires during the term of Subrecipient's contract with the person or entity, as proof of continuing coverage. Subrecipient's contract with any such person or entity shall clearly state that acceptance of the insurance policy declaration pages by the Subrecipient shall not relieve or decrease the liability of the person or entity. **Persons or entities shall be required to update all expired policies before Subrecipient's acceptance of an invoice for monthly payment from such parties.**
- (c) Subrecipient shall require performance and payment bonds to the extent they are required under Chapter 2253 of the Texas Government Code.

- (d) Subrecipient shall require, on all construction projects, that any person or entity required to provide Federal Construction Assurances shall complete form SF-424D, entitled "Assurances – Construction Programs," and Subrecipient shall maintain such documentation.

#### **8.04 ASSIGNMENT AND SUBCONTRACTS**

Subrecipient shall not assign, transfer, or delegate any rights, obligations, or duties under this Contract without the GLO's prior written consent. Notwithstanding this provision, Subrecipient may subcontract some or all of the services to be performed under this Contract. In any subcontracts, Subrecipient shall legally bind the subcontractor to perform and make such subcontractor subject to all the duties, requirements, and obligations of Subrecipient as specified in this Contract. Nothing in this Contract shall be construed to relieve Subrecipient of the responsibility for ensuring that the goods delivered, and/or the services rendered by Subrecipient and/or any of its subcontractors, comply with all the terms and provisions of this Contract.

For all construction contracts or subcontracts to which Federal Labor Standards requirements apply, Subrecipient shall submit to the GLO all labor related documentation required to ensure compliance. Subrecipient shall retain five percent (5%) of the payment due under each of Subrecipient's construction or rehabilitation subcontracts until the GLO determines that the Federal Labor Standards requirements applicable to each such contract or subcontract have been satisfied.

#### **8.05 PROCUREMENT**

Subrecipient must comply with the procurement procedures stated at 2 C.F.R. §§ 200.318 through 200.326 and all other applicable federal, state, and local procurement procedures and laws, regulations, and rules. Subrecipient must confirm that its vendors and subcontractors are not debarred from receiving state or federal funds at each of the following web addresses:

Texas Comptroller's Vendor Performance Program at:

<https://comptroller.texas.gov/purchasing/>;

and the Federal General Services Administration's System for Award Management (SAM):

<https://www.sam.gov>.

#### **8.06 PURCHASES AND EQUIPMENT**

Any purchase of Equipment under this Contract shall be made in accordance with all applicable laws, regulations, and rules including those listed in **Attachment D**. Subrecipient shall retain title to and possession of any Equipment unless and until transferred to the GLO or disposed of in accordance with federal regulations. Subrecipient shall furnish, with its final request for reimbursement, a list of all Equipment purchased with Program funds under the Contract, including the name of the manufacturer, the model



number, and the serial number, if applicable. The disposition of any Equipment shall be in accordance with all applicable laws, regulations, and rules, including those listed in **Attachment D**.

#### **8.07 COMMUNICATION WITH THIRD PARTIES**

The GLO and the authorities named in **ARTICLE 7**, above, may initiate, in accordance with any legal authority granted by statute, regulation, or rule, communications with any subcontractor, and may request access to any books, documents, personnel, papers, and records of a subcontractor which are pertinent to this Contract. Such communications may be required to conduct audits, examinations, Davis-Bacon Labor Standards interviews, and gather additional information as provided in **ARTICLE 7** herein. The results of such communication will be shared with Subrecipient, in writing, prior to any publication.

#### **8.08 RELATIONSHIP OF THE PARTIES**

The Parties to this Contract are associated only for the purposes and to the extent specified in this Contract. Subrecipient is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract creates a partnership or joint venture, employer-employee or principal-agent relationships, or any liability whatsoever with respect to the indebtedness, liabilities, or obligations of Subrecipient or any other party. If applicable, Subrecipient shall be solely responsible for and the GLO shall have no obligation with respect to: withholding of income taxes, FICA, or any other taxes or fees; industrial or workers' compensation insurance coverage; accumulation of vacation leave or sick leave; or unemployment compensation coverage provided by the State.

#### **8.09 COMPLIANCE WITH OTHER LAWS**

In the performance of this Contract, Subrecipient shall comply with all applicable federal, state, and local laws, ordinances, and regulations, including those listed in **Attachments B, C, and D**. Subrecipient is deemed to know and understand all applicable laws, statutes, ordinances, and regulations affecting its performance under this Contract.

#### **8.10 NOTICES**

Any notices required under this Contract shall be deemed delivered when deposited either in the United States mail, postage paid, certified, return receipt requested; or with a common carrier, overnight, signature required, to the appropriate address below:

**GLO**

Texas General Land Office  
1700 N. Congress Avenue, 7<sup>th</sup> Floor  
Austin, TX 78701  
Attention: Contracts Management Division

**Subrecipient**

City of Houston  
900 Bagby St., 4<sup>th</sup> Floor  
Houston, TX 77002  
Attention: Director of Housing and Community Development Department

Notice given in any other manner shall be deemed effective only if and when received by the Party to be notified. Either Party may change its address for notice by written notice to the other Party as herein provided.

**8.11 GOVERNING LAW AND VENUE**

This Contract and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Subrecipient irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of *forum non conveniens*, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction with respect to this Contract or any document related hereto. **NOTHING IN THIS CONTRACT SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO OR A WAIVER OF GOVERNMENTAL IMMUNITY BY SUBRECIPIENT.**

**8.12 SEVERABILITY**

If a court of competent jurisdiction determines any provision of this Contract is invalid, void, or unenforceable, the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

**8.13 DISPUTE RESOLUTION**

Subrecipient shall use the dispute resolution process established in Chapter 2260 of the Texas Government Code and related rules to attempt to resolve any dispute under this Contract, including a claim for breach of contract by the GLO, that the Parties cannot resolve in the ordinary course of business. Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of such a claim constitute grounds for Subrecipient to suspend performance under this Contract of Programs unaffected by the claim(s) at issue. Notwithstanding this provision, the GLO and Subrecipient reserves all legal and equitable rights and remedies available to it.

**8.14 PUBLIC RECORDS**

Information related to the performance of this Contract may be subject to the Public Information Act ("PIA") and will be withheld from public disclosure or released only in accordance therewith. Subrecipient shall make any information created or exchanged with the state pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state/the GLO. Subrecipient shall make any information required

under the PIA available to the GLO in portable document file (".pdf") format or any other format agreed between the Parties. Subrecipient's failure to mark as "confidential" or a "trade secret" any information it believes to be excepted from disclosure waives all claims Subrecipient may make against the GLO for releasing such information without prior notice to Subrecipient.

**Subrecipient shall release the following information upon receipt of an open records request:**

- The amount of CDBG-DR funds expected to be made available;
- The range of Programs or Activities that may be undertaken with CDBG-DR funds;
- The estimated amount of CDBG-DR funds proposed to be used for Activities that will meet the national objective of benefit to low- and moderate-income persons; and
- The proposed CDBG-DR Activities likely to result in displacement and the Subrecipient's anti-displacement and relocation plan.

#### **8.15 AMENDMENTS TO THE CONTRACT**

Amendments to decrease or increase the subaward, to add or delete a Program, to extend the term of the Contract, and/or to make other substantial amendments to the Contract may be made only by written agreement of the Parties, under the formal amendment process except that, upon completion of a Program, the GLO shall issue a close-out letter pursuant to **SECTION 2.03**. The formal amendment process requires submission by the GLO Project Manager of the proposed amended language or amount to the GLO Contract Management Division for the preparation of a formal Amendment and circulation for necessary GLO and Subrecipient signatures. In the sole discretion of the GLO, and in conformance with federal law, the GLO may approve other adjustments required during Project performance by the GLO by way of a Revision or Technical Guidance Letter unilaterally issued by the GLO and acknowledged by the Subrecipient. Such approvals must be in writing and may be delivered by U.S. mail or electronic mail.

Pursuant to **SECTION 2.03** hereof, final **Program Completion Reports** for all Programs performed under this Contract shall be submitted to the GLO and shall include all such informal revisions agreed to by the Subrecipient and GLO over the life of the Contract.

#### **8.16 REVISIONS TO PERFORMANCE STATEMENTS**

Performance Statements may be revised by the Subrecipient quarterly and submitted to the GLO for approval. A proposed Revision to any Performance Statement does not require application of the formal Amendment process established in Section 8.15, above, but must be approved by the GLO, in writing, in order to take effect.

#### **8.17 ENTIRE CONTRACT AND MODIFICATIONS**

This Contract, its Attachment(s), any Amendment(s) Technical Guidance Letter(s), and/or Revision(s) issued in conjunction with this Contract, if any, constitute the entire agreement of the Parties and are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements made in connection with the



subject matter hereof. Any additional or conflicting terms in Attachment(s), Technical Guidance Letter(s), and/or Revision(s) shall be harmonized with this Contract to the extent possible. Unless an Attachment, Technical Guidance Letter, or Revision specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language shall be construed consistently with the Contract.

**8.18 PROPER AUTHORITY**

Each Party hereto represents and warrants that the person executing this Contract on its behalf has full power and authority to legally bind its respective entity. Subrecipient acknowledges that this Contract is effective for the period of time specified in the Contract. Any work performed by Subrecipient after the Contract terminates is performed at the sole risk of Subrecipient.

**8.19 COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which shall be an original, and all such counterparts shall together constitute but one and the same Contract.

**8.20 SURVIVAL**

The provisions of **ARTICLES 5, 6, AND 7; AND SECTIONS 1.01, 1.03, 2.05, 3.02, 3.04, 8.02, 8.03, 8.07, 8.08, 8.09, 8.10, 8.11, 8.13, 8.14, 8.15** of this Contract, and any other continuing obligations of Subrecipient shall survive the termination or expiration of this Contract.

**8.21 CONTRACT CLOSEOUT**

Upon completion of all Programs and Activities required for the Contract, and pursuant to **SECTION 2.03** hereof, Subrecipient shall prepare final **Program Completion Reports** confirming final performance measures, budgets, and expenses and the GLO will close the Contract in accordance with 2 C.F.R. §§ 200.343 through 200.345 and GLO CDBG-DR guidelines consistent therewith. The GLO will notify Subrecipient via official closeout letter upon review of the final Program Completion Report.

**8.22 INDIRECT COST RATES**

Unless Subrecipient has negotiated or does negotiate an indirect cost rate with the federal government, subject to periodic renegotiations of the rate during the Contract Period, Subrecipient's indirect cost rate shall be set by 2 C.F.R. § 200.414(f), i.e., ten percent (10%).

**8.23 CONFLICT OF INTEREST**

- (a) Subrecipient shall abide by the provisions of this Section and include the provisions in all subcontracts. Subrecipient shall comply with all conflict of interest laws and regulations applicable to the Program.
- (b) Subrecipient shall maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts, which standards may be located in various

Subrecipient governing documents, including but not limited to, the Subrecipient's Charter, Code of Ordinances, Administrative Procedures, Executive Orders, and Policies and Procedures.

#### **8.24 ENVIRONMENTAL CLEARANCE REQUIREMENTS**

- (a) Subrecipient is responsible for conducting environmental reviews and for obtaining any environmental clearance necessary for successful completion of the Project. Subrecipient shall prepare environmental review or assessment of each Activity in accordance with applicable laws, regulations, rules, and guidance. Subrecipient shall maintain a written Environmental Review Record ("ERR") for each Activity, including all supporting source documentation and documentation to support any project mitigation. Subrecipient shall provide a copy of the ERR and all related source documentation to the GLO.
- (b) Subrecipient shall address inquiries and complaints and shall provide appropriate redress related to environmental Activities. Subrecipient shall document each communication issued or received hereunder in the related ERR.
- (c) The GLO may, in its sole discretion, reimburse Subrecipient for certain exempt environmental Activities, as defined in federal regulations. Reimbursement requests for exempt environmental Activities must be supported by the proper HUD-prescribed form.
- (d) The Parties acknowledge and understand that the GLO may enter into Interagency agreements with the Texas Historical Commission, including GLO Contract No. 19-127-000-B465, and other entities in order to facilitate any necessary environmental or historic review. The GLO may incorporate one or more Interagency agreement into this contract via a Technical Guidance Letter.

#### **8.25 CITIZEN PARTICIPATION AND ALTERNATIVE REQUIREMENTS**

- (a) Subrecipient must ensure that all citizens have equal and ongoing access to information about the Programs, including ensuring that Program information is available in the appropriate languages for the geographical area served by the Subrecipient. Information furnished to citizens shall include, without limitation:
  - 1. The amount of CDBG-DR funds expected to be made available;
  - 2. The range of Activities that may be undertaken with the CDBG-DR funds;
  - 3. The estimated amount of the CDBG-DR funds proposed to be used for Activities meeting the national objective of benefiting low-to-moderate income persons; and
  - 4. A clear statement if any proposed CDBG-DR Activities are likely to result in displacement and the entity's anti-displacement and relocation plan.

- (b) Complaint Procedures: Subrecipient must have written citizen complaint procedures that provide a timely written response (within fifteen (15) working days) to complaints and grievances. Subrecipient shall notify citizens of the location and the days and hours when the location is open for business, so they may obtain a copy of these written procedures.
- (c) Technical Assistance: Subrecipient shall provide technical assistance to all Program participants, regardless of income, abilities, or LMI status, and shall make reasonable accommodations for any potential Program participant who requires assistance to access any Program. For example, Subrecipient shall provide an alternative means for completing a Program application for any applicant who is unable to access an online application.
- (d) Subrecipient shall maintain a citizen participation file which includes a copy of the Subrecipient's complaint procedures, documentation and evidence of opportunities provided for citizen participation (e.g., public notices, advertisements, flyers, etc.), documentation of citizen participation events (e.g., meeting minutes, attendance lists, sign-in sheets, news reports, etc.), and documentation of any technical assistance requested and/or provided.

#### 8.26 SIGNAGE REQUIREMENTS

On any public building or public facility funded under this Contract, Subrecipient shall place permanent signage. Signs shall be placed in a prominent, visible public location. Subrecipient shall format each sign to best fit the architectural design of the building or facility but should be legible from at least three (3) feet distance.

For other construction projects (e.g., water transmission lines, sewer collection lines, drainage, roadways, housing rehabilitation) funded under this Contract, Subrecipient shall place temporary signage erected in a prominent location at the construction project site or along a major thoroughfare within the locality.

All signage required under this Section 8.25 shall contain the following:

"This project is funded by the City of Houston, the Texas General Land Office of the State of Texas, and the United States Department of Housing and Urban Development through the Community Development Block Grant Program to provide for disaster recovery and restoration of infrastructure for communities impacted by Hurricane Harvey."

#### 8.27 PROCUREMENT OF RECOVERED MATERIALS

- (a) To the extent applicable, the Provider shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
  - i. Competitively within a timeframe providing for compliance with the contract performance schedule;
  - ii. That meet contract performance requirements; or
  - iii. At a reasonable price.
- (b) To ensure maximum use of recovered/recycled materials per 2 CFR § 200.322,



information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>, along with the list of EPA-designated items.

**8.28 INFORMATION AND DATA SECURITY STANDARDS**

Subrecipient shall comply with all terms specified in the **GLO Information Security Appendix**, incorporated herein for all purposes as **Attachment F**.


**8.29 STATEMENTS OR ENTRIES**

Except as otherwise provided under federal law, any person who knowingly and willfully falsifies, conceals, or covers up a material fact by any trick, scheme or device or who makes any materially false, fictitious, or fraudulent statement or representation or who makes or uses any false writing or document knowing the writing or document to contain any materially false, fictitious, or fraudulent statement or entry shall be prosecuted under Title 18, United States Code, § 1001. Under penalties of 18 U.S.C. § 1001, the undersigned Provider representative hereby declares that he/she has examined this Contract and Attachments, including without limitation, the Solicitation and Solicitation Response, and to the best of his/her knowledge and belief any statements, entries, or claims made by Provider are, correct, accurate and complete.






**SIGNATURE PAGES FOLLOW**

**GLO SIGNATURE PAGE FOR GLO CONTRACT NO. 19-147-001-B489  
SUBRECIPIENT AGREEMENT – HURRICANE HARVEY – ROUND 1**

**GENERAL LAND OFFICE**

DocuSigned by:  
  
Mark A. Havens, Chief Clerk/  
Deputy Land Commissioner

Date of execution: 1/5/2019

OGC   
DD   
SDD   
DGC   
GC 

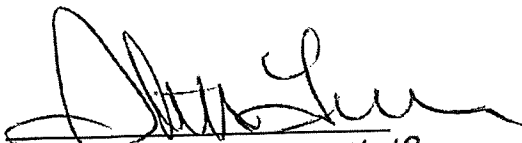
**ATTACHED TO THIS CONTRACT:**

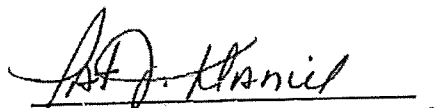
- ATTACHMENT A:** Program Budgets
- ATTACHMENT B:** Federal Assurances and Certifications
- ATTACHMENT C:** General Affirmations
- ATTACHMENT D:** Nonexclusive List of Applicable Laws, Rules, and Regulations
- ATTACHMENT E:** Special Conditions
- ATTACHMENT F:** GLO Information Security Appendix
- ATTACHMENT G:** Program Completion Report
- PERFORMANCE STATEMENT 1:** Buyout Program
- PERFORMANCE STATEMENT 2:** Economic Revitalization Program
- PERFORMANCE STATEMENT 3:** Homebuyer Assistance Program
- PERFORMANCE STATEMENT 4:** Homeowner Assistance Program
- PERFORMANCE STATEMENT 5:** Housing Administration Program and Planning Program
- PERFORMANCE STATEMENT 6:** Multifamily Rental Program
- PERFORMANCE STATEMENT 7:** Public Services Program
- PERFORMANCE STATEMENT 8:** Single Family Development Program
- PERFORMANCE STATEMENT 9:** Small Rental Program

**CITY OF HOUSTON SIGNATURE PAGE FOLLOWS**

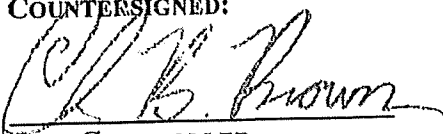
CITY OF HOUSTON SIGNATURE PAGE FOR GLO CONTRACT NO. 19-147-001-B489  
SUBRECIPIENT AGREEMENT – HURRICANE HARVEY – ROUND 1

CITY OF HOUSTON

  
MAYOR 1-4-19

  
CITY SECRETARY Assistant


COUNTERSIGNED:

  
CITY CONTROLLER  
Lemuel Hall

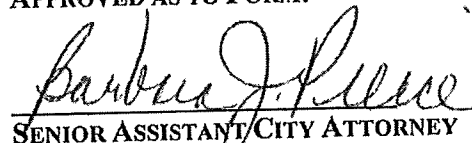
DATE OF COUNTERSIGNATURE:

1-4-19

APPROVED:

  
DIRECTOR, HOUSING AND  
COMMUNITY DEVELOPMENT  
DEPARTMENT

APPROVED AS TO FORM:

  
SENIOR ASSISTANT CITY ATTORNEY

ATTACHMENTS FOLLOW



**CITY OF HOUSTON SIGNATURE PAGE FOR GLO CONTRACT No. 19-147-001-B489  
SUBRECIPIENT AGREEMENT – HURRICANE HARVEY – ROUND 1**

**CITY OF HOUSTON**

\_\_\_\_\_  
**MAYOR**

\_\_\_\_\_  
**CITY SECRETARY**

**COUNTERSIGNED:**

**DATE OF COUNTERSIGNATURE:**

\_\_\_\_\_  
**CITY CONTROLLER**

**APPROVED:**

**APPROVED AS TO FORM:**

DocuSigned by:

*Tom McLasland*

\_\_\_\_\_  
**DIRECTOR, HOUSING AND  
COMMUNITY DEVELOPMENT  
DEPARTMENT**

\_\_\_\_\_  
**SENIOR ASSISTANT CITY ATTORNEY**

**ATTACHMENTS FOLLOW**

### CITY OF HOUSTON PROGRAM BUDGETS

Activity No.	HUD Activity Type	Other Funds	Total
	Homeowner Assistance Program		\$ 392,729,436
	Single Family Development Program		\$ 204,000,000
	Multifamily Rental Program		\$ 321,278,580
	Small Rental Program		\$ 61,205,100
	Homebuyer Assistance Program		\$ 21,741,300
	Buyout Program		\$ 40,800,000
	Public Services		\$ 60,000,000
	Economic Revitalization Program		\$ 30,264,834
	Houston Planning		\$ 23,100,000
	Houston Housing Administration		\$ 20,835,088
	<b>Total</b>		<b>\$ 1,175,954,338</b>

Draft – For review/discussion purposes only. Final Programs and Budgets to be approved by the U.S. Department of Housing and Urban Development.

## ASSURANCES - CONSTRUCTION PROGRAMS

OMB Approval No. 4040-0009  
Expiration Date: 01/31/2019

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET.  
SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

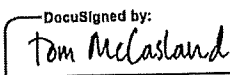
**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681- 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other non-discrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.



11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
20. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		TITLE	
 DocuSigned by: Tom McLasland		Director	
APPLICANT ORGANIZATION		DATE SUBMITTED	
City of Houston, Housing and Community Development		1/4/2019	

**CERTIFICATION REGARDING LOBBYING  
COMPLIANT WITH APPENDIX A TO 24 C.F.R. PART 871***Certification for Contracts, Grants, Loans, and Cooperative Agreements:*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

*Statement for Loan Guarantees and Loan Insurance:*

The undersigned states, to the best of his or her knowledge and belief, that: If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification.

NAME OF APPLICANT

AWARD NUMBER AND/OR PROJECT NAME

City of Houston, Housing and Community Development 19-147-001-B489

PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

Tom McCasland

SIGNATURE

DocuSigned by:

Tom McCasland

DATE

1/4/2019

b38c2814e6f844f...

**Disclosure of Lobbying Activities**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse for public burden disclosure)

<b>1. Type of Federal Action:</b> ____ a. contract ____ b. grant ____ c. cooperative agreement ____ d. loan ____ e. loan guarantee ____ f. loan insurance	<b>2. Status of Federal Action:</b> ____ a. bid/offer/application ____ b. initial award ____ c. post-award	<b>3. Report Type:</b> ____ a. initial filing ____ b. material change  <b>For material change only:</b> Year _____ quarter _____ Date of last report _____
<b>4. Name and Address of Reporting Entity:</b> ____ Prime      ____ Subawardee Tier _____, if Known:  <b>Congressional District, if known:</b>	<b>5. If Reporting Entity in No. 4 is Subawardee,</b> Enter Name and Address of Prime:  <b>Congressional District, if known:</b>	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$ _____	
<b>10. a. Name and Address of Lobbying Registrant</b> (if individual, last name, first name, MI):	<b>b. Individuals Performing Services (including address if</b> different from No. 10a) (last name, first name, MI):	
<b>11. Information requested through this form is authorized by</b> title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		
<b>Federal Use Only</b>		<b>Signature:</b> _____ <b>Print Name:</b> _____ <b>Title:</b> _____ <b>Telephone No.:</b> _____ <b>Date:</b> _____
		<b>Authorized for Local Reproduction</b> Standard Form - LLL (Rev. 7-97)



**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 4040-0013. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (4040-0013), Washington, DC 20503.

**General Affirmations**

To the extent they apply, Subrecipient affirms and agrees to the following, without exception:

1. Subrecipient represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Subrecipient nor the firm, corporation, partnership, or institution represented by Subrecipient, or anyone acting for such a firm, corporation, partnership, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Contract or any solicitation response upon which this Contract is based to any competitor or any other person engaged in the same line of business as Subrecipient.
2. If the Contract is for services, Subrecipient shall comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.
3. Under Section 231.006 of the Family Code, the Subrecipient certifies that Provider's legal entity named in this Contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
4. A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application. Subrecipient certifies it has submitted this information to the GLO.
5. If the Contract is for the purchase or lease of computer equipment, as defined by Texas Health and Safety Code Section 361.952(2), Subrecipient certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code, related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in Title 30 Texas Administrative Code Chapter 328.
6. Pursuant to Section 2155.003 of the Texas Government Code, Subrecipient represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract.
7. Payments due under the Contract shall be directly applied towards eliminating any debt or delinquency Subrecipient owes to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.
8. Upon request of the GLO, Subrecipient shall provide copies of its most recent business continuity and disaster recovery plans.

9. If the Contract is for consulting services governed by Texas Government Code Chapter 2254, Subchapter B, in accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Subrecipient certifies that it does not employ an individual who has been employed by The GLO or another agency at any time during the two years preceding the Subrecipient's submission of its offer to provide consulting services to the GLO or, in the alternative, Subrecipient, in its offer to provide consulting services to the GLO, disclosed the following: (i) the nature of the previous employment with the GLO or other state agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.
10. If the Contract is not for architecture, engineering, or construction services, Subrecipient must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve any dispute arising under the Contract.
11. If the Contract is for architecture, engineering, or construction services, subject to Texas Government Code, Section 2260.002 and Texas Civil Practice and Remedies Code Chapter 114, Subrecipient shall use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve all disputes arising under this Contract. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005, claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code Section 114.002 shall be governed by the dispute resolution process set forth below in subsections (a)-(d).
  - a. Notwithstanding Texas Government Code, Chapter 2260.002(3) and Chapter 114.012 and any other statute or applicable law, if the Subrecipient's claim for breach of contract cannot be resolved by the parties in the ordinary course of business, Subrecipient may make a claim against the GLO for breach of contract and the GLO may assert a counterclaim against the Subrecipient as is contemplated by Texas Government Code, Chapter 2260, Subchapter B. In such event, Subrecipient must provide written notice to the GLO of a claim for breach of the Contract not later than the 180th day after the date of the event giving rise to the claim. The notice must state with particularity: (1) the nature of the alleged breach; (2) the amount the Subrecipient seeks as damages; and (3) the legal theory of recovery.
  - b. The chief administrative officer, or if designated in the Contract, another officer of the GLO, shall examine the claim and any counterclaim and negotiate with the Subrecipient in an effort to resolve them. The negotiation must begin no later than the 120th day after the date the claim is received, as is contemplated by Texas Government Code, Chapter 2260, Section 2260.052.
  - c. If the negotiation under paragraph (b) above results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the agreement or settlement to writing and each party shall sign the agreement or settlement. A partial settlement or resolution of a claim does not waive a party's rights under this Contract as to the parts of the claim that are not resolved.



- d. If a claim is not entirely resolved under paragraph (b) above, on or before the 270th day after the date the claim is filed with the GLO, unless the parties agree in writing to an extension of time, the parties may agree to mediate a claim made under this dispute resolution procedure. This dispute resolution procedure is the Subrecipient's sole and exclusive process for seeking a remedy for an alleged breach of contract by the GLO if the parties are unable to resolve their disputes as described in this section.
  - e. Nothing in the Contract shall be construed as a waiver of the state's or the GLO's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies or immunities or be considered as a basis for estoppel. The GLO does not waive any privileges, rights, defenses, or immunities available to it by entering into this Contract or by its conduct, or by the conduct of any representative of the GLO, prior to or subsequent to entering into this Contract.
  - f. Compliance with the dispute resolution process provided for in Texas Government Code, Chapter 2260, subchapter B and incorporated by reference in subsection (a)-(d) above is a condition precedent to the Subrecipient: (1) filing suit pursuant to Chapter 114 of the Civil Practices and Remedies Code; or (2) initiating a contested case hearing pursuant to Subchapter C of Chapter 2260 of the Texas Government Code.
12. Subrecipient represents and warrants that, pursuant to Section 2270.002 of the Texas Government Code, Subrecipient does not boycott Israel and will not boycott Israel during the term of the Contract.
13. This Contract is contingent upon the continued availability of lawful appropriations by the Texas Legislature. Subrecipient understands that all obligations of the GLO under this Contract are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the GLO may terminate the Contract. The Contract shall not be construed as creating a debt on behalf of the GLO in violation of Article III, Section 49a of the Texas Constitution.
14. Subrecipient certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
15. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Subrecipient certifies that it is not (1) the executive head of the GLO, (2) a person who at any time during the four years before the effective date of the Contract was the executive head of the GLO, or (3) a person who employs a current or former executive head of the GLO.

16. Subrecipient represents and warrants that all statements and information prepared and submitted in connection with this Contract are current, complete, true, and accurate. Submitting a false statement or making a material misrepresentation during the performance of this Contract is a material breach of contract and may void the Contract or be grounds for its termination.
17. Pursuant to Section 2155.004(a) of the Texas Government Code, Subrecipient certifies that neither Subrecipient nor any person or entity represented by Subrecipient has received compensation from the GLO to participate in the preparation of the specifications or solicitation on which this Contract is based. Under Section 2155.004(b) of the Texas Government Code, Subrecipient certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate. This Section does not prohibit Subrecipient from providing free technical assistance.
18. Subrecipient represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
19. If the Contract is for professional or consulting services governed by Texas Government Code Chapter 2254, Subrecipient represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the Contract, were former employees of the GLO during the twelve (12) month period immediately prior to the date of execution of the Contract.
20. The Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the GLO.
21. IF THE CONTRACT IS NOT FOR ARCHITECTURE OR ENGINEERING SERVICES GOVERNED BY TEXAS GOVERNMENT CODE CHAPTER 2254, SUBRECIPIENT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE GLO, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF SUBRECIPIENT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY SUBRECIPIENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN Texas STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND

SUBRECIPIENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. SUBRECIPIENT AND THE GLO SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

22. IF THE CONTRACT IS FOR ARCHITECTURE OR ENGINEERING SERVICES GOVERNED BY TEXAS GOVERNMENT CODE CHAPTER 2254, SUBRECIPIENT SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE GLO, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES TO THE EXTENT CAUSED BY, ARISING OUT OF, OR RESULTING FROM ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILLFUL MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY, AND/OR OTHERWISE RELATED TO SUBRECIPIENT'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE SUBRECIPIENT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, CONSULTANTS UNDER CONTRACT TO SUBRECIPIENT, OR ANY OTHER ENTITY OVER WHICH THE CONTRACTOR EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY SUBRECIPIENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN Texas STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND SUBRECIPIENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. SUBRECIPIENT AND THE GLO SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM
23. SUBRECIPIENT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE GLO AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF SUBRECIPIENT PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) THE GLO'S AND/OR SUBRECIPIENT'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO THE GLO BY SUBRECIPIENT OR OTHERWISE TO WHICH THE GLO HAS ACCESS AS A RESULT OF SUBRECIPIENT'S PERFORMANCE UNDER THE CONTRACT. SUBRECIPIENT AND THE GLO shall FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. SUBRECIPIENT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY SUBRECIPIENT WITH THE



OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND SUBRECIPIENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, SUBRECIPIENT WILL REIMBURSE THE GLO AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF THE GLO DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF SUBRECIPIENT OR IF THE GLO IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, THE GLO WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND SUBRECIPIENT WILL PAY ALL REASONABLE COSTS OF THE GLO'S COUNSEL.

24. Subrecipient has disclosed in writing to the GLO all existing or potential conflicts of interest relative to the performance of the Contract.
25. Sections 2155.006 and 2261.053 of the Texas Government Code prohibit state agencies from accepting a solicitation response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Subrecipient certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
26. Subrecipient understands that the GLO will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material related to this Contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Subrecipient shall make any information created or exchanged with the State/GLO pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State or the GLO.
27. The person executing this Contract certifies that he/she is duly authorized to execute this Contract on his/her own behalf or on behalf of Subrecipient and legally empowered to contractually bind Subrecipient to the terms and conditions of the Contract and related documents.
28. If the Contract is for architectural or engineering services, pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code, Subrecipient shall perform services (1) with professional skill and care ordinarily provided by competent engineers or architects

practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

29. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Subrecipient shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the Contract and the requirement to cooperate is included in any subcontract it awards. The GLO may unilaterally amend the Contract to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.
30. Subrecipient certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in the Contract by any state or federal agency.
31. Subrecipient expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Subrecipient represents and warrants to the GLO that any technology provided to the GLO for purchase pursuant to this Contract is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: providing equivalent access for effective use by both visual and non-visual means; presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this Section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.
32. If the Contract is for the purchase or lease of covered television equipment, as defined by Section 361.971(3) of the Texas Health and Safety Code, Subrecipient certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.

33. Pursuant to Section 572.069 of the Texas Government Code, Subrecipient certifies it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for the GLO involving Subrecipient within two (2) years after the date that the contract is signed, or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.



### **NONEXCLUSIVE LIST OF APPLICABLE LAWS, RULES, AND REGULATIONS**

If applicable to a Program or Activity, Provider must be in compliance with the following laws, rules, and regulations; and any other state, federal, or local laws, rules, and regulations as may become applicable throughout the term of the Contract, and Provider acknowledges that this list may not include all such applicable laws, rules, and regulations.

**Provider and is deemed to have read and understands the requirements of each of the following, if applicable to the Project under this Contract:**

#### **GENERALLY**

The Acts and Regulations specified in this Contract;

Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Public Law 115-56);

The Housing and Community Development Act of 1974 (12 U.S.C. § 5301 *et seq.*);

The United States Housing Act of 1937, as amended, 42 U.S.C. § 1437f(o)(13) (2016) and related provisions governing Public Housing Authority project-based assistance, and implementing regulations at 24 C.F.R. Part 983 (2016);

Cash Management Improvement Act regulations (31 C.F.R. Part 205);

Community Development Block Grants (24 C.F.R. Part 570);

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Disaster Recovery Implementation Manual;

GLO Housing Guidelines; and

State of Texas Plan for Disaster Recovery: Hurricane Harvey – Round 1, dated April 6, 2018, as amended.

#### **CIVIL RIGHTS**

Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d *et seq.*); 24 C.F.R. Part 1, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e, *et seq.*);

Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. § 3601, *et seq.*), as amended;

Executive Order 11063, as amended by Executive Order 12259, and 24 C.F.R. Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063"; The failure or refusal of Provider to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;

The Age Discrimination Act of 1975 (42 U.S.C. § 6101, *et seq.*); and

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794.) and "Nondiscrimination

Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development", 24 C.F.R. Part 8. By signing this Contract, Provider understands and agrees that the activities funded shall be performed in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, *et seq.*), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system.

#### **LABOR STANDARDS**

The Davis-Bacon Act, as amended (originally, 40 U.S.C. §§ 276a-276a-5 and re-codified at 40 U.S.C. §§ 3141-3148); 29 C.F.R. Part 5;

The Copeland "Anti-Kickback" Act (originally, 18 U.S.C. § 874 and re-codified at 40 U.S.C. § 3145); 29 C.F.R. Part 3;

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (originally, 40 U.S.C. §§ 327A and 330 and re-codified at 40 U.S.C. §§ 3701-3708);

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act) (29 C.F.R. Part 5); and

Federal Executive Order 11246, as amended.

#### **EMPLOYMENT OPPORTUNITIES**

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u); 24 C.F.R. §§ 135.3(a)(2) and (a)(3);

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. § 4212);

Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1688); and

Federal Executive Order 11246, as amended.

#### **GRANT AND AUDIT STANDARDS**

Single Audit Act Amendments of 1996, 31 U.S.C. § 7501;

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Uniform Grant and Contract Management Act (Texas Government Code Chapter 783) and the Uniform Grant Management Standards, issued by Governor's Office of Budget and Planning; and

Title 1 Texas Administrative Code § 5.167(c).

#### **LEAD-BASED PAINT**

Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831(b)).

#### **HISTORIC PROPERTIES**

The National Historic Preservation Act of 1966 as amended (16 U.S.C. § 470, *et seq.*), particularly sections 106 and 110 (16 U.S.C. §§ 470 and 470h-2), except as provided in §58.17 for Section 17 projects;

Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 C.F.R., 1971-1975 Comp., p. 559, particularly section 2(c);

Federal historic preservation regulations as follows: 36 C.F.R. Part 800 with respect to HUD programs; and

The Reservoir Salvage Act of 1960, as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. § 469, *et seq.*), particularly section 3 (16 U.S.C. § 469a-1).

#### **ENVIRONMENTAL LAW AND AUTHORITIES**

Environmental Review Procedures for Recipients assuming HUD Environmental Responsibilities (24 C.F.R. Part 58, as amended);

National Environmental Policy Act of 1969, as amended (42 U.S.C. §§ 4321-4347); and  
Council for Environmental Quality Regulations for Implementing NEPA (40 C.F.R. Parts 1500-1508).

#### **FLOODPLAIN MANAGEMENT AND WETLAND PROTECTION**

Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 C.F.R., 1977 Comp., p. 117, as interpreted in HUD regulations at 24 C.F.R. Part 55, particularly Section 2(a) of the Order (For an explanation of the relationship between the decision-making process in 24 C.F.R. Part 55 and this part, see § 55.10.); and

Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 C.F.R., 1977 Comp., p. 121 particularly Sections 2 and 5.

#### **COASTAL ZONE MANAGEMENT**

The Coastal Zone Management Act of 1972 (16 U.S.C. § 1451, *et seq.*), as amended, particularly sections 307(c) and (d) (16 U.S.C. § 1456(c) and (d)).

#### **SOLE SOURCE AQUIFERS**

The Safe Drinking Water Act of 1974 (42 U.S.C. §§ 201, 300(f), *et seq.*, and 21 U.S.C. § 349) as amended; particularly section 1424(e) (42 U.S.C. § 300h-3(e)); and

Sole Source Aquifers (Environmental Protection Agency-40 C.F.R. part 149.).

#### **ENDANGERED SPECIES**

The Endangered Species Act of 1973 (16 U.S.C. § 1531, *et seq.*) as amended, particularly section 7 (16 U.S.C. § 1536).

#### **WILD AND SCENIC RIVERS**

The Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271, *et seq.*) as amended, particularly sections 7(b) and (c) (16 U.S.C. § 1278(b) and (c)).

#### **AIR QUALITY**

The Clean Air Act (42 U.S.C. § 7401, *et seq.*) as amended, particularly sections 176(c) and (d) (42 U.S.C. § 7506(c) and (d)).

Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency-40 C.F.R. Parts 6, 51, and 93).



**FARMLAND PROTECTION**

Farmland Protection Policy Act of 1981 (7 U.S.C. § 4201, *et seq.*) particularly sections 1540(b) and 1541 (7 U.S.C. §§ 4201(b) and 4202); and

Farmland Protection Policy (Department of Agriculture-7 C.F.R. part 658).

**HUD ENVIRONMENTAL STANDARDS**

Applicable criteria and standards specified in HUD environmental regulations (24 C.F.R. Part 51)(other than the runway clear zone and clear zone notification requirement in 24 C.F.R. § 51.303(a)(3); and

HUD Notice 79-33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979.

**ENVIRONMENTAL JUSTICE**

Executive Order 12898 of February 11, 1994—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (59 FR 7629), 3 C.F.R., 1994 Comp. p. 859.

**SUSPENSION AND DEBARMENT**

Use of debarred, suspended, or ineligible contractors or subrecipients (24 C.F.R. § 570.609);

General HUD Program Requirements; Waivers (24 C.F.R. Part 5); and

Nonprocurement Suspension and Debarment (2 C.F.R. Part 2424).

**OTHER REQUIREMENTS**

Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58).

**ACQUISITION / RELOCATION**

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601, *et seq.*), 24 C.F.R. Part 42, and 24 C.F.R. § 570.606.

**FAITH-BASED ACTIVITIES**

Executive Order 13279 of December 12, 2002 - Equal Protection of the Laws for Faith-Based and Community Organizations, (67 FR 77141).

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

### **SPECIAL CONDITIONS**

If applicable to a Program or Activity, Subrecipient must be in compliance with the following Special Conditions and any other State, Federal, or local laws, rules, and regulations as may be applicable, throughout the term of the Contract, prior to the release of any grant funds for the Programs or Activities anticipated.

Subrecipient is deemed to have read and to understand the requirements of each of the following, if applicable to the Program or Activity under this Contract:

#### **A. REIMBURSEMENT, GENERALLY**

As provided for in Public Law 115-56, the Contract funds may not be used for activities that are eligible to be reimbursed by, or for which funds are made available by, (a) the Federal Emergency Management Agency (FEMA); (b) the Army Corps of Engineers (Corps); (c) any other federal funding source; or (d) covered by insurance, and Subrecipient shall ensure compliance with all such requirements.

#### **B. NATIONAL FLOOD INSURANCE PROGRAM COMPLIANCE**

- (1) Subrecipient must provide documentation which indicates they have received approval from the Texas Water Development Board (TWDB), the National Flood Insurance Program (NFIP) State Coordinating Agency, that appropriate ordinances or orders necessary for Subrecipient to be eligible to participate in the NFIP have been adopted.
- (2) Where Activities specified in a Performance Statement, involve structures that are located in Special Flood Hazard Areas (SFHA), flood insurance may be required, and Subrecipient shall obtain such insurance, and shall maintain documentation evidencing compliance with such requirements.
- (3) Subrecipient acknowledges and agrees that if any property that is the subject of an Activity under this Contract located within a floodplain, that the following terms and conditions shall apply:
  - a. Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001- 4128), Federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:
    - i. The community in which the area is situated is participating in the National Flood Insurance Program ("NFIP") (44 CFR parts 59 through 79), or less than one (1) year has passed since the FEMA notification regarding such hazards; and
    - ii. The community is participating in the NFIP, or that flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.
  - b. Where the community is participating in the NFIP and the recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, Subrecipient is responsible for ensuring that flood insurance under the NFIP is obtained and maintained.
  - c. Under Section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 515a, HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for flood damage to any personal, residential, or commercial property if:
    - i. The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and

- ii. The person failed to obtain and maintain flood insurance.
- d. Subrecipient understands and agrees that it has a responsibility to inform homeowners receiving disaster assistance that triggers the flood insurance purchase requirement of their statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so.

**C. PROJECT MAPPING/DESIGN INFORMATION**

For construction projects, Subrecipient shall require and maintain copies, in written and/or digital format, of final Project record drawing(s) and engineering schematics, as constructed.

**D. WATER SYSTEM IMPROVEMENTS**

- (1) Prior to the GLO's release of funds for the construction of any water system improvements, Subrecipient shall provide certification to the GLO that plans, specifications, and related documents for the specified water system improvements have been prepared by the engineer selected for such activities, or the engineer's duly authorized representative, and that the review of such plans, specifications, and related documents meet the applicable Texas Commission on Environmental Quality (TCEQ) review requirements described in Title 30 of the Texas Administrative Code.
- (2) Prior to construction, Subrecipient shall provide documentation to the GLO that an approved new or amended Certificate of Convenience and Necessity (CCN), or the equivalent permit or authority for the area to be served, has been issued by the TCEQ.
- (3) Prior to Subrecipient submission of the Project Completion Report for any water system improvements described in Attachment A, Subrecipient shall provide a letter from the TCEQ that the constructed well is approved for interim use and may be temporarily placed into service pursuant to 30 Texas Administrative Code, Chapter 290—Rules and Regulations for Public Water Systems.

**E. SEWER SYSTEM IMPROVEMENTS**

Prior to the construction of any sewer system improvements described, Subrecipient shall provide certification that plans, specifications, and related documents for the specified sewer system improvements have been prepared by the engineer selected for such activities, or the engineer's duly authorized representative, and that the review of such plans, specifications, and related documents meet the Texas Commission on Environmental Quality (TCEQ) review requirements described in 30 Texas Administrative Code, Chapter 217, Subchapter D.

Further, prior to the construction of any sewer lines or additional service connections described in Attachment A, Subrecipient shall provide notification of the start of construction on any sewer treatment plant of other system-related improvements included in this Contract.

**F. WASTEWATER TREATMENT CONSTRUCTION**

Prior to incurring costs for any wastewater treatment construction in Attachment A, Subrecipient shall provide documentation of an approved permit or amendment(s) to an existing permit for such activities from the TCEQ's Water Quality Division.

In addition, Subrecipient shall provide documentation to the GLO that an approved new or amended Certificate of Convenience and Necessity (CCN), or equivalent permit or authority for the area to be served has been issued by the TCEQ.



#### **G. SEPTIC SYSTEM IMPROVEMENTS**

- (1) Subrecipient shall provide documentation that final plans, specifications, and installation of its septic system improvements have been reviewed and approved by the City or County Health Department through authority granted by the TCEQ.
- (2) Subrecipient shall mitigate all existing septic systems in accordance with 30 Texas Administrative Code Chapter 285, Subchapter D, §285.36(b), which states, "All tanks, boreholes, cesspools, seepage pits, holding tanks, and pump tanks shall have the wastewater removed by a waste transporter, holding a current registration with the executive director. All tanks, boreholes, cesspools, seepage pits, holding tanks, and pump tanks shall be filled to ground level with fill material (less than three inches in diameter), which is free of organic and construction debris."
- (3) Prior to the selection of program recipients for proposed On-Site Sewer Facilities (OSSF), Subrecipient shall provide a copy of its proposed program guidelines to for GLO review. All proposed OSSF programs must meet or exceed guidelines set forth in 30 Texas Administrative Code Chapter 285 Subchapter D.

#### **H. BUILDING CONSTRUCTION**

Subrecipient shall provide documentation that the construction of a new building and facilities are in compliance with the Texas Accessibility Standards (TAS) of the Architectural Barriers Act, Chapter 469, Texas Government Code, and the Texas Department of Licensing and Regulation (TDLR) Architectural Barriers Administrative Rules, 16 Texas Administrative Code, Part 4, Chapter 68. If estimated construction costs exceed Fifty Thousand Dollars (\$50,000.00), Construction Documents must be submitted to the Texas Department of Licensing and Regulation (TDLR) for an accessibility plan review.

#### **I. BRIDGE CONSTRUCTION/REHABILITATION**

Subrecipient shall use the minimum design requirements of the Texas Department of Transportation (TxDOT) for bridge construction/rehabilitation. Final plans and specifications must be submitted to TxDOT for review and approval prior to the start of construction, and documentation of such approval must be provided to the GLO.

#### **J. DISASTER SHELTERS**

Subrecipient shall ensure that the primary purpose of a facility designated a "disaster shelter" is to serve as a disaster shelter, and shall ensure the facility is operated at all times in a manner that ensures that the priority use is to serve as a disaster shelter regardless of any other scheduled uses or commitments that existed at the time of the disaster or emergency situation. In addition, Subrecipient shall prepare or be incorporated into an approved emergency management plan, as prescribed by the Texas Division of Emergency Management, identifying the shelter as a facility that provides short-term lodging for evacuees during and immediately after an emergency situation. Subrecipient shall submit a copy of Subrecipient's Emergency Management Plan Annex for Shelter and Mass Care to the GLO.

#### **K. DEBRIS REMOVAL**

Subrecipient shall ensure that any debris to be removed consists primarily of vegetation, construction and demolition materials from damaged or destroyed structures, and personal property. Only debris identified as the responsibility of the local jurisdiction will be eligible for the reimbursement of cost of removal.

Prior to beginning debris collection operations, Subrecipient shall address all pertinent environmental concerns, adhere to all applicable regulations, and obtain all required permits. Further, Subrecipient

shall adhere to the methods described herein for the collection and storage of debris prior to proper disposal.

While construction and demolition debris may be collected and disposed of at an appropriately rated landfill, woody and/or vegetative debris must be stored prior to disposal by use of temporary debris storage and reduction sites (TDSR). Subrecipient will prepare and operate the TDSR sites, or local jurisdictions choosing to conduct their own debris operations may review Chapter 7 of the FEMA Debris Management Guide regarding the use of TDSR sites. This document may be obtained at <https://www.fema.gov/pdf/government/grant/pa/demagde.pdf>.

In order to maintain the life expectancy of landfills, Subrecipients disposing of woody and/or vegetative debris must choose burning, chipping, or grinding as the method of disposal. Any project disposing of woody and/or vegetative debris must be approved in writing by the GLO.

#### **L. USE OF BONDS**

Subrecipient must notify the GLO of its issuance and sale of bonds for completion of the Project funded under this Contract.

#### **M. PROGRAM GUIDELINES**

Prior to the selection of Program beneficiaries for each Program, Subrecipient shall provide to the GLO, for GLO review and approval, a copy of its proposed guidelines for the Program. The guidelines must meet or exceed the requirements in the Federal Registers. The guidelines must include provisions for compliance with the Federal Fire Prevention and Control Act of 1974 (which requires that any housing unit rehabilitated with grant funds be protected by a hard-wired or battery-operated smoke detector) and provisions for compliance with 24 CFR 35 (HUD lead-based paint regulation), as applicable.

#### **N. COMPLIANCE PERIODS FOR PROGRAMS**

Subrecipient shall adopt appropriate compliance periods for each Program or Activity, as applicable, in accordance with Federal Register regulations. The specific compliance period and loan term requirements will be recorded in the Program Guidelines, subject to GLO approval.

#### **O. COASTAL MANAGEMENT**

Subrecipient acknowledges and agrees that any Project that may impact a Coastal Natural Resource Area must be consistent with the goals and policies of the Texas Coastal Management Program as described in 31 Texas Administrative Code, Part 16, Chapter 501.

#### **P. INELIGIBLE HOUSING ACTIVITIES**

The following are ineligible housing activities:

- (1) Forced mortgage payoff
- (2) Incentive payments to households that move to disaster-impacted floodplains
- (3) Properties that served as second homes at the time of the disaster, or following the disaster, are not eligible for rehabilitation assistance or housing incentives
- (4) Rehabilitation/reconstruction of homes located in the floodway
- (5) Rehabilitation/reconstruction of a home where:
  - i. the combined household income is greater than 120 percent AMI or the national median, and
  - ii. the property was as located in a floodplain at the time of the disaster, and

- iii. the property owner did not maintain flood insurance on the damaged property, even when the property owner was not required to obtain and maintain such insurance.
- (6) Assistance for the repair, replacement, or restoration of a property to a person who has failed to meet Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a), which states that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for "repair, replacement, or restoration" for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property.



## **GLO Information Security Appendix**

### **1. Definitions**

**"Breach of Security"** or **"Breach"** means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information including data that is encrypted if the person accessing the data has the key required to decrypt the data.

**"Personal Identifying Information"** or **"PII"** means information that alone or in conjunction with other information identifies an individual, as defined at Tex. Bus. & Com. Code § 521.002(1) as of the Effective Date of this Contract.

**"Sensitive Personal Information"** or **"SPI"** means the information categories listed at Tex. Bus. & Com. Code § 521.002(2), which as of the Effective Date of this Contract, reads as follows: (A) an individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted: (i) social security number; (ii) driver's license number or government-issued identification number; or (iii) account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or (B) information that identifies an individual and relates to: (i) the physical or mental health or condition of the individual; (ii) the provision of health care to the individual; or (iii) payment for the provision of health care to the individual. "Sensitive Personal Information" does not include publicly available information that is lawfully made available to the public from the federal government or a state or local government.

### **2. Security and Privacy Compliance**

- 2.1. Subrecipient shall keep all PII and SPI received or generated under the Contract and any documents containing PII or SPI strictly confidential.
- 2.2. Subrecipient shall comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations and directives.
- 2.3. Subrecipient shall implement administrative, physical, and technical safeguards to protect PII and SPI that are consistent with the guidelines in the National Institute of Standards and Technology ("NIST") Cybersecurity Framework Version 1.1. All such safeguards shall comply with applicable data protection and privacy laws.
- 2.4. Subrecipient will legally bind any contractors and their subcontractors to the same requirements stated herein and obligations stipulated in the Contract and documents related thereto. Subrecipient shall ensure that the requirements stated herein are imposed on any subcontractor of Provider's subcontractor(s).
- 2.5. Subrecipient will not share PII or SPI with any third parties, except as necessary for Subrecipient's performance under the Contract.

- 2.6. Subrecipient will ensure that initial privacy and security training, and annual training thereafter, is completed by its employees and contractors, including any subcontractor, that have access to PII or SPI or who create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise personally handle PII or SPI on behalf of Subrecipient. Subrecipient agrees to maintain and, upon request, provide documentation of training completion. The requirement for initial privacy and security training may be satisfied by verifiable existing security awareness training.
- 2.7. Any PII or SPI maintained or stored by Subrecipient or any contractor, including any subcontractor, must be stored on servers or other hardware located within the physical borders of the United States and shall not be accessed outside of the United States.

### 3. Data Ownership

- 3.1. The GLO shall retain full ownership of all data, including PII and SPI, provided to Subrecipient by the GLO.
- 3.2. Upon termination of the Contract, Subrecipient shall promptly return to the GLO all GLO-owned data possessed by Subrecipient and its employees, agents, or contractors, including any subcontractor. Subrecipient shall retain no copies or back-up records of GLO-owned data. If such return is infeasible or causes undue business hardship, as mutually determined by the GLO and Subrecipient, the obligations set forth in this **Attachment G**, with respect to GLO-owned data, shall survive termination of the Contract and Subrecipient shall limit any further use and disclosure of GLO Data to the purposes that make the return of or GLO-owned data infeasible or causes undue business hardship. However, no provision in this Section 3.2 in no event shall circumvent the record-keeping and access requirements of 24 C.F.R. Part 570. In lieu of the requirements in this Section 3.2, the GLO may direct Subrecipient to destroy any GLO-owned data in Subrecipient's possession. Any such destruction shall be certified by Subrecipient.

### 4. Data Mining

- 4.1. Subrecipient agrees not to use PII or SPI for unrelated purposes, advertising or advertising-related services, or for any other purpose not explicitly authorized by the GLO in the Contract or any document related thereto.
- 4.2. Subrecipient agrees to take all reasonably feasible physical, technical, administrative, and procedural measures to ensure that no unauthorized use of PII or SPI occurs.

### 5. Breach of Security

- 5.1. Subrecipient agrees to provide the GLO with the name and contact information for a Subrecipient employee which shall serve as the GLO's primary data security contact.

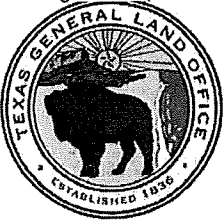
- 5.2. Upon discovery of a Breach of Security or suspected Breach of Security by the Subrecipient, Subrecipient agrees to use commercially reasonable efforts to notify the GLO as soon as possible upon discovery of the Breach of Security or suspected Breach of Security, but in no event shall notification occur later than twenty-four (24) hours after discovery. Notification of a Breach of Security or suspected Breach of Security shall be provided by telephone to one of the following GLO Information Security team members: Brandon Rogers, GLO Information Security Officer, at (512) 463-5763; Larissa Cameron, GLO Privacy Officer, at (512) 475-1438; Arturo Montalvo, Director of Information Security, at (512) 463-5316; and the GLO Office of Information Security (OIS) Monitoring Desk at (512) 839-7021. Within five (5) business days, Subrecipient agrees to provide, at minimum, a written preliminary report regarding the Breach or suspected Breach to the GLO with root cause analysis including a log detailing the data affected.
- 5.3. The initial notification and preliminary report shall be submitted to the GLO Information Security Officer at [brandon.rogers@glo.texas.gov](mailto:brandon.rogers@glo.texas.gov).
- 5.4. Subrecipient agrees to take all reasonable steps to promptly mitigate a Breach of Security and reduce the risk of any further Breach of Security.
- 5.5. If the Breach of Security includes SPI, including Social Security Numbers, payment card information, or health information, Subrecipient agrees to provide affected individuals complimentary access for one (1) year of credit monitoring services.

## 6. Right to Audit

- 6.1. At the GLO's request, Subrecipient agrees to promptly and accurately complete a NIST based information security questionnaire provided by the GLO regarding Subrecipient's business practices and information technology environment. Subrecipient would also agree to provide any external IT service provider's (that they use) SSAE16 SOC Type II, Cloud Security Alliance Cloud Controls Matrix, or similar certification.
- 6.2. In conducting any audit under this section GLO shall keep Subrecipient's business practices and information technology environment ("City Security Information") strictly confidential and shall not use the City Security Information for any other purpose not expressly authorized by the City under this Contract and shall not disclose City Security Information to third parties. GLO shall destroy and certify to such destruction of all City Security Information and any other documents and materials related thereto within five business days of the expiration or termination of this Contract or when the need to know no longer exists, whichever is earlier.
- 6.3. In the event of a breach of system security, subject to applicable laws, Subrecipient shall use reasonable efforts to provide full access and cooperation for all activities determined by HUD and the GLO to be required to ensure an effective incident response, including providing all requested images, log files, and event information to facilitate rapid



resolution of data breaches. All information disclosed, gathered, or accessible to the GLO, or other agency of the State of Texas, the State of Texas or HUD pursuant to this Contract, is considered City Security Information and, subject to applicable laws, is subject to the confidentiality obligations set forth in this Section 6.



**Texas General Land Office**  
**Community Development & Revitalization Program**  
**HOUSING**  
**Program Completion Report**

Subrecipient/Grant Administrator: GLO Contract Number: DUNS No. Contract Start Date: Contract End Date: ☐ HOUSING**Part I. General Reports****Certificate of Expenditures:**

Activity	GLO-CDR Budget	GLO-CDR Funds Drawn To-Date	GLO-CDR Funds not Received (including pending draws)		Local Contribution	Percent Matched
			GLO-CDR Reserved Funds	Unutilized Funds (Deob)		
Total						0 %

**Civil Rights & Citizen Participation:**
 Requirements met and forms attached: ☐ Equal Employment Opportunity ☐ Section 3 ☐ Excessive Force Policy and Resolution ☐ Section 504
Fair Housing Activity (describe): Work Completed Date: **Certifications:**

As Executive Director, I certify that:

- All activities undertaken with funds provided under the contract identified in this report, have, to the best of my knowledge, been carried out in accordance with the contract agreement;
- The information contained in this Project Completion Report is accurate to the best of my knowledge;
- All records related to contractor activities are available for review;
- GLO-DR funds were not used to reduce the level of local financial support for housing and community development activities;
- The persons to benefit from the activities described in Exhibit A, Performance Statement, of this contract are receiving service or a benefit from the use of the new or improved facilities and activities;
- For all activities undertaken with funds provided under the contract identified in this report, promotion of MBE participation has been undertaken;
- All requirements to Affirmatively Further Fair Housing have been met; and
- Proper provision has been made for the payment of all unpaid costs and unsettled third-party claims and the State of Texas is under no obligation to make any further payment to the recipient under the contract agreement in excess of the amount identified in the Certificate of Expenditures table as "GLO-CDR Reserved Funds".

Name and Title (Print)	Signature	Date
------------------------	-----------	------

**Attachments:** The following documents support this report.

☐ Original Submittal,  
also submitted via email☐ Revision Date revised:**Part II. Performance Report**

Report work performed, performance measures and beneficiary data for each contract budget activity.

**Actual Accomplishments:**

Activity/Project:			
Project Description/Location:			
Project Accomplishments:		Total #:	

**HUD Performance Measures:**

Activity	Objective	Outcome
Benefit Indicator		
Special Category		

**Beneficiary Detail - Activities**

Identify all activities that benefit the persons reported on this sheet; report beneficiary details for those persons and households.

Activity:
-----------

**Beneficiaries by Demographic:**

	No. of Persons			No. of Households (demographics of the Head of Household)		
	Male	Female	Total	Male	Female	Total
Gender						
Race	Non-Hispanic	Hispanic	Sub-Total	Non-Hispanic	Hispanic	Sub-Total
Grand Total:						

**Beneficiaries by Income:**

Income Level	No. of Persons	No. of Owner Occupied Households	No. of Renter Occupied Households
Very Low (at or below 30% of the AMFI)			
Low (31-50% of the AMFI)			
Moderate (51-80% of the AMFI)			
Non-Low/Moderate (above 80% of the AMFI)			
Total			



Subtotal - All Low/Mod		
Percent Low/Mod	0.00%	0

**Click "+" button to include another Activity/Project.**

### Part III Final Financial Interest Report

Report all contracts executed under this CDBG-DR contract that are valued at or above \$2,000.

#### Contracts with no subcontractors

Type of Services	Business Name	Contract Amount			Qtr Executed
		CDBG-DR Funds	Other Funds	Total Dollars	

☐ At least one contract executed under this CDBG-DR contract includes subcontracts valued at or above \$10,000.

☐ No contracts executed under this CDBG-DR contract include subcontracts valued at or above \$10,000.

**CITY OF HOUSTON****BUYOUT PROGRAM PERFORMANCE STATEMENT**

Subrecipient shall carry out the following housing activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Buyout Program Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

**Project Description**

The Subrecipient will provide a Buyout Program to remove homes from the housing stock that are in areas with a high risk of flooding or in areas at a high risk of flooding for Low- to Moderate-Income ("LMI") individual households affected by Hurricane Harvey. The Subrecipient may offer buyouts to Low- to Moderate Income individual households under the Low- to Moderate Buyout (LMB) or Low- to Moderate Income Housing Incentive (LMHI) or urgent need (UN), thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery and Administration costs, as defined in the State of Texas Plan for Disaster Recovery, enacted May 1, 2018, as amended, will not exceed ten percent (10%) and two percent (2%), respectively, of the total grant allocation. An environmental review must be conducted at all locations prior to the execution and commencement of work.

Eligible activities for the funds are as listed in HCDA section 105(a)(1), 105(a)(7-9) 105(a)(24-25), 5305(a)(8), 24 CFR 570.20(b)(4), and; 24 CFR 570.201(g) including but are not limited to Buyouts; Demolition; Relocation Assistance; Payment of Non-Federal Share; Housing incentives. A waiver eligible under FR-6066-N-01 permits housing incentives and other requirements for one-for one replacement housing, relocation, and Real property acquisition requirements.

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
Buyout Program	LMHI	100
Buyout Program	UN	100

**Buyout Program**

The Subrecipient will offer a Buyout Program that will remove approximately two hundred (200) single family or multifamily homes from areas with high flood risk. The maximum assistance provided to each property will be two hundred fifty thousand dollars (\$250,000) for buyout assistance including incentives/moving and settlement costs and other eligible project costs. The

Subrecipient will purchase residential structures that have flooded and demolish them to create park amenities, open space, or detention areas. The program is voluntary and is intended to assist residents to move out of areas that have been impacted by multiple disasters or are at high risk of flooding from future disasters. The program is also intended to reduce the impact of future disasters, while encouraging targeted revitalization efforts and the creation of open space.

The Subrecipient may work with subrecipients, such as the Harris County Flood Control District or other City Departments to implement this program. If a designee of the Subrecipient is selected, the Subrecipient will work with the designee to choose buyout project locations. Buyouts under this program may be part of a larger City or County buyout strategy, in accordance with a long-term plan for the property to become future open space or detention, to avoid removing a viable property from the housing market. It may include the buyout of impacted single and multifamily housing. Buyout property will be maintained in perpetuity as greenspace, as applicable to buyouts.

To be eligible for Assistance the Residential Structure Homeowner Properties must be Owner-occupied at the time of the storm; served as homeowner's primary residence; sustained damage from Hurricane Harvey; the property is environmentally cleared; and the property is located in a Disaster Risk Reduction Area (DRRA), repetitive flood risk area or Floodplain. The Homeowner applicants and co-applicants must be current on payments for child support; furnish evidence that property taxes are current, under an approved payment plan, or that they have an exemption under current laws and Homeowner applicants must agree to a limited subrogation of any future awards related to Hurricane Harvey, to ensure duplication of benefits compliance.

To be eligible for assistance, the Rental Property must be Renter-occupied at the time of the storm; sustained damage from Hurricane Harvey; the property is environmentally cleared; and the property is located in DRRA, repetitive flood risk area or Floodplain. The Rental Property owners must furnish evidence that property taxes are current, they are under an approved payment plan, or that they have an exemption under current laws.

Buyout Program guidelines will detail applicant or project eligibility requirements, application process, compliance with Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) regulations, and other information.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**



**City of Houston**  
**Buyout Program Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Housing Guidelines	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**City of Houston**  
**Buyout Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_MI_BP-LMI_CityofHouston	Buyout Program – LMHI	\$18,360,000	\$0	\$18,360,000
18-###-###_MI_BP-UN_CityofHouston	Buyout Program - UN	\$18,360,000	\$0	\$18,360,000
18-###-###_MI_BP-LMI_CityofHouston	Project Delivery- BP-LMHI	\$2,040,000	\$0	\$2,040,000
18-###-###_MI_BP-UN_CityofHouston	BP-Project Delivery - UN	\$2,080,000	\$0	\$2,080,000
	<b>TOTAL</b>	<b>\$40,800,000</b>	<b>\$0</b>	<b>\$40,800,000</b>

## CITY OF HOUSTON

## ECONOMIC REVITALIZATION PROGRAM PERFORMANCE STATEMENT

Subrecipient shall carry out the following economic revitalization activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Program Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

Project Description

The Subrecipient will provide an Economic Revitalization Program to help create job for Low to Moderate Income ("LMI") individuals and to improve the economic viability of areas affected by Hurricane Harvey in order to meet the National Objective of benefiting low- to moderate-income persons, thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery costs will be not exceed six percent (6%).

Economic Revitalization activities that are eligible for funding are listed in HCDA section 105(a)(17), 105(a)(19), 105(a)(22). Economic revitalization activities must contribute to the long-term recovery and restoration of housing. A waiver eligible under FR-6066-N-01 permits other national objective documentation and public benefit standards.

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
Economic Revitalization Program	LMI	813 jobs created/ retained

Economic Revitalization Program

The Subrecipient will offer an Economic Revitalization Program, which will support a comprehensive recovery by creating or retaining eight hundred thirteen (813) jobs at or below fifty thousand (\$50,000) per job created or retained for low and moderate-income persons through the provision of capital, credit and technical assistance to businesses, including microenterprises. Assistance may be provided through loans or grants, and assistance may be part of a revolving loan fund. It is intended that this program will support small businesses that include, but is not limited to, those providing housing construction services, to work with and complement the housing programs funded with Community Development Block Grant-Disaster Recovery funds. Economic revitalization activities must contribute to the long-term recovery and restoration of housing. The Subrecipient may utilize public and private nonprofit agencies, authorities, or

organizations and for-profit organizations to carry out the program. The application or Notice of Funding Availability/ Request for Proposal (NOFA/ RFP) process will clearly establish the process and acceptance period, threshold criteria, and the award process. Selection criteria will likely include: the need for program, cost reasonableness and effectiveness, activity management and implementation, and experience/past performance. Eligible subrecipients include public or private nonprofit agencies, authorities, or organizations and for-profit organizations.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**



**City of Houston**  
**Economic Revitalization Program Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Project Delivery Funds	Cumulative Billing Cap by Benchmark for Project Delivery Funds
Approval of Notice Housing Guidelines, or NOFA/RFP.	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**City of Houston**  
**Economic Revitalization Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_MI_ER-LMI_CityofHouston	Economic Revitalization - LMI	\$28,448,944	\$0	\$28,448,944
18-###-###_MI_ER-LMI_CityofHouston	ER-Project Delivery-LMI	\$1,815,890	\$0	\$1,815,890
	<b>TOTAL</b>	<b>\$30,264,834</b>	<b>\$0</b>	<b>\$30,264,834</b>

**CITY OF HOUSTON****HOMEBUYER ASSISTANCE PROGRAM PERFORMANCE STATEMENT**

Subrecipient shall carry out the following housing activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Homebuyer Assistance Program Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

**Project Description**

The Subrecipient will provide a Homebuyer Assistance Program to provide funds for down payment, closing cost, principal buydown, and other direct financial assistance for Low- to Moderate-Income ("LMI") individual households and households earning between eighty percent (80%) and one hundred twenty percent (120%) Area Median Income (AMI), in order to meet the dual National Objectives of benefiting low- to moderate-income persons and meeting an urgent need, thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery and Administration costs, as defined in the State of Texas Plan for Disaster Recovery, enacted May 1, 2018, as amended, will not exceed ten percent (10%) and two percent (2%), respectively, of the total grant allocation for both Non-Rental and Rental Activities. An environmental review must be conducted at all locations prior to the execution and commencement of work.

This activity is eligible for Community Development Block Grant – Disaster Recovery funds as listed in 24 CFR 570.201(n) and HCDA section 105(a)(24). A waiver eligible under FR-6066-N-01 permits Homeownership assistance for households earning up to one hundred twenty percent (120%) Area Median Income and down payment assistance for up to one hundred percent (100%) of the down payment.

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
Homebuyer Assistance Program	LMI	200
Homebuyer Assistance Program	UN	452

Homebuyer Assistance Program

The Subrecipient will provide a Homebuyer Assistance Program, which will assist eligible applicant households earning up to one hundred twenty percent (120%) of the area median income (AMI) to purchase a home. The program will assist approximately six hundred fifty-two (652) eligible households, of which it is estimated two hundred (200) will be low to moderate income households. The Homebuyer Assistance Program will prioritize households that were impacted by Hurricane Harvey, to facilitate the movement of low to moderate income households into new homes after their homes were damaged by Hurricane Harvey. Assistance may include down payment assistance, closing cost assistance, principal buydown, and other direct financial assistance to homebuyers to finance the purchase of a home. Direct homeownership assistance under 570.201(n) allows the Subrecipient to pay up to one hundred percent (100%) of the down payment amount required by the lender. The City may also utilize other forms of direct homebuyer assistance such as subsidizing interest rates and mortgage principal amounts, including making grants to reduce the effective interest rate on the amount needed by the eligible household to achieve an affordable mortgage payment level. The maximum amount per unit is thirty thousand dollars (\$30,000). Refer to the Homebuyer Assistance Program Guidelines for additional technical guidance.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**



**City of Houston**  
**Homebuyer Assistance Program Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Homebuyer Assistance Guidelines	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**City of Houston**  
**Homebuyer Assistance Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_MI_HBA-LMI_CityOfHouston	Homebuyer Assistance Program - LMI	\$6,000,000	\$0	\$6,000,000
18-###-###_MI_HBA-UN_CityOfHouston	Homebuyer Assistance Program - UN	\$13,567,170	\$0	\$13,567,170
18-###-###_MI_HBA-UN_CityOfHouston	HBA-Project Delivery-LMI	\$666,667	\$0	\$666,667
18-###-###_MI_HBA-UN_CityOfHouston	HBA-Project Delivery-UN	\$1,507,463	\$0	\$1,507,463
	<b>TOTAL</b>	<b>\$21,741,300</b>	<b>\$0</b>	<b>\$21,741,300</b>

**CITY OF HOUSTON****HOMEOWNER ASSISTANCE PROGRAM PERFORMANCE STATEMENT**

Subrecipient shall carry out the following housing activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Homeowner Assistance Program Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

**Homeowner Assistance Program (HoAP)**

The Subrecipient will provide City Managed Rehabilitation, Elevation and Reconstruction, Reimbursement, Acquisition, Homeowner Managed Rehabilitation, and Interim Mortgage Assistance. Activities are for Low to Moderate Income ("LMI") individual households and non-Low to Moderate Income individuals that were affected by Hurricane Harvey in order to meet the dual National Objectives of benefiting low-to moderate-income persons and meeting an Urgent Need, thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery and Administration costs, as defined in the State of Texas Plan for Disaster Recovery, enacted May 1, 2018, as amended, will not exceed ten (10%) and two percent (2%), respectively, of the total grant allocation. An environmental review must be conducted at all locations prior to the execution and commencement of work.

Eligible housing activities allowed under CDBG-DR; HCDA Section 105(a)(1), 105(a)(3-4), 105(a)(8) 105(a)(11), 105(a)(18), and 105(a)(25), 24 CFR 570.201(g) include but are not limited to single family owner-occupied rehabilitation and reconstruction; Hazard mitigation; Relocation assistance; demolition only; other activities associated with the recovery of impacted single family housing stock; payment of non-federal share. A waiver eligible under FR-6066-N-01 permits housing incentives and other requirements for one-for-one replacement housing, relocation, and Real property acquisition requirements. A modification to the limitation on emergency grant payments for interim mortgage assistance will also be used as stated in the same Federal Register.

The following estimated activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
City Managed Rehabilitation	LMI	1,348
City Managed Rehabilitation	UN	67
Reimbursement	LMI	177
Reimbursement	UN	1,519

Acquisition	LMI	35
Homeowner Managed Rehabilitation	LMI	221
Homeowner Managed Rehabilitation	UN	259
Interim Mortgage Assistance	LMI	353
Interim Mortgage Assistance	UN	88
Total		4,067

The City of Houston will be performing the following housing activities as part of the Homeowner Assistance Program (HoAP) within the city limits of Houston. Refer to the Homeowner Assistance Program Guidelines for further technical guidance regarding each program. Guidelines must be posted on the Subrecipient's website.

City Managed, Elevation, Rehabilitation and Reconstruction

The Subrecipient will provide homeowner rehabilitation and reconstruction assistance activities for an estimated one thousand four hundred fifteen (1,415) households of which it is anticipated that one thousand three hundred forty-eight (1,348) will be Low to Moderate Income households. The City will manage and complete the construction process for the rehabilitation or reconstruction of damaged homes on behalf of homeowners. The City anticipates contracting with a firm(s) to provide design and construction services for the rehabilitation or reconstruction of damaged properties.

Subrecipient must ensure that, upon completion, the rehabilitated, repaired, or reconstructed portion of each property complies with local building codes, and that the entire structure complies with local health and safety codes and standards and all applicable federal, state, and local building codes, the City's Minimum Property Standards (MPS), and compliance with one of the Green Building Standards as required by the Harvey Federal Register.

All reconstructed and newly constructed housing units must comply with the universal design features in new construction, as established by the GLO's Construction Standards, RESCHECK Certification, the International Residential Codes, as required by Subchapter G, Chapter 214, Local Government Code and one of the following Specifications, such as Energy Standards verified by a U.S. Department of Energy Building Energy Codes Program. All replacement housing, including manufactured housing units or modular homes, must comply with Housing and Urban



Development (HUD), program guidelines, construction standards and state, local, or regional building codes, as applicable.

Subrecipient shall conduct at a minimum a 50% inspection and final inspection as required by the GLO rehabilitation and reconstruction standards to meet the International Residential Code 2012, or the Local, County, State, or Federal Code, whichever is most stringent. If any Housing Units are located within a Catastrophe Area, as defined in Section 2210.005 of the Texas Insurance Code and suffer damage due to windstorms and/or hail, Subrecipient obtain certificates of completion from the Texas Department of Insurance pursuant to the requirements of Section 2210.2515 of the Texas Insurance Code and City's permitting office.

#### Reimbursement

The Subrecipient will offer a reimbursement option to an estimated one thousand six hundred ninety-six (1,696) households of which it is estimated that one hundred seventy-seven (177) will be Low to Moderate Income households. The assisted households will have completed partial or full repairs on their home before applying to the program. Households may be eligible for reimbursement of eligible expenses incurred, prior to application to the program, for work performed to minimum program standards, following an environmental clearance. Xactimate or a similar industry standard tool will be used to ensure cost reasonableness and the work will be verified through an on-site inspection by subrecipient or subrecipient's designee.

Subrecipient must ensure that, upon completion, the rehabilitated, repaired, or reconstructed portion of each property complies with local building codes, and that the entire structure complies with local health and safety codes and standards and all applicable federal, state, and local building codes, including the City's Minimum Property Standards (MPS).

Subrecipient shall conduct a final inspection (site inspection verifying completion of repairs).

#### Homeowner Managed Rehabilitation, Elevation and Reconstruction

The Subrecipient will provide a Homeowner Managed Rehabilitation option for four hundred eighty (480) households of which it is estimated that two hundred twenty-one (221) will be Low to Moderate Income households. The Subrecipient will assist homeowners to manage their own rehabilitation process and will provide construction advisory services for homeowners. The program will allow homeowners who have started the process and are under contract with a contractor at the time of application but need financial assistance to complete repairs. Homeowners will select their own licensed and insured contractor(s) and contract verifications, subject to approval and verification by the Subrecipient. Xactimate® or similar industry standard tools will be used to ensure cost reasonableness and the work will be validated through an on-site inspection. Homeowner managed rehabilitation, elevation, and reconstruction will only be available to homeowners who have initiated the repair process and are under contract with a contractor at the time of application.

Subrecipient must ensure that, upon completion, the rehabilitated, repaired, or reconstructed portion of each property complies with local building codes, and that the entire structure complies with local health and safety codes and standards and all applicable federal, state, and local building codes, including the City's Minimum Property Standards (MPS)

Subrecipient shall conduct progress inspections to verify repairs are completed and requirements are satisfied.

#### Acquisition

The Subrecipient may elect to voluntarily acquire single family homes for rehabilitation or reconstruction. The home acquired may then be reconstructed through the Single-Family Development Program or rehabilitated or reconstructed by partners. These homes would then be offered for sale to Low to Moderate homebuyers or to another homeowner with a damaged home. It is estimated that the Acquisition option may acquire an estimated thirty-five (35) homes. Assistance will be provided to homeowners located in a floodplain or residing in a repetitive flood area that agree to relocate outside of the floodplain. The Relocation incentive assistance will be offered. Applicant may receive post-disaster fair market value, which may include incentives. However, incentives may not be given to applicants that move into disaster-impacted floodplains.

#### Interim Mortgage Assistance

The Subrecipient will offer interim mortgage assistance for an estimated four hundred forty-one (441) households of which it is estimated that three hundred fifty-three (353) will be Low to Moderate Income households. Assistance will be provided to homeowners being served under the Homeowner Assistance Program who are making both a mortgage payment on their storm-damaged home and making a rental payment for their temporary home. These homeowners may be eligible to receive up to twenty (20) months of assistance based on the lesser of their monthly mortgage and temporary rental housing payments. This option may be considered when the rehabilitation or reconstruction of a home extends beyond three (3) months, during which mortgage payments may be due, but the home remains uninhabitable. Determination of reasonable and necessary award amounts, including duplication of benefits calculation, retroactive eligibility, and specific performance milestones for the rehabilitation/reconstruction of homes, will be established in the program guidelines.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**City of Houston**  
**Homeowner Assistance Program Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Housing Guidelines	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**



**City of Houston**  
**Homeowner Assistance Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
City Managed Rehabilitation	Rehabilitation & Reconstruction - LMI	\$156,382,597	\$0	\$156,382,597
City Managed Rehabilitation	Rehabilitation & Reconstruction - UN	\$5,345,649	\$0	\$5,345,649
Reimbursement	Reimbursement -LMI	\$14,138,260	\$0	\$14,138,260
Reimbursement	Reimbursement -UN	\$121,553,039	\$0	\$121,553,039
Acquisition	Acquisition - LMI	\$7,069,130	\$0	\$7,069,130
Homeowner Managed Rehabilitation	Homeowner Managed Rehabilitation - LMI	\$17,672,825	\$0	\$17,672,825
Homeowner Managed Rehabilitation Option	Homeowner Managed Rehabilitation - UN	\$20,691,298	\$0	\$20,691,298
Interim Mortgage Assistance	Interim Mortgage Assistance Option - LMI	\$8,482,956	\$0	\$8,482,956
Interim Mortgage Assistance	Interim Mortgage Assistance Option - UN	\$2,120,739	\$0	\$2,120,739
Project Delivery	HoAP - Project Delivery - LMI	\$22,778,307	\$0	\$22,778,307
Project Delivery	HoAP - Project Delivery - UN	\$16,494,636		\$16,494,636
	<b>TOTAL</b>	<b>\$392,729,436</b>	<b>\$0</b>	<b>\$392,729,436</b>

**City of Houston**  
**Administration and Planning Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_ MI_Admin- CityOfHouston	Administration Program	\$20,835,088	\$0	\$20,835,088
18-###-###_MI- Plan- CityofHouston	Planning Program	\$23,100,000	\$0	\$23,100,000
	<b>TOTAL</b>	<b>\$43,935,088</b>	<b>\$0</b>	<b>\$43,935,088</b>

**CITY OF HOUSTON****MULTIFAMILY RENTAL PROGRAM PERFORMANCE STATEMENT**

Subrecipient shall carry out the following housing activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Multifamily Rental Program Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

**Project Description**

The Subrecipient will repair multifamily properties and build new multifamily developments for Low- to Moderate Income ("LMI") individual households affected by Hurricane Harvey, in order to meet the National Objective of benefiting low- to moderate income persons, thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery and Administration costs, as defined in the State of Texas Plan for Disaster Recovery, enacted May 1, 2018, as amended, will not exceed ten percent (10%) and two percent (2%), respectively, of the total grant allocation. An environmental review must be conducted at all locations prior to the execution and commencement of work.

Eligible activities include rehabilitation, reconstruction, new construction, and acquisition. HCDA Section 105 (a)(1), 105(a)(3-4), 105(a)(7-8), 105(a)(11), and 105(a)(14-15). A waiver eligible under FR-6066-N-01 permits new housing construction.

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
Multifamily Rental Program	LMI	1,530

**Multifamily Rental Program**

The Subrecipient will offer a Multifamily Rental Housing program to provide an additional one thousand five hundred thirty (1,530) affordable units for low- to moderate-income households within the City of Houston. The program will include new construction, the acquisition and/or rehabilitation of multifamily rental housing, and strategic land acquisition for multifamily developments. The program will address the affordable housing shortage and meet the needs of disaster impacted rental households, including those in public housing. This program will also provide housing designed to meet the needs of special populations. Subrecipient will prioritize transactions leveraged with housing tax credits, conventional equity, conventional debt, tax exempt debt, deferred developer fees, seller notes, in-kind equity and other potential funding sources. The maximum award is forty million dollars (\$40,000,000) per development. The eligibility criteria include the following:

- i. Project must meet Community Development Block Grant-Disaster Recovery eligibility requirements



- ii. Development must be located within the city limits of Houston, except in certain cases where the City and County partner on projects that provide housing
- iii. At a minimum, fifty-one percent (51%) of the units rehabilitated or developed will be reserved for a lien period for low to moderate income households earning eighty percent (80%) or less of the Area Median Family Income (AMFI) at affordable rents. For rehabilitation or reconstruction, the lien period will be a minimum of fifteen (15) years, and for new construction, the lien period will be a minimum of twenty (20) years.
- iv. Any substantial rehabilitation, as defined by 24 CFR 5.100, or new construction of a building with more than four rental units will include installation of broadband infrastructure, as required.
- v. Property owners receiving disaster assistance that triggers the flood insurance purchase requirement have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance in writing and to maintain such written notification in the documents evidencing the transfer of the property, and the transferring owner may be liable if he or she fails to do so.
- vi. Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for "repair, replacement, or restoration" for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. No disaster assistance may be provided for the repair, replacement, or restoration of a property to a person who has failed to meet this requirement.

Refer to the approved Multifamily Rental Program Guidelines for further technical guidance.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**City of Houston**  
**Multifamily Rental Program Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Multifamily Rental Program Guidelines	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**City of Houston**  
**Multifamily Rental Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_MI_R-Multi-LMI_CityOfHouston	Multifamily Rental Program - LMI	\$289,150,722	\$0	\$289,150,722
18-###-###_MI_R-CityOfHouston	Multi-Project Delivery-LMI	\$32,127,858	\$0	\$32,127,858
	<b>TOTAL</b>	\$321,278,580	\$0	\$321,278,580

**CITY OF HOUSTON****PUBLIC SERVICES PERFORMANCE STATEMENT**

Subrecipient shall carry out the following public services activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Public Services Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

**Project Description**

The Subrecipient will provide public services to approximately three hundred thousand (300,000) low- and moderate-income ("LMI") persons affected by Hurricane Harvey to support residents to find housing, remedy housing issues, or to become more resilient in future disasters in order to meet the National Objective of benefiting low- to moderate-income persons, thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery and Administration costs, as defined in the State of Texas Plan for Disaster Recovery, enacted May 1, 2018, as amended, will not exceed ten percent (10%) for housing activities and 6% for non-housing activities and two percent (2%), respectively, of the total grant allocation for both Non-Rental and Rental Activities. An environmental review must be conducted on all projects prior to the execution and commencement of work. Eligible activities include the provision of public services as listed in HCDA Sec. 105(a)(8).

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
Public Services	LMI	300,000

**Public Services Program**

The Subrecipient will provide public services to approximately three hundred thousand (300,000) low to moderate income persons. The program will provide a comprehensive approach to recovery for Houstonians. These services will support residents to find housing, remedy housing issues, and/or become more resilient in future disasters, creating a stronger, more prepared community. Services will be made accessible to individuals with wide-ranging barriers through varying outreach strategies, partnerships with organizations serving people with disabilities, and making accommodations, as needed.

Services may include housing counseling, legal assistance, transportation services, fair housing services, health/mental health services, employment training, workforce development, and other services to address the needs of those impacted by Hurricane Harvey. To address the needs of those impacted who have become homeless or are at risk of becoming homeless. Housing



counseling and legal assistance services will assist in furthering fair housing by addressing housing barriers and allowing residents greater choice to move to neighborhoods with higher opportunity. Employment training and workforce development programs, including those that support housing recovery and housing construction, will address the need for job skills to support recovery. In addition, workforce development will help boost long-term recovery by supplying residents of impacted communities with the necessary skills and opportunities to increase household income. To address the needs of those impacted who have become homeless or are at risk of becoming homeless, services may include subsistence payments, rental housing subsidies, security deposits, and other services to assist in housing and/or rehousing this population.

The provision of public services is also intended to assist residents in preparing and qualifying for housing programs offered by the Subrecipient. Remedying title or tax issues through legal services and providing housing counseling for low to moderate income communities may prepare more residents to become eligible for programs such as the Subrecipients Homeowner Assistance and Homebuyer Assistance Programs.

Refer to the approved Public Services Guidelines for further technical guidance.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**City of Houston**  
**Public Services Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Public Services Guidelines	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**City of Houston**  
**Public Services Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_MI_Public-LMI_CityofHouston	Public Service - LMI	\$56,760,000	\$0	\$56,760,000
18-###-###_MI_Public-LMI_CityofHouston	Public-Project Delivery-LMI	\$3,240,000	\$0	\$3,240,000
	<b>TOTAL</b>	<b>\$60,000,000</b>	<b>\$0</b>	<b>\$60,000,000</b>

**CITY OF HOUSTON****SINGLE FAMILY DEVELOPMENT PROGRAM PERFORMANCE STATEMENT**

Subrecipient shall carry out the following housing activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Single Family Development Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

**Project Description**

The Subrecipient will provide new affordable single family homes for Low- to Moderate-Income ("LMI") individual households affected by Hurricane Harvey, in order to meet the National Objective of benefiting low- to moderate-income persons, thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery and Administration costs, as defined in the State of Texas Plan for Disaster Recovery, enacted May 1, 2018, as amended, will not exceed ten (10%) and two percent (2%), respectively, of the total grant allocation for both Non-Rental and Rental Activities. An environmental review must be conducted at all locations prior to the execution and commencement of work.

New construction is eligible based on information provided in the Federal Register waiving the requirements of 42 U.S.C.(a) HCDA Section 105 (a)(1), 105(a)(4), 105(a)(7-8), 105(a)(11), 105(a)(14-15); A waiver eligible under FR-6066-N-01 permits new housing construction.

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
Single Family Development	LMI	1,020

**Single Family Development Program**

The Subrecipient will offer a Single Family Development Program to provide one thousand twenty (1,020) new affordable single family homes for low and moderate income homebuyers. This program will work in conjunction with other recovery programs to provide housing options for those directly impacted by Hurricane Harvey and those indirectly impacted due to the resulting shortage of available housing.

The construction cost is limited to two hundred thousand dollars (\$200,000) per home, however additional allocations, above the two hundred thousand dollars (\$200,000) threshold may be provided to address certain site-specific conditions including accessibility needs environmental



issues, resiliency/mitigation measures, municipal ordinances, and neighborhood requirements. Additional allocations may be allowed based on the submitted application, onsite inspection and additional requirements that will be outlined in the Standard Operating Procedure. The City will work with applicants who require American with Disabilities (ADA) accommodations to select properties that satisfy their ADA needs; and/or will incorporate ADA construction for new homes built on empty lots. The maximum award of assistance was estimated utilizing information from existing repair and reconstruction programs. The maximum amount of assistance for each unit constructed and inclusive of site-specific conditions shall not exceed two hundred seventy-two thousand dollars (\$272,000). Refer to the approved Single-Family Development Guidelines for further technical guidance.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**City of Houston**  
**Single Family Development Program Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Housing Guidelines	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**City of Houston**  
**Single Family Development Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_MI_SF-LMI_CityofHouston	Single Family Development Program - LMI	\$183,600,000	\$0	\$183,600,000
18-###-###_MI_SF-LMI_CityofHouston	SF Project Delivery -LMI	\$20,400,000	\$0	\$20,400,000
	<b>TOTAL</b>	<b>\$204,000,000</b>	<b>\$0</b>	<b>\$204,000,000</b>

**CITY OF HOUSTON****SMALL RENTAL PROGRAM PERFORMANCE STATEMENT**

Subrecipient shall carry out the following housing activities in the City of Houston in strict accordance with the terms of the Subrecipient's approved Small Rental Program Guidelines, Contract, and all Attachments, whether attached physically or incorporated by reference.

**Project Description**

The Subrecipient will rehabilitate small rental properties (one (1) to seven (7) units) for Low- to Moderate-Income ("LMI") individual households affected by Hurricane Harvey in order to meet the National Objective of benefiting low- to moderate-income persons, thus satisfying the criteria listed in Section 104(b)(3) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(b)(3)). Project Delivery and Administration costs, as defined in the State of Texas Plan for Disaster Recovery, enacted May 1, 2018, as amended, will not exceed ten (10%) and two percent (2%), respectively, of the total grant allocation for both Non-Rental and Rental Activities. An environmental review must be conducted at all locations prior to the execution and commencement of work.

Eligible Program activities include Rehabilitation, Reconstruction, New Construction, and Acquisition. HCDA Section 105 (a)(1), 105(a)(3-4), 105(a)(7-8), 105(a)(11), and 105(a)(14-15). A waiver eligible under FR-6066-N-01 permits new housing construction

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Activities Served
Small Rental Program	LMI	600

**Small Rental Program**

The Subrecipient will provide a Small Rental Program to rebuild the affordable rental housing stock damaged by Hurricane Harvey by rehabilitating small rental properties (defined in this program as individual buildings with no more than seven (7) residential units) and create new housing stock through infill development of new small rental properties. This program, along with the Multifamily Rental Program, intends to meet the increased demand for affordable rental housing in Houston by rehabilitating or building approximately six hundred (600) units of rental housing, which will be available to low-and moderate-income households. It will provide financial assistance, through forgivable loans, to landlord applicants who serve a low- to moderate-income market. Refer to the approved Small Rental Program Guidelines for further technical guidance.



Property owner applicants must provide proof that the property taxes are current, have an approved payment plan, or have an approved property tax exemption in place. Applicants must agree to a limited subrogation of any future awards related to Hurricane Harvey according to duplication of benefits requirements and agree to lien period and lien requirements.

Properties must not be in a floodway and have an environmental clearance.

Developments must meet Community Development Block Grant- Disaster Recovery eligibility requirements and be located within the city limits of Houston (except in certain cases where the City and County partner on projects that provide housing).

If a single-family unit is rehabilitated or developed, it must be reserved for low to moderate income households. At least two (2) units in a duplex or triplex must be reserved for low to moderate income households. Any substantial rehabilitation, as defined by 24 CFR 5.100, or new construction of a building with more than four (4) rental units will include installation of broadband infrastructure, as required. Developments may include more than one (1) property, such as with a scattered site rental development.

Property owners receiving disaster assistance that triggers the flood insurance purchase requirement have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance in writing and to maintain such written notification in the documents evidencing the transfer of the property, and the transferring owner may be liable if he or she fails to do so. Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for "repair, replacement, or restoration" for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. No disaster assistance may be provided for the repair, replacement, or restoration of a property to a person who has failed to meet this requirement.

Applicable elevation requirements will apply to development and rehabilitation.

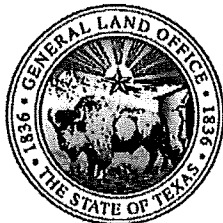
**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**City of Houston**  
**Small Rental Program Benchmarks**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Small Rental Program Guidelines	15%	15%
15% of Program Funds drawn by Subrecipient	15%	30%
25% of Program Funds drawn by Subrecipient	15%	45%
50% of Program Funds drawn by Subrecipient	15%	60%
75% of Program Funds drawn by Subrecipient	15%	75%
100% of Program Funds drawn or activities closed by Subrecipient	20%	95%
Closeout of Program accepted	5%	100%

**City of Houston**  
**Small Rental Program Budget**

Activity No	HUD Activity Type	Grant Award	Other Funds	Total
18-###-###_MI_R-Small-LMI_CityofHouston	Small Rental Program - LMI	\$55,084,590	\$0	\$55,084,590
18-###-###_MI_R-Small-LMI_CityofHouston	Small - Project Delivery- LMI	\$6,120,510	\$0	\$6,120,510
	<b>TOTAL</b>	<b>\$61,205,100</b>	<b>\$0</b>	<b>\$61,205,100</b>



**AMENDMENT NO. 1 TO  
GLO CONTRACT NO. 19-076-008-B357**

THE GENERAL LAND OFFICE (the "GLO") and CITY OF HOUSTON ("Subrecipient"), each a "Party" and collectively "the Parties" to GLO Contract No. 19-076-008-B357 (the "Contract"), desire to amend the Contract.

WHEREAS, the Parties desire to replace Subrecipient's DUNS Number with its Texas Identification Number (TIN); and

WHEREAS, the Parties desire to revise or replace certain language in the Contract to correct certain administrative errors; and

WHEREAS, the Parties desire to revise the Performance Statement, Budget, and Benchmarks for Infrastructure Projects;

NOW, THEREFORE, the Parties agree as follows:

1. Subrecipient's DUNS Number **145057811** is deleted from the Contract and replaced with the Texas Identification Number (TIN) **17460011640**.
2. ATTACHMENT A to the Contract, **Performance Statements, Budget, and Benchmarks for Housing Projects**, is deleted in its entirety and replaced with the **Revised Performance Statement, Budget, and Benchmarks for Housing Projects**, attached hereto and incorporated herein in its entirety for all purposes as **ATTACHMENT A-1**.
3. SECTION 8.28 of the Contract is deleted in its entirety and replaced with the following:

**"8.28 STATEMENTS OR ENTRIES**

**WARNING: ANY PERSON WHO KNOWINGLY MAKES A FALSE CLAIM OR STATEMENT TO HUD MAY BE SUBJECT TO CIVIL OR CRIMINAL PENALTIES UNDER 18 U.S.C. § 287, 18 U.S.C. § 1001, AND 31 U.S.C. § 3729.**

Except as otherwise provided under federal law, any person who knowingly and willfully falsifies, conceals, or covers up a material fact by any trick, scheme, or device; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document despite knowing the writing or document to contain any materially false, fictitious, or fraudulent statement

or entry shall be prosecuted under Title 18, United States Code, § 1001.

**Under penalties of 18 U.S.C. § 287, 18 U.S.C. § 1001, and 31 U.S.C. § 3729, the undersigned Subrecipient representative hereby declares that he/she has examined this Contract and Attachments and, to the best of his/her knowledge and belief, any statements, entries, or claims made by Subrecipient are true, accurate, and complete."**

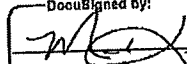
4. This Amendment shall be effective upon the date of the last signature.
5. The terms and conditions of the Contract not amended herein shall remain in force and effect.






**SIGNATURE PAGE FOLLOWS**



**SIGNATURE PAGE FOR AMENDMENT NO. 1 TO  
GLO CONTRACT NO. 19-076-008-B357**

**GENERAL LAND OFFICE**

DocuSigned by:  
  
Mark A. Havens, Chief Clerk/  
Deputy Land Commissioner  
Date of execution: 4/29/2020

OGC		_____
PM		_____
SDD		_____
DGC		_____
GC		_____

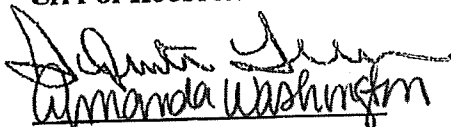
**ATTACHED TO THIS AMENDMENT:**

**ATTACHMENT A-1** Revised Performance Statement, Budget, and Benchmarks for Housing Projects

**CITY OF HOUSTON SIGNATURE PAGE FOLLOWS**


**CITY OF HOUSTON SIGNATURE PAGE FOR AMENDMENT NO. 1 TO  
GLO CONTRACT NO. 19-076-008-B357**

**CITY OF HOUSTON**

  
**MAYOR**

4-8-2020  
**DATE**

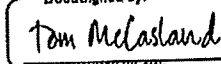
  
**CITY SECRETARY Assistant**

**COUNTERSIGNED:**  
  
**CITY CONTROLLER**  
*Jerald R. Ralston*


**DATE OF COUNTERSIGNATURE:**

4-14-2020

**APPROVED:**

DocuSigned by:  
  
4/7/2020  
**DIRECTOR, HOUSING AND  
COMMUNITY DEVELOPMENT  
DEPARTMENT**

**APPROVED AS TO FORM:**

DocuSigned by:  
  
4/8/2020  
**SENIOR ASSISTANT CITY ATTORNEY**

**SUBRECIPIENT NAME: CITY OF HOUSTON**

**HOUSING PERFORMANCE STATEMENT**

Subrecipient shall carry out the following housing activities in the City of Houston area in strict accordance with the terms of Subrecipient's or GLO's approved Housing Guidelines (where applicable), Contract, and all Attachments, whether attached physically or incorporated by reference.

**Project Description**

Subrecipient will fund the purchase of multifamily properties, assist with the relocation of residents, and demolish structures to reduce density in vulnerable areas. The proposed Activities will remove housing from the floodplain and prevent residential flooding in the future. This is a voluntary program and eminent domain will not be used. The City and/or a subrecipient, such as the Harris County Flood Control District, will carry out the program. Properties will be returned to green space to help absorb water and mitigate street and residential flooding in the future. Only properties impacted by a 2016 flood event are eligible. Properties will be dedicated and maintained in perpetuity for use that is compatible with open space. Subrecipient will remove approximately 3 properties from the floodplain and/or high flood risk areas. The City of Houston will utilize assessments provided with Harris County MOD and FEMA data to identify areas or homes that are at risk of flooding again and were impacted by the 2016 flood events. The program will benefit an area where at least 51% of residents are low- and moderate-income (LMI) households, as well as arrange for the demolition of dilapidated structures and conversion of property to open space. An environmental review must be conducted at all locations prior to the execution and commencement of work.

The following activities will be assisted under the Contract:

Activity Type	National Objective	Estimated Number of Properties
Buyout	LMI	3

**Buyout Program (BP-LMI)**

Subrecipient will remove approximately 3 of properties from high flood risk areas.

Subrecipient must ensure that, upon completion, the acquired (buyout) property will be dedicated and maintained in perpetuity for use that is compatible with open space. The locations of these properties have not been determined at this time.

Subrecipient will offer relocation assistance for up to an estimated 3 properties. Assistance will be provided to residents located in a floodplain that agree to relocate outside of the floodplain. The properties acquired with funds provided under this Contract may be used for green space or as recreational area.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**



**CITY OF HOUSTON**  
**HOUSING BENCHMARKS**

Benchmark	Incremental Cap for Charges by Benchmark for Administration and Project Delivery Funds	Cumulative Billing Cap by Benchmark for Administration and Project Delivery Funds
Approval of Housing Guidelines (where applicable)	15%	15%
15% of Project Funds drawn by subrecipient	15%	30%
25% of Project Funds drawn by subrecipient	15%	45%
50% of Project Funds drawn by subrecipient	15%	60%
75% of Project Funds drawn by subrecipient	15%	75%
100% of Project Funds drawn or Activities closed by subrecipient	20%	95%
Closeout of grant accepted	5%	100%

**CITY OF HOUSTON**  
**HOUSING BUDGET**

HUD Activity Type	Program Activity Type	Grant Award	Other Funds	Total
Acquisition - buyout of residential properties	Buyout Program - LMI	\$22,178,653	\$0	\$22,178,653
Acquisition - buyout of residential properties	Buyout Program - Project Delivery- LMI	\$838,312	\$0	\$838,312
Administration	Buyout Program - Admin- LMI	\$469,733	\$0	\$469,733
<b>TOTAL</b>		<b>\$23,486,698</b>	<b>\$0</b>	<b>\$23,486,698</b>

**LEASING AGREEMENT**  
**EXHIBIT "B"**  
**FEDERAL REQUIREMENTS**

## **FEDERAL REQUIREMENTS**

### **NONEXCLUSIVE LIST OF APPLICABLE LAWS, RULES, AND REGULATIONS**

If applicable to a Program or Activity, Provider must be in compliance with the following laws, rules, and regulations; and any other state, federal, or local laws, rules, and regulations as may become applicable throughout the term of the Contract, and Provider acknowledges that this list may not include all such applicable laws, rules, and regulations.

**Provider and is deemed to have read and understands the requirements of each of the following, if applicable to the Project under this Contract:**

#### **GENERALLY**

The Acts and Regulations specified in this Contract;

Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Public Law 115-56);

The Housing and Community Development Act of 1974 (12 U.S.C. § 5301 *et seq.*);

The United States Housing Act of 1937, as amended, 42 U.S.C. § 1437f(o)(13) (2016) and related provisions governing Public Housing Authority project-based assistance, and implementing regulations at 24 C.F.R. Part 983 (2016);

Cash Management Improvement Act regulations (31 C.F.R. Part 205);

Community Development Block Grants (24 C.F.R. Part 570);

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Disaster Recovery Implementation Manual;

GLO Housing Guidelines; and

State of Texas Plan for Disaster Recovery: Hurricane Harvey – Round 1, dated April 6, 2018, as amended.

#### **CIVIL RIGHTS**

Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d *et seq.*); 24 C.F.R. Part 1, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e, *et seq.*);

Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. § 3601, *et seq.*), as amended;

Executive Order 11063, as amended by Executive Order 12259, and 24 C.F.R. Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063"; The failure or

refusal of Provider to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;

The Age Discrimination Act of 1975 (42 U.S.C. § 6101, *et seq.*); and

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794.) and "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development", 24 C.F.R. Part 8. By signing this Contract, Provider understands and agrees that the activities funded shall be performed in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, *et seq.*), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system.

#### **LABOR STANDARDS**

The Davis-Bacon Act, as amended (originally, 40 U.S.C. §§ 276a-276a-5 and re-codified at 40 U.S.C. §§ 3141-3148); 29 C.F.R. Part 5;

The Copeland "Anti-Kickback" Act (originally, 18 U.S.C. § 874 and re-codified at 40 U.S.C. § 3145); 29 C.F.R. Part 3;

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (originally, 40 U.S.C. §§ 327A and 330 and re-codified at 40 U.S.C. §§ 3701-3708);

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act) (29 C.F.R. Part 5); and

Federal Executive Order 11246, as amended.

#### **EMPLOYMENT OPPORTUNITIES**

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u); 24 C.F.R. §§ 135.3(a)(2) and (a)(3);

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. § 4212);

Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1688); and

Federal Executive Order 11246, as amended.

#### **GRANT AND AUDIT STANDARDS**

Single Audit Act Amendments of 1996, 31 U.S.C. § 7501;

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Uniform Grant and Contract Management Act (Texas Government Code Chapter 783) and the Uniform Grant Management Standards, issued by Governor's Office of Budget and Planning; and

Title 1 Texas Administrative Code § 5.167(c).

#### **LEAD-BASED PAINT**



Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831(b)).

#### **HISTORIC PROPERTIES**

The National Historic Preservation Act of 1966 as amended (16 U.S.C. § 470, *et seq.*), particularly sections 106 and 110 (16 U.S.C. §§ 470 and 470h-2), except as provided in §58.17 for Section 17 projects;

Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 C.F.R., 1971-1975 Comp., p. 559, particularly section 2(c);

Federal historic preservation regulations as follows: 36 C.F.R. Part 800 with respect to HUD programs; and

The Reservoir Salvage Act of 1960, as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. § 469, *et seq.*), particularly section 3 (16 U.S.C. § 469a-1).

#### **ENVIRONMENTAL LAW AND AUTHORITIES**

Environmental Review Procedures for Recipients assuming HUD Environmental Responsibilities (24 C.F.R. Part 58, as amended);

National Environmental Policy Act of 1969, as amended (42 U.S.C. §§ 4321-4347); and

Council for Environmental Quality Regulations for Implementing NEPA (40 C.F.R. Parts 1500-1508).

#### **FLOODPLAIN MANAGEMENT AND WETLAND PROTECTION**

Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 C.F.R., 1977 Comp., p. 117, as interpreted in HUD regulations at 24 C.F.R. Part 55, particularly Section 2(a) of the Order (For an explanation of the relationship between the decision-making process in 24 C.F.R. Part 55 and this part, see § 55.10.); and

Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 C.F.R., 1977 Comp., p. 121 particularly Sections 2 and 5.

#### **COASTAL ZONE MANAGEMENT**

The Coastal Zone Management Act of 1972 (16 U.S.C. § 1451, *et seq.*), as amended, particularly sections 307(c) and (d) (16 U.S.C. § 1456(c) and (d)).

#### **SOLE SOURCE AQUIFERS**

The Safe Drinking Water Act of 1974 (42 U.S.C. §§ 201, 300(f), *et seq.*, and 21 U.S.C. § 349) as amended; particularly section 1424(e) (42 U.S.C. § 300h-3(e)); and

Sole Source Aquifers (Environmental Protection Agency-40 C.F.R. part 149.).

#### **ENDANGERED SPECIES**

The Endangered Species Act of 1973 (16 U.S.C. § 1531, *et seq.*) as amended, particularly section 7 (16 U.S.C. § 1536).

#### **WILD AND SCENIC RIVERS**

The Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271, *et seq.*) as amended, particularly sections 7(b) and (c) (16 U.S.C. § 1278(b) and (c)).

#### **AIR QUALITY**

The Clean Air Act (42 U.S.C. § 7401, *et seq.*) as amended, particularly sections 176(c) and (d) (42 U.S.C. § 7506(c) and (d)).

Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency-40 C.F.R. Parts 6, 51, and 93).

#### **FARMLAND PROTECTION**

Farmland Protection Policy Act of 1981 (7 U.S.C. § 4201, *et seq.*) particularly sections 1540(b) and 1541 (7 U.S.C. §§ 4201(b) and 4202); and

Farmland Protection Policy (Department of Agriculture-7 C.F.R. part 658).

#### **HUD ENVIRONMENTAL STANDARDS**

Applicable criteria and standards specified in HUD environmental regulations (24 C.F.R. Part 51)(other than the runway clear zone and clear zone notification requirement in 24 C.F.R. § 51.303(a)(3); and

HUD Notice 79-33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979.

#### **ENVIRONMENTAL JUSTICE**

Executive Order 12898 of February 11, 1994—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (59 FR 7629), 3 C.F.R., 1994 Comp. p. 859.

#### **SUSPENSION AND DEBARMENT**

Use of debarred, suspended, or ineligible contractors or subrecipients (24 C.F.R. § 570.609);

General HUD Program Requirements; Waivers (24 C.F.R. Part 5); and

Nonprocurement Suspension and Debarment (2 C.F.R. Part 2424).

#### **OTHER REQUIREMENTS**

Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58).

#### **ACQUISITION / RELOCATION**

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601, *et seq.*), 24 C.F.R. Part 42, and 24 C.F.R. § 570.606.

#### **FAITH-BASED ACTIVITIES**

Executive Order 13279 of December 12, 2002 - Equal Protection of the Laws for Faith-Based and Community Organizations, (67 FR 77141).

**EXHIBIT "C-1"**  
**OPERATING BUDGET**

	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21
Revenue	\$45,190	\$45,190	\$45,190	\$45,190	\$45,190	\$45,190	\$45,190	\$40,671	\$31,633	\$18,076	\$9,038	\$4,519	\$0
Expenses													
Utilities	\$6,977	\$6,977	\$6,977	\$6,977	\$6,977	\$6,977	\$6,977	\$6,279	\$4,884	\$2,791	\$1,395	\$698	\$0
Insurance	\$2,170	\$2,170	\$2,170	\$2,170	\$2,170	\$2,170	\$2,170	\$2,170	\$0	\$0	\$0	\$0	\$0
Property Management Fees	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900
Office Salary	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700
Office Rent	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400
Trash	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350
Office Internet and Phone	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300
Advertising and Promotion	\$220	\$220	\$220	\$220	\$220	\$220	\$220	\$220	\$0	\$0	\$0	\$0	\$0
Software Costs	\$150	\$150	\$150	\$150	\$150	\$150	\$150	\$150	\$150	\$150	\$150	\$150	\$150
Pest Control	\$90	\$90	\$90	\$90	\$90	\$90	\$90	\$81	\$63	\$36	\$18	\$9	\$0
Maintenance	\$2,260	\$2,260	\$2,260	\$2,260	\$2,260	\$2,260	\$2,260	\$2,084	\$1,682	\$904	\$462	\$228	\$0
Net Operating Income	\$28,674	\$28,674	\$28,674	\$28,674	\$28,674	\$28,674	\$28,674	\$27,477	\$20,304	\$9,545	\$2,373	(\$1,214)	(\$4,800)

\*Estimate based on Effective Date of November 2020 with Feasibility of 90 Days with two 30 Day Extensions. Estimated closing in May 2021. Wind down period from June 2021 to November 2021



## SCHEDULE 1

### VOLUNTARY ACQUISITION – INFORMATIONAL NOTICE

**[EXECUTED TO BE INSERTED]**

VOLUNTARY ACQUISITION – - Informational Notice - (Agencies with Eminent Domain Authority)

Grantee or Agency Letterhead

### NOTICE OF INTEREST

January 8, 2020

Dear Mr. Wood:

City of Houston, is interested in acquiring property you own at 3200 North MacGregor Way, Houston Texas 77004 for a proposed project which may receive funding assistance from the U.S. Department of Housing and Urban Development (HUD) under the Multi Family Buyout Program. Federal funds are administered by the City's Housing and Community Development Department.

Please be advised that the City of Houston possess eminent domain authority to acquire property, however, in the event you are not interested in selling your property, or if we cannot reach an amicable agreement for the purchase of your property, we will not pursue its acquisition under eminent domain. Your property is not a necessary part of the proposed project and is not part of an intended, planned, or designed project area where substantially all of the property within the area is to be acquired.

The fair market value is estimated to be \$5,580,000.00 to purchase your property. However, since this transaction is voluntary; current or future negotiations may result in a different price that may be the same, or higher or lower than this amount. Please contact us at your convenience if you are interested in selling your property.

The property must be evaluated in accordance with the environmental regulations at 24 C.F.R. Part 58 and the National Environmental Policy Act (NEPA) at 40 C.F.R. Parts 1500-1508, as applicable. If the information found indicates that the property is not compliant with an applicable law or authority, the Seller(s) and Buyer(s) must be provided the opportunity to withdraw from the agreement without penalty.

In accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), owner-occupants who move as a result of a voluntary acquisition are not eligible for relocation assistance. However, tenant-occupants displaced as a result of voluntary acquisition may be entitled to URA relocation assistance and must be informed in writing as soon as feasible.

If you have any questions about this notice or the proposed project, please contact

Rupa Sen, Real Estate Manager  
2100 Travis Street, 9<sup>th</sup> FL | Houston, Texas 77002  
832-394-6217 | [rupa.sen@houstontx.gov](mailto:rupa.sen@houstontx.gov)

Very truly yours,

DocuSigned by:  
Tom McCasland  
BB424356487DF4BF...

Tom McCasland, Director

**SELLER'S RECEIPT AND ACKNOWLEDGMENT OF NOTICE OF INTEREST**

DocuSigned by:  
Kevin Wood  
1D92200FE64E4DA...

11/2/2020

Name:  
Title: Managing Member

Date

Name:  
Title:

Date

## SCHEDULE 2

### TEXAS DISCLOSURES

1.1 **Notice Required by Chapter 49, Water Code.** If all or any part of the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services pursuant to Chapter 49 of the Texas Water Code, then Seller shall deliver to Purchaser, and Purchaser shall execute, the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district prior to or concurrently with the execution and delivery of this Agreement.

1.2 **Notice Required by § 13.257, Water Code.** Pursuant to Section 13.257 of the Texas Water Code, please be advised as follows: "The real property, described above, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property." Purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of this Agreement for the purchase of the Land and improvements described herein.

1.3 **Annexation Notice.** To the extent Section 5.011 of the Texas Property Code is applicable to all or any portion of the Property or this transaction, Purchaser hereby acknowledges and agrees that Seller delivered the following notice to Purchaser prior to execution of this Agreement:

#### "NOTICE REGARDING POSSIBLE ANNEXATION

If the property that is the subject of this Agreement is located outside the limits of a municipality, the property may now or later be included in the extraterritorial jurisdiction. To determine if the property is located within a municipality's extraterritorial jurisdiction or is likely to be located with a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the property for further information. The foregoing notice has been given solely in order to comply with Section 5.011 of the Texas Property Code and Seller makes no representation whether and to what extent the property may already be located within the limits of a municipality."

#### 1.4 **STATUTORY NOTICE REGARDING POSSIBLE LIABILITY FOR ADDITIONAL TAXES.**

"STATUTORY NOTICE REGARDING POSSIBLE LIABILITY FOR ADDITIONAL TAXES. If for the current ad valorem tax year the taxable value of the land that is the subject of this Agreement is determined by a

special appraisal method that allows for appraisal of the land at less than its market value, the person to whom the land is transferred may not be allowed to qualify the land for that special appraisal in a subsequent tax year and the land may then be appraised at its full market value. In addition, the transfer of the land or a subsequent change in the use of the land may result in the imposition of an additional tax plus interest as a penalty for the transfer or the change in the use of the land. The taxable value of the land and the applicable method of appraisal for the current tax year is public information and may be obtained from the tax appraisal district established for the County in which the land is located."

1.5 Intentionally Deleted.

1.6 Additional Texas Statutory Notices.

1.6.1 . INTENTIONALLY DELETED

1.6.2 Notice of Property Located in an Agricultural Development District. If the Property is located in an agricultural development district, then in accordance with § 60.063 of the Texas Agricultural Code: (1) Seller shall give to Purchaser a written notice that the Property is located in such a district at least one (1) business day prior to the expiration of the Option Period; (2) Purchaser agrees to acknowledge receipt of the notice in writing once received; and (3) at the Closing, a separate copy of the notice with current information about the district will be executed by Seller and Purchaser and recorded in the deed records of the county in which the Property is located.

1.6.3 Public Improvement Districts. If the Property is in a public improvement district, §5.014 of the Texas Property Code, requires Seller to notify Purchaser as follows: As a Purchaser of this Property, Purchaser is obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372 of the Texas Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Purchaser's failure to pay the assessments could result in a lien on and the foreclosure of the Property.

1.6.4 Propane Gas System Service Area. If the Property is located in a propane gas system service area owned by a distribution system retailer, Seller must give Purchaser written notice as required by § 141.010 of the Texas Utilities Code, which notice shall be given at least one (1) business day prior to the expiration of the Option Period.