

Long & Levit LLP 4.8.2021
City of Houston 4.29.2021
Long & Levit LLP 5.24.2021

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

SOLICITATION NO. _____
ORDINANCE # 2021-0747
CONTRACT # 4600016838

AGREEMENT FOR PROFESSIONAL PLANNING SERVICES

ARTICLE 1. PARTIES

THIS AGREEMENT FOR PROFESSIONAL PLANNING SERVICES (this "Agreement") is made on the date countersigned by the City Controller between the **CITY OF HOUSTON, TEXAS** (the "City"), a home-rule city of the State of Texas principally situated in Harris County, and **MOORE IACOFANO GOLTSMAN, INC.** ("Contractor"), a California for-profit corporation doing business in Texas.

1.01 **ADDRESS:**

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

<u>City</u>	<u>Contractor</u>
Director Houston Public Works City of Houston P. O. Box 1562 Houston, Texas 77251	317 Lexington Avenue Suite 2 San Antonio, Texas 78215 Attention: Mr. Mukul Malhotra Principal

The Parties agree as follows:

1.02 **TABLE OF CONTENTS**

1.02.1 This Agreement consists of the following sections:

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1.03 **PARTS INCORPORATED**

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

1.04 **CONTROLLING PARTS**

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

1.05 **DEFINITIONS**

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

1.06 **SIGNATURES**

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

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

Name:
Title:

ATTEST/SEAL:

City Secretary



CONTRACTOR:

Moore Iacofano Spoltsman, Inc.

By:

Name: Daniel Iacofano

Title: President/CEO

Federal Tax ID Number: 94-3116998

CITY OF HOUSTON, TEXAS

Signed by:

Mayor

APPROVED:

DocuSigned by:
Carol Haddock
A93C410B72B3453

Director, Houston Public Works

COUNTERSIGNED BY:

Ch. B. Brown

City Controller *Jennal Pelt*

APPROVED:

DocuSigned by:
Jerry Adams
8DD360430A6F4C8...

Chief Procurement Officer

COUNTERSIGNATURE DATE:

9-9-21

APPROVED:

DocuSigned by:
Tom McLasland
BB4243B4670F4BE

Director, Housing and Community
Development Department

APPROVED AS TO FORM:

DocuSigned by:
David Chang
8D06B002B0E3407

Sr. Assistant City Attorney
L.D. File No. 0342000129001

ARTICLE 2. DUTIES OF CONTRACTOR

2.01 SCOPE OF SERVICES

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

2.02 COORDINATE PERFORMANCE

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

2.03 TIME EXTENSIONS

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

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

2.04. **REPORTS**

2.04.1 Contractor shall submit all reports and progress updates required by the Director, the City of Houston Housing and Community Development Department (HCDD) and CPO.

2.05 **PAYMENT OF SUBCONTRACTORS**

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

2.05.2 **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS IF THE CITY HAS PAID SUCH SUMS TO THE CONTRACTOR. THE FOREGOING SHALL NOT BE CONSTRUED TO PRECLUDE THE CONTRACTOR FROM DISPUTING, IN GOOD FAITH, INVOICES FROM ITS SUBCONSULTANTS.**

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

2.06 **RELEASE**

2.06.1 **CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS (EXCLUDING OTHERS PROVIDING SERVICES FOR THE PROJECT), EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR BODILY INJURY, DEATH, OR PHYSICAL DAMAGE 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 CONCURRENT NEGLIGENCE OF CITY AND CONTRACTOR AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY TO THE EXTENT SUCH CLAIMS RESULT IN WHOLE OR IN PART FROM CONTRACTOR'S NEGLIGENCE OR WILFUL MISCONDUCT AND ARE COVERED BY CONTRACTOR'S INSURANCE. CONTRACTOR HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.**

2.07 INDEMNIFICATION

2.07.1 WITH RESPECT TO *PROFESSIONAL LIABILITY* CLAIMS, CONTRACTOR AGREES TO AND SHALL INDEMNIFY AND HOLD THE CITY, ITS AGENTS (EXCLUDING OTHERS PROVIDING SERVICES FOR THE PROJECT), EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REIMBURSEMENT OF REASONABLE ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY TO THE EXTENT CAUSED BY CONTRACTOR'S NEGLIGENCE IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

2.07.1.1 CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED SUBPARAGRAPHS 2.07.1.1 THROUGH 2.07.1.3, "CONTRACTOR") ACTUAL NEGLIGENCE OR WILFUL MISCONDUCT;

2.07.1.2 RESERVED.

2.07.1.3 THE CONTRACTOR'S ACTUAL STRICT PRODUCTS OR STATUTORY LIABILITY (IF SO PROVIDED WITH RESPECT TO CONTRACTOR'S SERVICES UNDER APPLICABLE LAW);

2.07.1.4 NOTWITHSTANDING THE ABOVE PROVISIONS OF THIS SECTION 2.07.1, CONTRACTOR HAS NO OBLIGATION TO PAY FOR ANY DAMAGES OR DEFENSE RELATED TO DAMAGES OR COSTS PRIOR TO A FINAL DETERMINATION OF ITS NEGLIGENCE LIABILITY OR WILFUL MISCONDUCT. FOLLOWING ANY SUCH DETERMINATION OF ITS LIABILITY, CONTRACTOR SHALL BE RESPONSIBLE TO PAY AN AMOUNT OF SUCH DAMAGES AND COSTS EQUAL TO THE FINALLY DETERMINED PERCENTAGE OF LIABILITY BASED UPON THE PROVEN NEGLIGENCE OR WILFUL MISCONDUCT OF CONTRACTOR.

2.07.2 CONTRACTOR SHALL INDEMNIFY AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S NEGLIGENCE.

2.07.3 WITH RESPECT TO *GENERAL LIABILITY* CLAIMS, IN CASE OF CLAIMS RESULTING FROM INJURY AND/OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF ANY PROPERTY CAUSED BY THE NEGLIGENCE OR WILFUL MISCONDUCT OF CONTRACTOR, SOLELY IN CONNECTION WITH THE OPERATIONS OF THE CONTRACTOR WHICH WOULD BE COVERED UNDER CONTRACTOR'S COMMERCIAL GENERAL LIABILITY INSURANCE, CONTRACTOR WILL INDEMNIFY, DEFEND, AND HOLD THE CITY HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES,

AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR BODILY INJURY, DEATH, OR PHYSICAL DAMAGE TO PERSONS OR PROPERTY, INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY THE CONCURRENT (BUT NOT SOLE) NEGLIGENCE OF THE CITY. THE FOREGOING INDEMNITY SHALL NOT APPLY TO CLAIMS ARISING FROM OR RELATING TO THE ADEQUACY OF CONTRACTOR'S SERVICES WHICH WOULD BE COVERED UNDER CONTRACTOR'S PROFESSIONAL LIABILITY INSURANCE.

2.08 INDEMNIFICATION AND RELEASE – PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT

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

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

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

2.09 SUBCONTRACTOR'S INDEMNITY

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

2.10 INDEMNIFICATION PROCEDURES

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

2.10.1.1 a description of the indemnification event in reasonable detail;

2.10.1.2 the basis on which indemnification may be due; and

2.10.1.3 the anticipated amount of the indemnified loss.

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

2.10.2 Defense of Claims

2.10.2.1 Assumption of Defense. In case of a general liability claim as described in Section 2.07.3, above, Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City Attorney. Contractor shall then control the defense and any negotiations to settle the claim, subject to the City Attorney's consent or agreement to the settlement, which consent or agreement shall not unreasonably be withheld. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

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

2.11 INSURANCE

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

<u>COVERAGE</u>	<u>LIMIT OF LIABILITY</u>
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	<ul style="list-style-type: none"> • Bodily Injury by Accident \$500,000 (each accident) • Bodily Injury by Disease \$500,000 (policy limit) • Bodily Injury by Disease \$500,000 (each employee)

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Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence, and \$2,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit for: (i) Any Auto; or (ii) All Owned, Hired, and Non-Owned Autos
Professional Liability (if applicable)	\$1,000,000 per occurrence; \$2,000,000 aggregate
Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability and Automobile Liability	\$1,000,000
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

2.11.2 **Insurance Coverage.** At all times during the term of this Agreement and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the Agreement requirements. Prior to beginning performance under the Agreement, at any time upon the Director's request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Contractor shall be responsible for and pay: (i) all premiums; and (ii) any claims or losses to the extent of any deductible amounts. Contractor waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Contractor shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

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

2.11.4 **Required Coverage.** The City shall be an Additional Insured under this Agreement, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other Agreement provisions. Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers'

Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement. If professional liability coverage is written on a "claims made" basis, Contractor shall also provide proof of renewal each year for two years after substantial completion of the project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the project covered by this Agreement with a duration of two years after substantial completion. All certificates of insurance submitted by Contractor shall be accompanied by endorsements for: (i) Additional Insured coverage in favor of the City for Commercial General Liability and Automobile Liability policies; and (ii) Waivers of Subrogation in favor of the City for Commercial General Liability, Automobile Liability and Workers' Compensation/Employers' Liability policies. The Director will consider all other forms on a case-by-case basis.

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

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

2.12 **PROFESSIONAL STANDARDS**

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

2.13 **WARRANTIES**

2.13.1 Contractor shall perform all work in accordance with the professional standards of Section 2.12 Contractor shall perform all work using trained and skilled persons having experience performing the work required under this Agreement.

2.13.2 RESERVED

2.14 USE AND OWNERSHIP OF DATA AND WORK PRODUCTS

- 2.14.1 The City may use and shall be permitted to use all City Data, Contractor Data, and Work Products in accordance with this Section 2.14. Contractor's Work Products shall not include software used by Contractor to perform its services.
- 2.14.2 Contractor warrants that it owns the copyright to or has the right to use the Contractor Data.
- 2.14.3 Upon payment of all amounts due to Contractor for its services provided pursuant to this Agreement, Contractor conveys and assigns to the City its entire interest and full ownership worldwide (to the extent owned by Contractor) in and to all Work Products and all Proprietary Rights therein.
- 2.14.4 Following the conveyance and assignment of ownership as described in the preceding paragraph, Contractor shall not claim or exercise any Proprietary Rights in or to the Work Products. If requested by the Director, Contractor shall place a conspicuous notation on any Work Products indicating that the City owns the Work Products and the Proprietary Rights therein.
- 2.14.5 Contractor's assignment of its interest in the Work Products and the Proprietary Rights therein to the City does not constitute a mere license or franchise to the City.
- 2.14.6 Contractor shall execute all documents required by the Director to further evidence Contractor's assignment and the City's ownership of the Work Products and the Proprietary Rights therein. Contractor shall cooperate with City in registering, creating, and enforcing the City's ownership of the Work Products and the Proprietary Rights therein.
- 2.14.7 All Work Products are "works made for hire."
- 2.14.8 Contractor shall deliver to the Director all or any part of the original City Data, Contractor Data, Work Products, and/or all other files and materials that Contractor produces or gathers during its performance under this Agreement, in the format and on the media specified by Director, within five Business Days after written request from Director or after this Agreement terminates or otherwise expires.
- 2.14.9 Contractor may retain copies of the Work Products for its archives. Contractor shall not otherwise use, sell, license, or market the Work Products that have been conveyed and assigned to the City.
- 2.14.10 The City is, will be, and shall remain at all times the sole owner of all City Documents and all Work Products. Contractor expressly acknowledges that the City has all right, title, or other ownership interest in all City Documents and all Work Products. Contractor shall not possess or assert any lien or other right against any City Documents or Work Products. The provisions of this paragraph will be effective only after the conveyance and assignment as described in Section 2.14.3, above.

2.15 CONFIDENTIALITY

2.15.1 Except as otherwise provided in this Agreement, each Receiving Party shall:

- 2.15.1.1 Hold all Confidential Information of a Disclosing Party in strict confidence;
- 2.15.1.2 Protect all Confidential Information of a Disclosing Party with at least the same degree of care and in accordance with the security regulations by which it protects its own Confidential Information;
- 2.15.1.3 Not use, reproduce, or copy any Confidential Information of a Disclosing Party except as necessary for purposes of performing any duties or exercising any rights under, pursuant to, or in connection with this Agreement unless the Disclosing Party otherwise agrees in writing;
- 2.15.1.4 Not disclose any Confidential Information of a Disclosing Party to any person or entity except the Receiving Party's agents, Contractors, employees, and representatives with a need to know for purposes of performing any duties or exercising any rights under, pursuant to, or in connection with this Agreement unless the Disclosing Party otherwise agrees in writing;
- 2.15.1.5 Not remove any Confidential Information of a Disclosing Party from the continental United States;
- 2.15.1.6 Return or destroy all Confidential Information of a Disclosing Party and any copies of such Confidential Information upon request of the Disclosing Party and, in any event, when no longer needed or permitted for use under, pursuant to, or in connection with this Agreement; and
- 2.15.1.7 Advise its agents, Contractors, employees, and representatives of their obligations with respect to the Confidential Information of a Disclosing Party.

2.15.2 No Receiving Party shall have any obligation under this Section (Confidentiality) as to any Confidential Information of a Disclosing Party that:

- 2.15.2.1 Was previously known to it free and clear of any obligation to keep it confidential;
- 2.15.2.2 Except as otherwise provided under this Agreement, is disclosed to third parties by the Disclosing Party without restriction;
- 2.15.2.3 Is or becomes publicly available by other than unauthorized disclosure;
- 2.15.2.4 Is independently developed by it; or
- 2.15.2.5 Is disclosed in response to requests made under the Texas Public Information Act or a court order. However, the Receiving Party ordered to disclose the Confidential Information shall: (i) give the Disclosing

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Party of the Confidential Information prompt written notice of all such requests, and (ii) cooperate with the Disclosing Party's efforts to obtain a protective order protecting the Confidential Information from disclosure.

2.15.2.6 No Receiving Party shall be liable for the inadvertent or accidental disclosure of Confidential Information of a Disclosing Party, if the disclosure occurs despite the exercise of a reasonable degree of care, which is at least as great as the care the Receiving Party normally takes to protect its own Confidential Information of a similar nature.

2.15.2.7 Contractor shall obtain written agreements from its agents, employees, Contractors, and subcontractors that bind them to the terms of this Section (Confidentiality).

2.16 **LICENSES AND PERMITS**

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

2.17 **COMPLIANCE WITH LAWS**

2.17.1 Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances in its performance under this Agreement. Contractor, and its Subcontractors, if any, acknowledges that it is subject to and shall comply with all applicable federal, state, and local laws, regulations, rules, and policies applicable to the Hurricane Harvey Community Development Block Grant Disaster Recovery ("CDBG-DR17") program including, without limitation, Non-Exclusive List of Applicable Laws, Regulations, and Rules listed in Exhibit H, which include the federal regulations at 24 C.F.R. Part 570 and 2 C.F.R. Part 200.2.18

2.18 **SECTION 3 REGULATIONS**

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

2.19 **COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY ORDINANCE**

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

2.20 **CONFLICTS OF INTEREST**

2.20.1 Contractor shall comply with all conflicts of interest laws and regulations applicable to this Agreement. Contractor shall promptly disclose in writing to the City all actual or potential conflicts of interest relative to the performance of this Agreement.

2.20.2 If an actual or potential conflict arises between the City's interests and the interests of other clients Contractor represents, Contractor shall immediately notify the Director promptly in writing. If the Director consents to Contractor's continued representation of the other clients, he or she shall notify Contractor in writing. If the Director does not issue written consent within 3 business days after receipt of Contractor's notice, Contractor shall immediately terminate its representation of the other client whose interests are or may be in conflict with those of the City.

2.21 **NON-DISCRIMINATION**

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

2.22 **MWBE COMPLIANCE**

2.22.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least **24%** of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunities ("OBO") and will comply with them.

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

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

[Name of MWBE subcontractor] shall permit representatives of the City of Houston, at all reasonable times, to perform: (i) audits of the books and records of the subcontractor; and (ii) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and

records available for such purpose for at least 4 years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

Within five Business Days of execution of this subcontract, Contractor and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.

Any controversy between the Parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract may be submitted to the Director. The Director may prescribe procedures to provide dispute resolution by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

2.22.3 Contractor shall adhere to and comply with 2 CFR § 200.321 if subcontracts are to be let under this Agreement. The Contractor, if subcontracts are to be let, is required to take the following affirmative steps to ensure that small business firms, minority business firms, women's business enterprises, and labor surplus area firms are used when possible pursuant to 2 CFR Section § 200.321. Affirmative steps must include: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

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

2.23. **DRUG ABUSE DETECTION AND DETERRENCE**

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

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

- 2.23.2.1 a copy of its drug-free workplace policy;
 - 2.23.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "C", together with a written designation of all safety impact positions; and
 - 2.23.2.3 if applicable (e.g., no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "D".
- 2.23.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "E". Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or, if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.
- 2.23.4 Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.
- 2.23.5 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

2.24. **CONTRACTOR'S PERFORMANCE**

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

2.25. **PAY OR PLAY**

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

2.26. **ACCEPTANCE AND REJECTION**

- 2.26.1 Except as otherwise provided in this Section 2.26, Contractor shall not submit an invoice or request for payment (each, a "Request for Payment") and Contractor shall not be entitled to payment and the City shall have no duty to pay Contractor

unless the Director accepts the services and other Deliverables specified in Exhibit "B" in accordance with this Section 2.26.

- 2.26.2 Contractor shall provide written notice to the Director upon completion or delivery of the services or Deliverables specified in Exhibit "B". On or before the twentieth (20th) Business Day after the date the Director receives Contractor's written notice of completion or delivery, the Director shall provide written notice to Contractor stating whether the Director has accepted or rejected the services or Deliverables along with the reason(s) for any rejection. Failure of the Director to provide written notice of acceptance or rejection of any services or Deliverables on or before the 20th Business Day from his receipt of the Contractor's written notice of completion or delivery does not constitute acceptance or approval of the services or Deliverables by the Director or the City. If the Director fails to provide a written notice of acceptance or rejection by the 20th Business Day from the Director's receipt of Contractor's written notice of completion or delivery, Contractor may submit a Request for Payment for the services or Deliverables and such Request for Payment shall be subject to the Director's review, verification, and approval or dispute processes specified in the Payment Terms in Section 3.01 of this Agreement.
- 2.26.3 Notwithstanding anything to the contrary in this Agreement or elsewhere, the Director may, in his sole discretion, approve in writing a partial acceptance of the services and other Deliverables set forth in Exhibit "B".
- 2.26.4 If the Director reasonably rejects any services or Deliverables, in whole or part, Contractor shall have fifteen (15) Business Days after the Director sends written notification of rejection to correct or otherwise replace such services or Deliverables as necessary to conform to the Director's rejection notice. Contractor's corrections or replacements for rejected services or Deliverables shall be provided at no additional cost to the City. Contractor shall provide written notice to the Director upon completion of any such correction(s) or replacement(s) after the receipt of which the Director shall continue to either accept or reject (as provided under this Section) and Contractor shall continue to make any necessary correction(s) or replacement(s) (as provided under this Section) until the Director either accepts in writing all previously rejected services or Deliverable or issues a written final rejection notice in accordance with Section 2.26.5 of this Agreement.
- 2.26.5 Notwithstanding anything to the contrary in this Agreement, if the Director does not accept any services or Deliverable after one or more attempted correction(s) or replacement(s) of such services or Deliverables by Contractor, the Director may, in his sole discretion, issue a written final rejection notice to Contractor for such services and other Deliverables and the City shall have no obligation to pay any amount whatsoever related to those services or Deliverables that are the subject of the final rejection notice. The Director may, at any time after a final rejection notification has been issued, declare a default and elect to terminate this Agreement, in whole or in part, as provided in Section 4.05 of this Agreement.
- 2.26.6 The City reserves all other available rights and remedies at law or in equity, including without limitation all rights and remedies and rights under Article 2 of the Texas Business and Commerce Code.

2.27. ADDITIONS AND DELETIONS

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

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

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

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

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

2.28 ANTI-BOYCOTT OF ISRAEL

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

2.29 ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES

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

2.30 PRESERVATION OF CONTRACTING INFORMATION

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

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

ARTICLE 3. DUTIES OF CITY

3.01 PAYMENT TERMS

3.01.1 Subject to all terms and conditions of this Agreement, the City shall pay fees to Contractor and Contractor agrees to accept fees for services actually performed under each task detailed in Exhibit "B". Contractor further acknowledges that the fees set forth in Exhibit "B" represent the maximum compensation to be received by Contractor for performing the Services, unless the Director agrees, in writing, to expand the scope of the Services and simultaneously provide additional funding for the expanded scope. City's payments to Contractor for services are subject to the allocation of funds and all fees and expenses may only be paid from the Allocated Funds, as provided in below.

3.01.2 Early Payment Discount. The City of Houston's standard payment term is to pay

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

Payment Time - 10 Days: 2% Discount

Payment Time - 20 Days: 1% Discount

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

3.02 **TAXES**

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

3.03 **METHOD OF PAYMENT**

- 3.03.1 Upon the Director's written acceptance and approval of the services or Deliverables, or upon the Director's failure to provide a written notification of acceptance or rejection of services or Deliverables in accordance with Section 2.26 of this Agreement, Contractor may submit a Request for Payment to the Director. No Request for Payment, nor the cumulative sum of all Requests for Payment, shall exceed the Contract Price or the maximum budget for each line item set forth in the Fee Schedule, Exhibit "B".
- 3.03.2 Subject to all terms and conditions of this Agreement, the City shall pay Contractor on the basis of Requests for Payment submitted by Contractor and approved by the Director showing (1) a description of the services performed during the period covered by the Request for Payment and (2) the amount the Contractor requests for payment. Requests for Payment must state the specific services performed or Deliverables delivered and the corresponding prices for each item as indicated in the Scope of Services. For hourly rates for items billable as a time and materials payment in accordance with the Fee Schedule, Contractor must provide detailed timesheets which shall include the name of Contractor's or subcontractor's staff person, date services were performed by each staffer, the amount of time spent performing the services per day by each staffer, and a detailed description of the services performed by each staffer on each day which description and services must correspond to a specific and discrete Deliverable or subtask in the Scope of Services including Exhibit "B". The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice, unless the parties agree to the payment time under the Early Payment Discount described above. All fees due to Contractor under this Agreement shall only be payable from certain Allocated Funds, as provided below.

3.03.3 If the City disputes any item in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After any dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

3.04 **LIMIT OF APPROPRIATION**

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

3.04.2 Contractor understands that the City's obligation for payment under this Agreement, if any, is limited to CDBG-DR17 funds received by the City from the Texas General Land Office ("GLO") in accordance with the applicable GLO Harvey Contract for the performance of services under this Agreement. HCDD shall perform the day-to-day administration and oversight of the CDBG-DR17 funds. Unless adequate CDBG-DR17 funds are received, the City shall have no obligation to pay Contractor. Contractor must look to these designated funds only and to no other funds for the City's payment under this Agreement, and that the City is permanently excused from making payments due under this Agreement if, for whatever reason, there is a lack of CDBG-DR17 funds.

3.04.3 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of **TWO HUNDRED AND FORTY THOUSAND AND 00/100 dollars (\$240,000.00) during the current fiscal year** to pay money due under this Agreement during the City's current fiscal year (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds (each a "Supplemental Allocation" and collectively, the "Supplemental Allocations") for this Agreement, but they are not obligated to do so. Therefore, the Parties have agreed to the following procedures and remedies:

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

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

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

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

3.05 **ACCESS TO SITE**

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

3.06 **ACCESS TO DATA**

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

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

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

3.07 **NO QUANTITY GUARANTEE**

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

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

ARTICLE 4. TERM AND TERMINATION

4.01. AGREEMENT TERM

4.01.1 This Agreement is effective on the Countersignature Date and shall remain in effect for two (2) years, unless sooner terminated under this Agreement (the "Initial Term").

4.02. NOTICE TO PROCEED

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

4.03. RENEWALS

4.03.1 Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for one (1) successive 1-year term on the same terms and conditions. If the Director chooses not to renew this Agreement, he or she shall notify Contractor and the CPO of non-renewal at least 30 days before the expiration of the then-current term.

4.04. TERMINATION FOR CONVENIENCE BY CITY

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

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

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

4.05. TERMINATION FOR CAUSE BY CITY

4.05.1 If Contractor defaults under this Agreement, the Director may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights

and remedies which exist now or in the future. Default by Contractor occurs if:

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

4.05.1.2 Contractor becomes insolvent;

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

4.05.1.4 a receiver or trustee is appointed for Contractor.

4.05.2 If a default occurs, the Director may either waive the default in writing or, absent a waiver, shall deliver a written notice to Contractor (with a copy of the notice to the CPO) 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 Contractor to cure the default and Contractor does so to the Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate this Contract on the termination date, at no further obligation of the City.

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

4.06. **EFFECTS OF TERMINATION**

4.06.1 Upon termination, Contractor shall immediately turn over all work in progress and final Deliverables to the Director.

ARTICLE 5. MISCELLANEOUS

5.01 **INDEPENDENT CONTRACTOR**

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

5.02 **FORCE MAJEURE**

5.02.1 Timely performance by both Parties is essential to this Agreement. However, neither Party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a Party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, pandemics or epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, court orders, and the acts of superior governmental or military authority, and which the affected Party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic

conditions such as inflation, interest rates, economic downturn, or other factors of general application, or an event that merely makes performance more difficult, expensive, or impractical. Force Majeure does not entitle Contractor to extra reimbursable expenses or payment.

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

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

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

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

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

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

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

5.03 **SEVERABILITY**

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

5.04 **ENTIRE AGREEMENT**

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

5.05 **WRITTEN AMENDMENT**

5.05.1 Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of

an ordinance adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

5.06 **GOVERNING LAW AND VENUE**

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

5.07 **NOTICES**

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

5.08 **CAPTIONS**

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

5.09 **NON-WAIVER**

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

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

5.10 **INSPECTIONS AND AUDITS**

5.10.1 City representatives (including without limitation the Director and City Controller), and State, and Federal Government authorized representatives (collectively "Auditing Entities") may perform, or have performed (1) audits of Contractor's books and records, or (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records (including without limitation any documentation required under 2 C.F.R. Part 200, Subpart D) available for this purpose for at least (i) three (3) years after the GLO's closeout of the CDBG-DR17 program that is the subject of the GLO Harvey Contract, (ii) the time period required by 2 C.F.R. § 200.333 (retention requirements for records) in the event the City receives federal funds for all or a

portion of this Agreement, or (iii) seven (7) years after the Agreement terminates, whichever is longer. If the books and records are located outside of Harris County, Texas, Subrecipient agrees to make them available in Harris County, Texas. This Section 5.10 does not affect the applicable statute of limitations.

- 5.10.2 Upon reasonable written notice, not less than twenty-four (24) hours, Auditing Entities have the right to perform or have performed audits and inspections.
- 5.10.3 Audits of Contractor's books, documents, papers, and records, including electronic versions, pertaining to services provided under this Agreement may include, but are not limited to:
 - 5.10.3.1 payroll and personnel records, such as salaries, benefits and bonuses;
 - 5.10.3.2 subcontractor agreements, records and invoices;
 - 5.10.3.3 any accounting or management systems, or computers or servers on which City information is stored; and
 - 5.10.3.4 all documents or files evidencing costs and underlying expenses relating to Contractor's performance.
- 5.10.4 Contractor shall provide the Auditing Entities, including without limitation, the Director, City Controller, the Texas Department of Emergency Management, the HUD Administrator, the Comptroller General of the United States, Inspectors General, the GLO, the Texas State Auditor's Office or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making copies, audits, examinations, excerpts, and transcriptions. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts any transcriptions as reasonably needed.
- 5.10.5 Contractor shall provide the Auditing Entities, including without limitation, the Director, City Controller, the HUD Administrator, the GLO, Inspector General, the Texas State Auditor's Office or any other authorized representatives of these individuals or entities access to work sites pertaining to the work being completed.
- 5.10.6 If any audit or inspection performed by HUD, GLO, the City or any other local, state or federal entity providing funding to pay for Contractor's services under this Agreement, results in the disallowance, recapture, repayment, refund, return, and/or reimbursement of funds used by the City to pay fees and/or expenses for Contractor's services, based on Contractor's performance under this Agreement, Contractor shall repay, refund, and/or reimburse the City for all of such fees and/or expenses required to be paid by the City or in the case of a City audit, amounts requested or disallowed by the City, as unallowed, unauthorized, or otherwise inconsistent with this Agreement. Contractor shall be given a reasonable opportunity to review and dispute in writing the findings of such audit or inspection. Any adjustments or payments that must be made as a result of any such audit or inspection of the Contractor's performance under the Agreement, including invoices or records, shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the written findings by the City to the Contractor. In no event will Contractor be responsible for disallowed, recaptured, or reimbursed amounts that the City has paid to any party other than Contractor. Each Party shall bear its own costs of any such audit.

5.11 **ENFORCEMENT**

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

5.12 **AMBIGUITIES**

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

5.13 **SURVIVAL**

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

5.14 **PUBLICITY**

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

5.15 **RISK OF LOSS**

5.15.1 Unless otherwise specified elsewhere in this Agreement, risk of loss or damage for each product passes from Contractor to the City upon Acceptance by the City.

5.16 **PARTIES IN INTEREST**

5.16.1 This agreement does not bestow any rights upon any third party but binds and benefits the City and Contractor only. Except as may be specifically set forth in this Agreement and the GLO Harvey Contract (i) nothing expressed or referred to in this Agreement shall be construed to give any person, body, or legal entity, other than the City and Contractor, any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement; and (ii) there are no third-party beneficiaries to this Agreement, and this Agreement and all of its provisions are for the sole and exclusive benefit of the City and Contractor.

5.17 **SUCCESSORS AND ASSIGNS**

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

5.18 **BUSINESS STRUCTURE AND ASSIGNMENTS**

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

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

5.19 **DISPUTE RESOLUTION**

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

5.19.2 Except as may otherwise be provided by law, a dispute that (i) does not involve a question of law; (ii) arises during the performance of this Agreement; and (iii) is not resolved between the Project Administrator and Contractor must be handled as described below:

5.19.2.1 The Project Administrator shall put its decision in writing and mail or otherwise furnish Contractor with a copy. Contractor may abide by the decision or may appeal the decision to the Director.

5.19.2.2 If Contractor desires to appeal a decision of the Project Administrator, Contractor must submit a written appeal to the Director. Contractor must file its written appeal within seven Business Days following receipt of the Project Administrator's original decision. The Director shall provide Contractor with a written response to the appeal within 14 Business Days following its receipt. The decision of the Director is final.

5.20 **REMEDIES CUMULATIVE**

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

5.21 **CONTRACTOR DEBT**

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

NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

5.22 **FEDERAL REQUIREMENTS**

5.22.1 The Parties acknowledge that City may seek reimbursement from the HUD for costs incurred under this Agreement. The Contractor shall comply with all Community Development Block Grant ("CDBG"), including CDBG-DR17 and applicable program requirements outlined in Exhibits H and H-1 and made a part hereof. 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. Contractor 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.

5.22.2 Contractor and its Subcontractors shall comply with the Federal Contract Requirements for the Lead-Based Paint Hazard Control Program which is funded by CDBG programs administered by HUD.

5.23 **FLOW-THROUGH PROVISIONS**

5.23.1 The City is a party to the GLO Harvey Contract effective to govern this Agreement in accordance with the provisions set out in Exhibit K and Exhibit K-1 to this Agreement. Contractor shall comply with the applicable terms set out in Exhibit K and Exhibit K-1 as if it were the City, except to the extent this Agreement specifically addresses a topic also covered in Exhibit K and Exhibit K-1, in which case the terms of this Agreement shall apply. In the event Contractor believes a term or condition of the applicable GLO Harvey Contract is inapplicable, Contractor 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.

5.23.2 In the event the City is a recipient or subrecipient of other grant, federal, or state funds or the City otherwise uses restricted funds to pay Contractor for services or expenses provided under this Agreement, Contractor shall agree, in writing, to be bound by the same contract or grant terms and conditions, laws, and regulations as the City, to the extent relevant to Contractor's scope of work, ("Additional Flow Down Provisions"). Contractor's agreement to the Additional Flow Down Provisions must be in writing, signed by the Contractor and Director and approved by the City Attorney. Such written agreement does not require amendment of this Agreement but shall be incorporated into this Agreement as if fully referenced herein. If within a reasonable time after receipt of a written request from the Director (not to exceed 15 business days), the Parties are unable to reach a written

agreement on the relevant Additional Flow Down Provisions following good faith negotiations, the Director, at his sole discretion may (i) immediately suspend Contractor from any further performance for all or certain services under this Agreement, or (ii) terminate the Agreement, in whole or in part.

5.24 CONTRACT WORK AND SAFETY STANDARDS.

5.24.1 Overtime requirements. Neither Contractor or nor any subcontractor contracting for any part of the contract work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

5.24.2 Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in this section.

5.24.3 Withholding for unpaid wages and liquidated damages. FEMA shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of the Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in this section.

5.24.4 Subcontracts. Contractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

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EXHIBIT "A"

DEFINITIONS

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

1. "Agreement" means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.
2. "Business Day" means any calendar day except Saturdays, Sundays and full-day holidays for employees of the City (as designated by City Council).
3. "Chief Procurement Officer" ("CPO") means the Chief Procurement Officer of the City of Houston, as set forth in Chapter 15 of the Houston Code of Ordinances.
4. "City" is defined in the preamble of this Agreement and includes its successors and permitted assigns.
5. "City Attorney" means the City Attorney of the City or any person designated by the City Attorney to perform one or more of the duties of the City Attorney under this Agreement.
6. "City Data" means and includes any one or more of the following: Confidential Information or information or services to be provided under the Scope of Services described in Exhibit "B" of this Agreement; Documents or information that the City or persons acting on the City's behalf provides, makes available to, or transmits to Contractor on the City's behalf; and Documents or information Contractor receives, obtains, has access to, modifies, creates, develops, analyzes, uses for modeling or other services under this Agreement or otherwise prepares in connection with this Agreement.
7. "Confidential Information" means all non-public Documents or information of a Party to this Agreement, including without limitation any such Documents or information that is identified as or would be reasonably understood to be confidential, proprietary, and/or sensitive.
8. "Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.
9. "Contractor Data" means any Confidential Information or information or Documents that the Contractor or persons acting on the Contractor's behalf provides, makes available to, or transmits to the City under this Agreement which is (1) information or non-City Data that Contractor possessed prior to the date of this Agreement, (2) information that Contractor develops independently without use of any of the information provided by the City, and (3) information Contractor rightfully receives from a third party free to make such disclosure without breach of any legal obligation.
10. "Countersignature Date" means the date shown as the date countersigned on the signature page of this Agreement.

11. "Deliverables" means those items that Contractor is to deliver to the Director pursuant to the Scope of Services assigned to the Contractor under Exhibit "B".
12. "Director" means the Director of the City of Houston Public Works or such other person as she or he designates.
13. "Disclosing Party" means a Party who discloses, supplies, or provides Confidential Information to another Party or whose Confidential Information is otherwise in the possession, custody, or control of another Party.
14. "Documents" means all original and non-identical copy of any written, typed, or printed matter, or electronically stored information, of any kind or description. The word "documents" includes, but is not limited to, the following: agendas, analyses, audio or video recordings, bulletins, charts, circulars, communications (including any interoffice, social media, and other communications), computations, computer programs, copies, correspondence, data, databases, data compilations, data prototypes, designs, diagrams, diskettes, documents, drafts, drawings, electronic mail (email), electronically stored information, exhibits, facsimiles, forms, graphs, guides, images, information, inventions, items, letters, logs, manuals, maps, materials, memoranda, metadata, microfilm, minutes or meeting minutes, models, notes, notations, notebooks, operating manuals, original tracings of all drawings and plans, other graphic matter (however produced or reproduced), pamphlets, photographs (including any digital or film photographs), plans, printouts, policies, procedures, records, recordings (including any audio, video, digital, film, tape, and other recordings), reports, social media communications, software, specifications, tabulations, telegrams, underlying data, works, worksheets, work products, writings, and any other writings or recordings of any type or nature (and any revisions, modifications, or improvements to them).
15. "Federal Government" means the United States Federal Government, including, but not limited to any of the agencies or departments that are or may provide funding for the services to be completed under this Agreement, such as the Office of the Comptroller General of the United States, the Government Accountability Office, the Office of the Inspector General, or any authorized representative of the U.S. Housing and Urban Development Department or the United States Government.
16. "GLO Harvey Contract" means the subrecipient agreement between the City and the GLO, GLO Contract No. 19-147-001-B489, Community Development Block Grant Disaster Recovery Program Projects Non-Research & Development Harvey Round 1 Funding ("2019 Subrecipient Agreement") 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, which contract is attached as Exhibit K; and GLO Contract No. 21-134-000-C788, Community Development Block Grant Disaster Recovery Program Non-Research & Development Hurricane Harvey Funding ("2021 Subrecipient Agreement") countersigned by the City Controller on February 9, 2021 and approved by City of Houston Ordinance No. 2021-93, and any amendments thereto, which contract is attached as Exhibit K-1. On the date HUD approves the State of Texas Action Plan Amendment 8 (as such plan is described in the 2021 Subrecipient Agreement), the 2019 Subrecipient Agreement shall automatically terminate, and the 2021 Subrecipient Agreement will become effective to govern this Agreement from that date forward.
17. "HCDD" means the City of Houston Housing and Community Development Department.

18. "Notice to Proceed" means a written communication from the Director or the CPO to Contractor instructing Contractor to begin performance.
19. "Party" or "Parties" means one or all of the entities set out in the Preamble who are bound by this Agreement.
20. "Proprietary Rights" means copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein, any one or more of which is collectively referred to in this Agreement as Proprietary Rights.
21. "Receiving Party" means a Party who receives, retains, or accepts Confidential Information from another Party or is otherwise in the possession, custody, or control of Confidential Information from another Party.
22. "Work" is the entire completed project, including all labor, materials, equipment and services provided in connection with planning services under the scope of services of this Agreement.
23. "Work Products" means all Documents or Information that the City and/or Contractor creates, develops, modifies, prepares, produces, or writes under, pursuant to, or in connection with this Agreement. "Work Products" does not mean or include software, source code, or object code.

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EXHIBIT "B"
SCOPE OF SERVICES
CONTRACT PRICE WITH FEE SCHEDULE

EXHIBIT B

This exhibit details the scope of work and includes a schedule, specific deliverables, and the costs by deliverable to be paid by the City to the Consultant. This exhibit also includes further details about the relationship between the City and Contractor.

Contents:

- A. Budget
- B. Roles and Responsibilities
- C. Invoice and Payment
- D. Monthly Reporting
- E. Change to Work or Change Order
- F. Dispute Resolution
- G. Scope of Work
- H. Schedule

A. Budget

Per the definition of "Deliverables" in Exhibit "A" to the Agreement, the table below itemizes the Deliverables, as further described Section G "Scope of Work" herein, to be provided by the Contractor to the City according to the 18-month schedule in the Gantt chart in Section H herein.

Table 1: Deliverables and Fees

		Direct Fees	Deliverable Fees
Task 1: Baseline Analysis Report and Inventory			
1.1	City-Wide Baseline Analysis Report		\$11,671
1.2	Focus Area Baseline Analysis		\$13,030
1.3	Inventory	\$600	\$15,501
Subtotal		\$600	\$40,202
Task 2: Stakeholder and Community Engagement			
2.1	Equitable Engagement Plan		\$2,999
2.2a	Stakeholder Meeting (2) - Project Initiation and Existing Condition		\$6,790
2.2b	Stakeholder Meeting (2) - Overall Vision and Overarching Framework		\$4,790
2.2c	Stakeholder Meeting (2) - Preliminary Alternative Concepts		\$5,790
2.2d	Stakeholder Meeting (2) - Refined Concepts and Phasing		\$4,790
2.2e	Focus Group Meetings (4)		\$4,590
2.3	Walking Tours	\$1,200	\$8,701
2.4	Pop-Up Streetscape Workshops	\$3,000	\$22,330
2.5	Community Questionnaires	\$3,000	\$14,924
2.6a	Community Workshops (4) - Visioning		\$11,907
2.6b	Community Workshops (4) - Emerging Concepts Review		\$9,907
2.6c	Community Workshops (4) - Preferred Concepts and Prioritization		\$9,907
2.7	Augmented Reality		\$12,866
2.8	Pop-Up Outreach Events (4)	\$800	\$10,376

2.9	City-Wide Tool Kit Stakeholder Meetings (2) - Phase 1		\$4,529
2.9	City-Wide Tool Kit Stakeholder Meetings (2) - Phase 2		\$4,529
2.9	City-Wide Tool Kit Stakeholder Meetings (3) - Phase 3		\$6,762
Subtotal		\$8,000	\$146,563
Task 3: Sidewalk Program			
3.1	Community Resilient Sidewalks Program Draft		\$35,213
3.2	Community Resilient Sidewalks Program Final		\$9,416
Subtotal		\$0	\$44,628
Task 4: Tool Kit and Technical Solutions			
4.1	Draft City-Wide Tool Kit		\$21,564
4.2	Recommended City-wide Tool Kit Sidewalk Measures		\$10,829
4.3	Implementation Strategy for City-Wide Tool Kit		\$12,588
4.3	City-Wide Tool Kit Roll Out Strategy		\$8,292
4.4	Final City-Wide Tool Kit		\$8,348
Subtotal		\$0	\$61,622
Task 5: Community Implementation Strategy			
5.1	Community Sidewalk Phasing Plan		\$15,574
5.2	Recommended Community Sidewalk Measures Strategy		\$16,557
5.3	Community Funding Strategy & Project Prioritization		\$8,416
Subtotal		\$0	\$40,547
Task 6: Project Management			
6.1	Kick-Off Meeting		\$6,372
6.2	Project Administration, Invoicing, and Monthly Progress Reports		\$23,724
Subtotal		\$0	\$30,096
SUBTOTAL		\$8,600	\$363,658

B. Roles and Responsibilities

The Project Administrator, the person designated by the Director of Houston Public Works, shall monitor the progress of all Parties' performance under this Agreement. The Project Administrator will serve as the primary point of contact between the City and the Contractor.

1. Contractor:

- a) Contractor shall perform all services under this Agreement in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
- b) Contractor shall ensure that all Deliverables it completes under this Agreement meet or exceed the standards of Contractor's trade, profession, or industry; and meet or exceed the specifications set forth in the Agreement; and, to the extent applicable, be fit for ordinary use, of good quality, and with no material defects.
- c) Contractor shall include Project Administrator, as the primary point of contact between the City and the Contractor, with respect to all communications, discussions, and issues pertaining to the project, unless otherwise directed by the Project Administrator, the Director of HPW, or the Director of HCDD.

- i. Contractor shall promptly notify the City of any issues, delays, changes in scope, or additional costs or liabilities by providing written notice to the Project Administrator.

2. City:

The City acknowledges that the Contractor's performance of the services under the Agreement and the fees charged are dependent on City's timely and effective completion of the City's duties under the Agreement. As the primary point of contact between the City and the Contractor, the Project Administrator's responsibilities include, but are not limited to, the following:

- a) The Project Administrator shall provide Contractor with reliable, accurate and complete information.
- b) The Project Administrator shall serve as the primary liaison between the Contractor and the City's decision makers, subject matter experts, and management to provide timely decisions and approvals.
- c) The Project Administrator shall have skills commensurate with their role with respect to such services to be provided and the overall scope of the project.
- d) The Project Administrator shall monitor and evaluate whether:
 - i. Contractor performs all services under this Agreement in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances; and
 - ii. All Deliverables that Contractor completes under this Agreement meet or exceed the standards of Contractor's trade, profession, or industry; and meet or exceed the specifications set forth in the Agreement; and, to the extent applicable, be fit for ordinary use, of good quality, and with no material defects.
- e) If the Project Administrator, in their sole discretion, determines that the Contractor submits Deliverables that do not meet specifications or standards, fails to complete Deliverables timely, or otherwise fails to perform its obligations under this Agreement, the Project Administrator shall notify Contractor in writing as provided in Article 5.19 and may require Contractor, at its sole expense, to:
 - i. Enhance or replace substandard Deliverables with Deliverables that do meet or exceed the specifications and standards set forth in the Agreement;
 - ii. Refund payment for substandard Deliverables and accept the return of such Deliverables; and
 - iii. Take necessary action to ensure that future performance and Deliverables meet the specifications and standards set forth in the Agreement.

C. Invoice and Payment

All reports, Deliverables, and other critical documentation outlined in this Agreement must

be timely submitted via e-mail to the Project Administrator. Funds associated with this Agreement shall be disbursed to the Contractor upon completion and approval by the City of the Deliverables, (in monthly increments) within the total amounts outlined in the table above.

The Contractor shall submit Deliverables on a monthly basis, including but not limited to monthly progress and reports monthly invoices, to the Project Administrator no later than three (3) business days after the last day of each month. Upon approval by the Project Administrator, HCDD will issue payment.

The Contractor shall submit invoices to the City in accordance with Article 3 of the Agreement. The City shall ensure that all Deliverables, duties, and/or responsibilities outlined and scheduled in this Agreement are completed in conformance with the terms of the Agreement and this Exhibit prior to disbursement of funds. The City may request, in addition to an invoice detailing the work performed, documentation proving completion of the applicable Deliverables, duties, and/or responsibilities.

At a minimum, invoices must:

- a) Be submitted by email to the Project Administrator, donald.buaku@houstontx.gov and copied to Jessica.caraway@houstontx.gov or as otherwise specified in writing or potentially designated by the Director.
- b) List the current amount being billed;
- c) List the cumulative deliverables to-date and amount billed previously;
- d) List the balance remaining to be billed; and
- e) Be supported by documentation, as applicable

D. Monthly Reporting

Monthly progress reports are due to the Project Administrator outlining the progress made during the month, identifying any deliverables completed and other milestones met.

E. Change to Work or Change Order

Material changes to this Exhibit, including but not limited to the following circumstances:

- Potential extension of project period beyond that stipulated in this Agreement
- Substantial change to tasks or deliverables other than that stipulated in this Agreement

Changes may be made only by written agreement between the City and the Contractor. The Project Administrator or Director will have the final decision-making authority. Notwithstanding the preceding, the Project Administrator may approve extensions to Deliverable due dates.

F. Dispute Resolution

If the Contractor disputes a determination by the Project Administrator under Section B.2.e above, the Contractor may appeal said determination to the Director, as set forth in Article 5.19 of the Agreement.

G. Scope of Work

The following is the scope of work for Resilient Sidewalk plans for the two (2) districts of Gulfton and Kashmere Gardens and a City-wide Tool Kit. The services described below will help develop context sensitive sidewalk solutions for these two (2) distinct districts. These plans will serve as case studies for scalable and replicable solutions to address similar challenges and opportunities across other districts and neighborhoods of Houston and help develop the City-wide Tool Kit.

Based on the guidance received in the original RFP, the scope of work is divided into the following six (6) sections:

1. Baseline Analysis Report and Inventory
2. Stakeholder and Community Engagement
3. Sidewalk Program
4. Tool Kit and Technical Solutions
5. Implementation Strategy
6. Project Management

The tasks are not sequential. Certain tasks in Sections 2 and 6 will be done in conjunction with Sections 1, 3, 4 and 5. Additional meetings and workshops are optional tasks. The Contractor (MIG) envisions this project to be 18 months long.

Task 1. Baseline Analysis Report and Inventory

Task 1.1 City-Wide Baseline Analysis Report

The MIG Team will develop a city-wide baseline report. The report will summarize past and concurrent plans and reports such as Houston Public Works Sidewalk Program, Walkable Places, Complete Communities Initiative, Resilient Houston, and the 2015-16 survey and inventory that identified areas of highest needs.

The MIG Team will complete a full gathering of data for the City that may include sidewalk rehabilitation programs, spot repair and curb ramp updates, existing survey data, and identification of priorities and high need areas. Our team will coordinate with the City of Houston to obtain existing drainage design studies, utilities information, soils information, GIS stormwater infrastructure data, existing construction plans and CADD files, right-of-way information, property ownership, FEMA flood maps, and past flooding history. The preliminary asset inventory and condition assessment from Houston Public Works will serve as the primary source of data for this analysis. A baseline analysis will be produced based on data reviewed.

The MIG Team will conduct hydrologic analyses to determine the adequacy of stormwater infrastructure capacity. HEC-HMS software, or another of the City's choosing, will be used to compute hydrographs and peak flows. Our baseline analysis report will identify potential sidewalk flooding impacts from storm sewer inlets, pipes, manholes, and ditches, with a particular focus on the mitigation of adverse impacts on flooding conditions resulting from the introduction of impervious cover and potential ditch infill.

This task assumes that the MIG team will pull the following information from existing City sources: utilities information; right of way information; sidewalk information; property ownership; FEMA flood maps; City of Houston GIMS - for GIS stormwater infrastructure data (existing storm sewer infrastructure configuration, condition, capacity, and location with respect to existing or future sidewalks: including pipes, manholes, junctions, ditches, detention basins, and outfalls.); soils information; land use data; bike paths; existing sidewalk shapefile data; and channel, creek and streams. City will provide the MIG team with any and all of the data stated above, if the files the MIG Team has access to are determined to be insufficient or unavailable. Additionally, the MIG team will request existing drainage design studies, existing construction plans and CADD files, reported 311 calls relating to structural and non-structural flooding, other flood history, and all relevant planning City-wide documents as well community level documents as they pertain to Gulfton and Kashmere Gardens.

MIG Team will provide City with a PDF Draft Baseline Analysis Report for one round of consolidated comments in electronic format. MIG Team will incorporate the comments and submit the Final Report.

Task 1.1 Deliverables:

- Draft and Final City-Wide Baseline Analysis Report
- Timeline: Final deliverable by month three (3) of contract period. Interim deliverables to be provided as indicated on the appended timeline.
- Budget: \$11,671

Task 1.2 Focus Area Baseline Analysis

The MIG Team will utilize- data from Task 1.1 to perform a baseline analysis of the Gulfton and Kashmere Gardens Communities. The analysis will identify unique public realm issues and opportunities for each community. The MIG Team will create up to six (6) prototypical existing cross sections for each community.

MIG Team will conduct hydrologic analyses to determine the adequacy of stormwater infrastructure capacity for each community. HEC-HMS software, or another of the City's choosing, will be used to compute hydrographs and peak flows. Our Focus Area baseline analysis reports will identify potential sidewalk flooding impacts from storm sewer inlets, pipes, manholes, and ditches, with a particular focus on the mitigation of adverse impacts on flooding conditions resulting from the introduction of impervious cover and potential ditch infill.

MIG Team will provide City with a PDF Focus Area Baseline Analysis Report for Gulfton and Kashmere Gardens for one round of consolidated comments in electronic format. MIG Team will incorporate the comments and submit the Final Report.

Task 1.2 Deliverables:

- Draft and Final Focus Area Baseline Analysis Report – Kashmere Gardens
- Draft and Final Focus Area Baseline Analysis Report – Gulfton

- Timeline: Final deliverable by month four (4) of contract period. Interim deliverables to be provided as indicated on the appended timeline.
- Budget: \$13,030

Task 1.3 Inventory

Building on the Focus Area Baseline Analysis Report, the MIG Team will conduct an extensive desktop review and sidewalk audit of existing stormwater infrastructure, including pipes, manholes, junctions, ditches, detention basins, and outfalls. Reconnaissance will aim to observe land use and hydrologic characteristics. In addition to the extensive desktop review, the MIG team will conduct an in-person site visit. This may happen in conjunction with Task 2.3 (Walking Tours). Walk audit results will be documented in photographs and field notes, and will capture suitability for low-impact development features and other criteria that may not be adequately represented during the desktop review, like community use of space. The MIG Team will produce a walk audit summary for each community in PDF format.

We will evaluate reported 311 calls relating to structural and non-structural flooding and City of Houston GIMS. The MIG Team will produce existing conditions evaluations for each community based on this data. The evaluations will identify current patterns, accessibility uses, and highest areas of need.

A draft Existing Conditions Evaluation report will be created that will incorporate the Focus Area Baseline Analysis Report and Walk Audit Summary for each community. MIG Team will provide City with a PDF of the draft Existing Conditions Evaluation Report for Gulfton and Kashmere Gardens for one round of consolidated comments in electronic format. MIG Team will incorporate the comments and submit the Final Report.

Task 1.3 Deliverables:

- Walk Audit Summary – Kashmere Gardens
 - Walk Audit Summary - Gulfton
 - Draft and Final Existing Conditions Evaluation – Kashmere Gardens
 - Draft and Final Existing Conditions Evaluation – Gulfton
- Timeline: Final deliverable by month four (4) of contract period. Interim deliverables to be provided as indicated on the appended timeline.
 - Budget: \$15,501

Task 2. Stakeholder and Community Engagement

Task 2.1 Equitable Engagement Plan

MIG will develop an Equitable Engagement Plan (EEP) that serves as a roadmap and guide to the Sidewalk Plan engagement process. The EEP will be designed to ensure an inclusive and equitable engagement process that intentionally reaches a diverse cross-section of the Gulfton and Kashmere Gardens communities, with a particular emphasis on empowering historically marginalized community members. The MIG will build on its

framework for equitable engagement, which includes the following pillars:

- Define and Plan
- Listen and Learn
- Collaborate and Empower
- Measure and Evaluate
- Inform and Communicate

The EEP will incorporate the tasks listed in Task 2.

Task 2.1 Deliverable:

- Equitable Engagement Plan

Task 2.2 Focus Areas Stakeholder Meetings / Focus Groups

The MIG Team will coordinate with City and Community to set up a Stakeholder Group for each community, that will help steer the project. The group will consist of neighborhood and business leaders, people of different ages and abilities including youth, elderly, the disabled, as well as developers, built-environment professionals, and City Staff.

The Stakeholder Group will meet to review key deliverable and provide feedback at following key milestones of the project:

- Project Initiation and Existing Conditions
- Overall Vision and Overarching Framework
- Preliminary Alternative Concepts
- Refined Concepts and Phasing

In addition, MIG Team will conduct two (2) focus group meetings for each community. This meeting will preferably occur at the visioning stage.

Meetings will be virtual/ in-person or a hybrid depending on the circumstances surrounding the COVID-19 pandemic at the time of execution of the task. This meeting will be about one hour long. MIG will set up the meeting and create the presentation materials. Up to three (3) people from the MIG Team will attend each of these meeting. Each meeting will discuss outreach for the upcoming community meetings and events.

Task 2.2.a Stakeholder Group Meeting – Project Initiation and Existing Conditions

The MIG Team will meet with the Stakeholder Groups at the project initiation phase to discuss the overall project goals, project schedule and existing conditions. In addition, the meeting will focus on the overall community engagement strategy and how best to meaningfully engage the community. MIG will discuss the key questions that will be asked in the community surveys. MIG will create a PowerPoint presentation. MIG will summarize the meeting in PowerPoint PDF format and combine it with the PDF of the presentation.

Task 2.2.a Deliverable:

- Presentation and summary of meeting comments in PDF format

Task 2.2.b Stakeholder Group Meeting – Overall Vision and Overarching Framework

The MIG Team will meet with the Stakeholder Groups to discuss the overall community vision and share the preliminary responses to the community survey (Task 2.5). The meeting will also discuss potential common sidewalk improvements and high priority areas that will form the basis for the overarching framework of the Sidewalk Plan. The meeting will focus on the upcoming Community Visioning Workshop and other outreach events. MIG will create a PowerPoint presentation. MIG will summarize the meeting in PowerPoint PDF format and combine it with the PDF of the presentation.

Task 2.2.b Deliverable:

- Presentation and summary of meeting comments in PDF format

Task 2.2.c Stakeholder Group Meeting – Preliminary Alternative Concepts

The MIG Team will meet with the Stakeholder Groups to discuss the emerging alternative concepts. These concepts will build on the feedback received from the previous stakeholder meetings, community visioning meeting, community survey as well as other outreach events. The meeting will discuss common and specific emerging sidewalk improvements and the potential locations for these improvements. MIG will create a PowerPoint presentation. MIG will summarize the meeting in PowerPoint PDF format and combine it with the PDF of the presentation.

Task 2.2.c Deliverable:

- Presentation and summary of meeting comments in PDF format

Task 2.2.d Stakeholder Group Meeting – Refined Concepts and Phasing

The MIG Team will meet with the Stakeholder Groups to review the refined concepts and their locations. These concepts will build on the feedback received from the previous stakeholder meetings, community survey, City Staff feedback as well as other pop-up outreach events. The meeting will focus on discussing the preferred phasing and prioritization of improvements. The meeting will also discuss the upcoming Community Workshop for Preferred Concepts and other outreach events. MIG will create a PowerPoint presentation. MIG will summarize the meeting in PowerPoint PDF format and combine it with the PDF of the presentation.

Task 2.2.d Deliverable:

- Presentation and summary of meeting comments in PDF format

Task 2.2.e Focus Group Meetings

The MIG Team will meet with up to two (2) focus groups in each community. These focus groups could include high school students, cultural associations, multi-modal advocacy groups, or neighborhood and business associations. These meetings will most likely take place at the visioning stage and provide an opportunity for the focus groups to provide their feedback in terms of overall vision, common improvements, and high-need areas.

MIG will use the PowerPoint presentation. MIG will summarize the meeting in PowerPoint

PDF format and combine it with the PDF of the presentation.

Task 2.2.e Deliverable:

- Presentation and summary of meeting comments in PDF format

Task 2.3 Walking Tours

There is no substitute for on-the-ground reconnaissance. By hosting in-person tours with residents, business owners, and people with mobility challenges, site tour events provide opportunities to experience what is and is not working in the streetscape. MIG will develop a route map for the walking tour. Our staff and City Staff will conduct one (1) site tour in each community, in conjunction with the Pop-Up Streetscape Workshops (see Task 2.4) or (see Task 1.3) to provide hands-on opportunities for participants to engage with the sidewalks and to explore potential alternative scenarios. MIG will prepare a summary of the walking tour in PowerPoint PDF format.

Task 2.3 Deliverables:

- Summary of Walking Tour

Task 2.4 Pop-Up Streetscape Workshops

MIG will organize a fun, in-person pop-up streetscape workshop to model potential public realm streetscape improvements and technical solutions. A pop-up streetscape workshop is a temporary transformation to experience potential changes to public spaces such as street enhancements, location of landscaping and green stormwater infrastructure, sidewalk improvements, and plaza spaces.

MIG will design and implement a pop-up transformation to activate the public realm, demonstrate creative streetscape possibilities, and develop a community vision for sidewalk changes. This event will create engaging experiences for stakeholders by showcasing temporary installations of possible improvements for sidewalks, including landscaping. This approach encourages community members to co-design the space based on their unique needs and priorities.

MIG will develop a variety of outreach tools, including presentation boards for the pop-up streetscape workshop, photo-simulations, and flyers for general outreach. The City will be responsible for obtaining special events permits and associated documentation, as well as preparing a traffic control plan. The Project Team will assist with promoting and publicizing the events; recruiting and managing volunteers; managing cultural components such as artist and musicians, as well as social media campaigns; and language interpretation services.

The MIG Team will conduct up to one (1) pop-up streetscape workshop in each community. This workshop could either happen at the visioning stage or at the concepts stage. If possible, MIG Team will combine this event with a complimentary district community event such as Earth Day, Farmers Market, etc. Upon completion of the pop-up workshops, MIG will summarize and document the results of the community input in a highly graphic summary PowerPoint.

This meeting will serve as one of the community workshops for each district.

Task 2.4 Deliverables:

- Pop-Up Streetscape Workshop Materials
- Summary of Pop-Up Streetscape Workshop Engagement

Task 2.5 Community Questionnaires

The MIG Team will collect input on values, needs, priorities, and issues for the Community Resilient Sidewalk Programs for Gulfton and Kashmere Gardens through a community questionnaire. MIG will use its online interactive mapping tool, Maptionnaire (maptionnaire.com), to collect geo-specific, location-based data along the streetscape. Maptionnaire is implemented in a way that complements the other online and in-person methods, applying the appropriate tool at the relevant data collection and concept review points. The software is designed for easy use by the public, optimized for mobile devices, and based on familiar online mapping platforms.

Print and electronic copies of the survey will be distributed throughout the community. MIG will share a draft version of the questionnaire for one (1) round of client review before finalizing. The survey outreach will draw on Connect Community's and Northeast Houston Redevelopment Council's established communications, email distribution lists, and other methods. In addition, the survey will also be promoted during in-person activities, such as pop-up events and existing community meetings. CGES- Bailey, Northeast Houston Redevelopment Council, and Connect Community will assist with in-person outreach for the questionnaire. We will follow local health guidelines for COVID-19 physical distancing as we deploy the questionnaire outreach.

The MIG Team will prepare an analysis of questionnaire findings in a presentation format following the closing of the online and print surveys.

Task 2.5 Deliverables:

- Digital and Paper Survey
- Summary and Assessment of Survey Results

Task 2.6 Community Workshops (Up to 12)

The MIG Team and City Staff will host up to six (6) two-hour community workshops for each community. Meetings will be virtual/ in-person or a hybrid depending on the circumstances surrounding the COVID-19 pandemic at the time of execution of the task. These workshops will be in addition to the in-person pop-up streetscape workshop identified in Task 2.4. The workshops will be a mix of interactive meetings and open houses for each community. MIG will plan, facilitate, and summarize the community workshops. Up to four (4) people from MIG Team will participate in these workshops.

The community workshops will be held at following key milestones of the project:

- Community Visioning and Overarching Framework
- Emerging Alternative Concepts
- Preferred Concepts and Prioritization

Each of the milestones will hold a set of 'twin' meetings that are conducted at different times of the day/week. The same meeting format and materials will be presented at each two (2) 'twin' meetings.

Task 2.6.a Community Workshops (4) – Visioning

The MIG Team will meet with the community at the project initiation phase to discuss the overall project goals, project schedule, existing conditions, overall community vision. MIG will discuss the emerging community vision received from Stakeholder Group, Focus Groups, and community surveys. MIG will create a PowerPoint presentation. MIG will summarize the meeting in PowerPoint PDF format at the end of the second community meeting for each community and combine it with the PDF of the presentation. Multilingual translation services will be provided by City Staff.

Task 2.6.a Deliverable:

- Presentation and Summary of Community Visioning Workshop – Kashmere Gardens
- Presentation and Summary of Community Visioning Workshop – Gulfton

Task 2.6.b Community Workshops (4) – Emerging Alternative Concepts

The MIG Team will meet with the community to discuss the emerging alternative concepts for different sidewalk and public realm improvements. The community will also affirm the preferred community vision and overarching development framework. The community will review the feedback received from Stakeholder Group, Focus Groups and community surveys. MIG will create a PowerPoint presentation. MIG will summarize the meeting in PowerPoint PDF format at the end of the second community meeting for each community and combine it with the PDF of the presentation. Multilingual translation services will be provided by City Staff.

Task 2.6.b Deliverables:

- Presentation and Summary of Community Emerging Concepts Workshop – Kashmere Gardens
- Presentation and Summary of Community Emerging Concepts Workshop – Gulfton

Task 2.6.c Community Workshops (4) – Preferred Concepts & Prioritization

The MIG Team will meet with the community to discuss the preferred concepts for different sidewalk and public realm improvements. The community will review the feedback received from Stakeholder Group and other participants of other community events. The meeting will focus on discussing high priority improvements and high need areas for these improvements to be implemented. MIG will create a PowerPoint presentation. MIG will summarize the meeting in PowerPoint PDF format at the end of the second community meeting for each community and combine it with the PDF of the presentation. Multilingual translation services will be provided by City Staff.

Task 2.6.c Deliverables:

- Presentation and Summary of Community Preferred Concepts & Prioritization Workshop – Kashmere Gardens
- Presentation and Summary of Community Preferred Concepts & Prioritization Workshop – Gulfton

Task 2.7 Photo Simulations

MIG Team will create up to two (2) photo simulations each for Gulfton and Kashmere Gardens. This will allow community members to view the existing and proposed conditions to fully see and experience the impact of the proposed Community Resilient Sidewalk Program.

Task 2.7 Deliverables:

- Photo Simulations – Up to two (2) each for Kashmere Gardens and Gulfton

Task 2.8 Pop-Up Outreach Events (4)

Traditional community meetings often attract a regular and highly active small group of stakeholders that are not always representative of the community-at-large. Pop-up intercept events, on the other hand, can expand the audience for participation since these are best held outdoors on busy sidewalks, plazas, or parks and can foster direct and spontaneous interaction with the community members.

We will conduct up to two (2) pop-up intercept events in each community. Participants can interact with a series of displays and activities designed to solicit responses to specific questions on the needs and priorities for their community. The MIG Team will provide bilingual (English and Spanish speaking) staff to engage and communicate with community members. These events will most likely happen at emerging and refined concepts stage. Up to two (2) members from the MIG Team will attend these meetings. MIG will use materials developed in other tasks to create the in-person meeting materials.

We will follow local health guidelines for COVID-19 physical distancing as we deploy all outreach efforts.

Task 2.8 Deliverables:

- Pop-up Meeting Materials
- Summary of Up to Four (4) Pop-Up Outreach Events

Task 2.9 City-Wide Tool Kit Stakeholder Meetings (7)

The MIG Team will conduct a series of City-wide virtual stakeholder meetings as a means of engaging key stakeholders, organizations, and interest groups for input and feedback on the City-Wide Tool Kit. The MIG Team will conduct seven (7) City-Wide Stakeholder meeting throughout the duration of the project.

Meetings will be virtual/ in-person or a hybrid depending on the circumstances surrounding the COVID-19 pandemic at the time of execution of the task, and be about one (1) hour long. MIG will set up the meeting and create the presentation materials. Up to three (3) people from the MIG Team will attend each of these meeting. The meetings

will be decided in three (3) phases as described below.

Task 2.9.a City-Wide Tool Kit Stakeholder Meetings (2) – Phase 1

MIG Team will conduct City-wide Tool Kit Stakeholder meetings at initial phases to discuss the following:

1. Meeting #1: Kick-off meeting to discuss project goals, project schedule and overall components of the City-wide tool kit.
2. Meeting #2: Sidewalk mobility framework, for existing and new sidewalks – systems, connectivity, accessibility, ADA, interaction with other transportation/mobility systems.

Task 2.9.a Deliverables:

- Presentation and Summary of Meeting #1 and #2

Task 2.9.b City-Wide Tool Kit Stakeholder Meetings (2) – Phase II

MIG Team will conduct City-wide Tool Kit Stakeholder meetings at next phase to discuss the following:

1. Meeting #3: Resiliency, green stormwater Infrastructure, drainage, and flood mitigation, open ditch integration, with Houston-relevant solutions.
2. Meeting #4: Constructability, materials, innovative techniques, and Houston-relevant solutions.

Task 2.9.b Deliverables:

- Presentation and Summary of Meeting #3 and #4

Task 2.9.c City-Wide Tool Kit Stakeholder Meetings (3) – Phase 3

MIG Team will conduct City-wide Tool Kit Stakeholder meetings at next phase to discuss the following:

1. Meeting #5: Funding mechanisms, legal implications, cost-benefit implications, potential City policy changes.
2. Meeting #6: Coordination with the City's Infrastructure Design Manual (IDM), phasing, implementation strategies, coordination with external agencies, overlay with other City initiatives and plans, potential city policy changes.
3. Meeting #7: Review the Draft City-Wide Tool Kit

Task 2.9.c Deliverables:

- Presentation and Summary of Meeting #5, #6 and #7
- Timeline: Final deliverables for all items under Task 2 by end of contract period. Interim deliverables to be provided as indicated on the appended timeline.
- Budget: \$146,563

Task 3. Community Sidewalk Program

Task 3.1 Community Resilient Sidewalks Program Draft

MIG Team will create a Sidewalk Program document that will include the existing conditions analysis and inventory conducted in Task 1.2 and 1.3, community vision as

goals and concepts created in different community and stakeholder engagement tasks including Task 2.1 and 2.6. In addition, MIG Team will create technical specifications and recommendations for new and existing sidewalks. This will include up to six (6) prototypical proposed cross sections for each community. Finally, MIG Team will include key information gleaned from subsequent information created described in Tasks 5.1, 5.2, and 5.3.

The MIG Team will evaluate findings from Task 1 along with data on past flooding events to determine design modifications needed to mitigate existing or future sidewalk flooding locations.

Recommendations for storm sewer infrastructure improvements will be made for areas most frequently and severely inundated, taking into consideration City of Houston budget constraints (including both cost of initial investment and ongoing maintenance), as well as community concerns pertaining to equity and justice. To that end, recommendations could include the addition of detention areas or green infrastructure to store and infiltrate storm water to reduce flooding. Green infrastructure may include trees and tree boxes, permeable sidewalks, bioretention, and more. Green infrastructure can often be used to increase pedestrian and commuter safety, comfort, and enjoyment of sidewalk spaces.

If green infrastructure is determined to be insufficient to mitigate all impacts, we will address the need for stormwater detention infrastructure and will provide siting and sizing using a method similar to the stormwater pre-engineering process used by the City, a process in which our Team has participated on previous projects.

Task 3.1a Deliverables:

- Draft Kashmere Gardens Community Resilient Sidewalks Program
- Draft Gulfton Community Resilient Sidewalks Program

- Timeline: Final deliverable by end of contract period. Interim deliverables to be provided as indicated on the appended timeline.
- Budget: \$35,213

Task 3.2 Community Resilient Sidewalks Program Final

The City will provide one (1) round of consolidated comments on the Draft Community Resilient Sidewalks Programs. The MIG Team will deliver a Final Kashmere Gardens Community Resilient Sidewalks Program and Final Gulfton Community Resilient Sidewalks Program based on the City's feedback

Task 3.2 Deliverables:

- Final Kashmere Gardens Community Resilient Sidewalks Program
- Final Gulfton Community Resilient Sidewalks Program

- Timeline: Final deliverable by end of contract period. Interim deliverables to be provided as indicated on the appended timeline.
- Budget: \$9,416

Task 4. Tool Kit and Technical Solutions

Task 4.1 Draft City-Wide Tool Kit

The MIG Team will develop potential technical and creative solutions, applicable to the City of Houston, in the form of a Tool Kit, which includes alternatives for materials, design, construction, and maintenance with an emphasis on multi-functional design that is replicable City-wide. This Tool Kit will be developed through a primary lens of resiliency, safety, equity and innovation. These case-studies and best management practices (BMPs) will serve as examples for scalable and replicable solutions to address similar challenges experienced across neighborhoods and districts, city-wide.

The Tool Kit will incorporate the feedback received from City-wide Tool Kit stakeholders in Task 2.9 as well as content developed in Tasks 4.2, 4.3 and 4.4.

Task 4.1 Deliverables:

- Draft City-Wide Tool Kit

Task 4.2 Recommended City-Wide Tool-Kit Sidewalk Measures

The MIG Team will leverage community input and best practices from past experience and case studies (Gulfton and Kashmere Gardens) to identify a set of candidate measures for evaluating the design and condition of existing sidewalks on a City-Wide level. The various sidewalk metrics will focus on accessibility, connectivity, condition, contribution to flooding and drainage, safety and amentization for sidewalks, corners, and curb ramps. The measures will be created to help inventory and track progress for existing and future sidewalks. The MIG Team will work with City Staff and community members to ensure that the measures are well-defined, replicable, and easy to collect and maintain over time.

Task 4.2 Deliverables:

- City-Wide Sidewalk Measures (in tabular format with recommended sources, frequency of collection, etc.)

Task 4.3 Implementation Strategy for City-Wide Tool Kit

The MIG Team will also identify funding mechanisms to help implement the City-Wide Tool Kit, with a focus on how different types of organizations can contribute to implementation. Similar to the sidewalk plans for Kashmere Gardens and Gulfton, the MIG Team will develop project prioritization strategies, including evaluation and prioritization criteria.

Task 4.3 Deliverables:

- City-Wide Tool Kit Implementation Strategy

Task 4.4 City-Wide Tool Kit Roll Out Strategy

The MIG Team will work to devise a strategy to roll out the City-Wide Tool Kit to broader community partners. The Roll Out Strategy will include a list of targeted audiences, including, but not limited to all City departments, METRO, neighborhood organizations, utility providers, pedestrian advocacy organizations, and City boards and councils. The

MIG Team will develop a summary handout and presentation for use in introducing the Tool Kit to various individuals and groups.

Task 4.4 Deliverables:

- City-Wide Tool Kit Roll Out Strategy, including a summary handout and overview presentation

Task 4.5 Final City-Wide Tool Kit

City will provide MIG Team with one (1) round of consolidated comments in electronic format based upon coordinated feedback from City-wide Tool Kit Stakeholders that participated in Task 2.9, and City partners. The MIG Team will revise the draft City-Wide Tool Kit and finalize it for sharing with partners during the roll out.

Task 4.5 Deliverables:

- Final City-Wide Tool Kit and Technical Solutions
- Timeline: Final deliverables for all items under Task 4 by end of contract period. Interim deliverables to be provided as indicated on the appended timeline.
- Budget: \$61,622

Task 5. Community Implementation Strategy

Task 5.1 Community Sidewalk Phasing Plan

The MIG Team will develop a Phasing Plan for identified projects and improvements in the Kashmere Gardens and Gulfton neighborhoods. The Phasing Plan will include planning level cost estimates, timelines and responsibilities, as well as action items necessary prior to implementation. The MIG Team will critically analyze the list of projects and apply a set of evaluation criteria to ensure that the phasing considers and addresses life and safety, preventative maintenance, equity, demonstration projects, and collective impacts, as well as alignment with other public and private projects.

Task 5.1 Deliverable:

- Draft Community Sidewalk Phasing Plan for Kashmere Gardens and Gulfton

Task 5.2 Recommended Community Sidewalk Measures Strategy

The MIG Team will create a program of recommended measures for existing and new sidewalks with a detailed outline of tasks and responsible parties. The MIG Team will assess existing and proposed sidewalk infrastructure based on review of data and site surveys as noted above. Based on stormwater infrastructure location, hydraulic analyses, and needed repairs or capacity improvements, design alternatives will be determined, which may involve existing sidewalk relocation, raising grade elevations, adding curbs, using permeable pavement, modifying pedestrian street crossings, adding ADA features, or equivalent measures to reduce flooding and maintain service. Optimal future sidewalk locations will be determined based on flooding analyses, proposed stormwater infrastructure improvements, and community input.

Task 5.2 Deliverable:

- Recommended Community Sidewalk Measures Strategy

Task 5.3 Community Funding Strategy & Project Prioritization

MIG Team will evaluate funding mechanisms and sources available for improving safety, quality of life, and sustainability in streetscape environments. This includes exploring sales tax, property tax, and municipal bond measures for funding. Additionally, our team will identify Low-interest State Revolving Loans (SRF) with principal forgiveness; Community Development Block Grants (CDBG) funded via state agencies through the Department of Housing and Urban Development (HUD); annual grants from TxDOT; USDOT grants and loans available for transportation-related programs that include public transit improvements, expansions, and sidewalk funding; and FEMA reimbursements, grants, and loans that are available to repair damage from tropical storms, flooding, and other natural disasters.

For each community, all the materials created in Tasks 5.1, 5.2 and 5.3 will be consolidated in one (1) Implementation Strategy document. This in in turn will be included in the overall sidewalk plan in each community.

Task 5.3 Deliverable:

- Kashmere Gardens Community Sidewalk Implementation Strategy
 - Gulfton Community Sidewalk Implementation Strategy
- Timeline: Final deliverables for all items under Task 5 by month 17 of contract period. Interim deliverables to be provided as indicated on the appended timeline.
 - Budget: \$40,547

Task 6. Project Management

Project management includes kicking off the Sidewalk Plan effort, finalizing the project schedule and ongoing project management tasks. Subtasks that will continue through the life of the project include monthly invoicing, progress reports and schedule updates, as well as a regularly scheduled bi-weekly coordination call and more impromptu phone calls and emails to handle day-to-day coordination.

Task 6.1 Kick-Off Meeting

The virtual Kick-Off Meeting for the project will focus on initiating the project, confirming the project approach and objectives, refining the project schedule; and determining communication protocols. The Kick-Off Meeting will be designed to accomplish the following objectives:

- Discuss the project schedule
- Confirm engagement goals and expectations
- Identify and collect all City resources and data for baseline analyses and inventory production
- Confirm team member roles and responsibilities
- Confirm review process for outreach materials

- Identify key outreach activities, inputs, and optimal timing of events
- Confirm review process for deliverables

MIG staff will design the meeting agenda and provide a brief electronic summary. Attendance from the MIG Team will include the prime consultant and all subconsultants.

Task 6.1 Deliverables:

- Kick-off Meeting Agenda and Meeting Summary

Task 6.2 Project Administration, Invoicing, and Monthly Progress Reports

MIG Team will do regular monthly check in with City Staff. These meetings will be an hour long. Up to 2 people from MIG Team will attend this meeting. MIG will prepare monthly invoices and progress reports for review and approval by the City. The progress reports will identify tasks completed during the previous month. MIG will submit monthly invoices and will invoice as percentage complete by task.

Task 6.2 Deliverables:

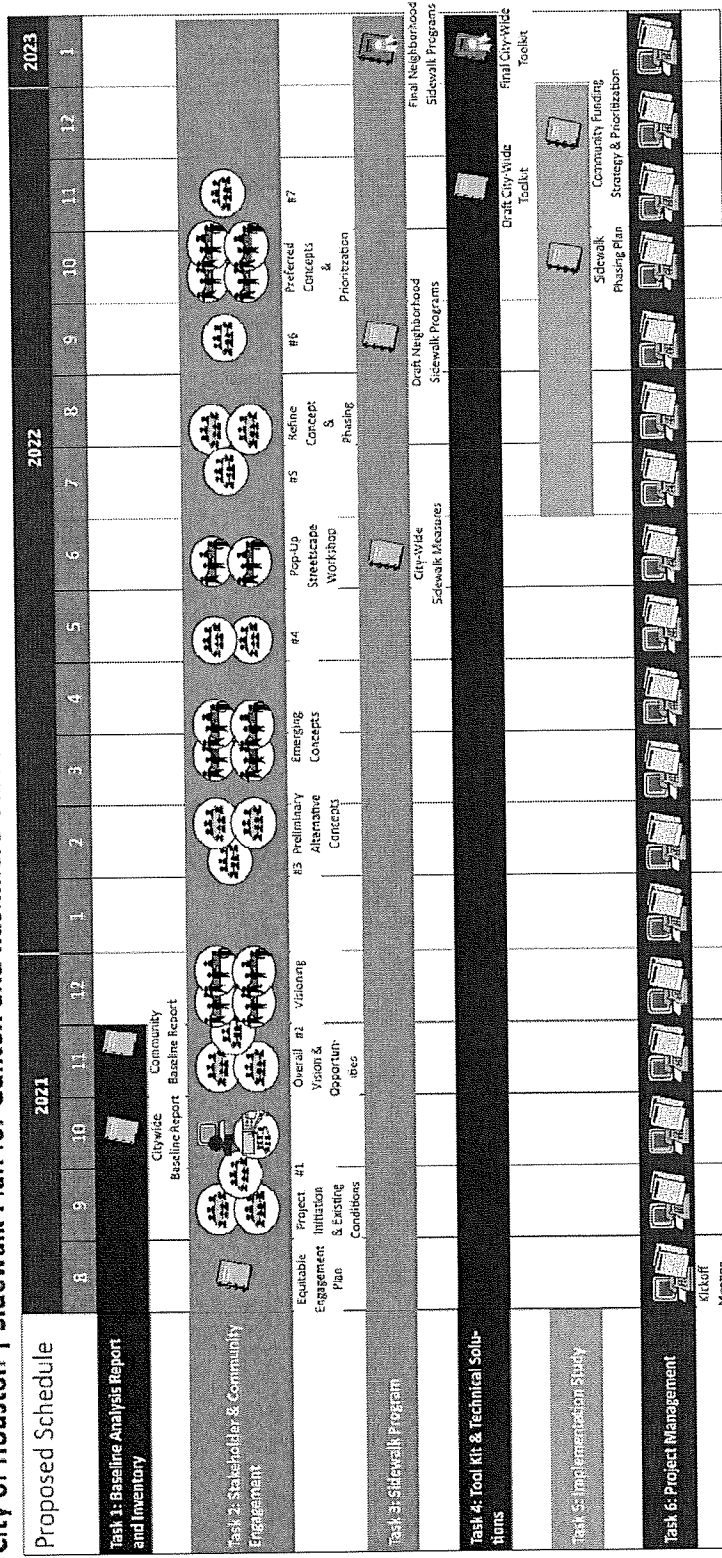
- Monthly Progress Reports, Monthly Invoices and Monthly Deliverables.
- Timeline: All items under Task 6 will be ongoing during the contract period. Interim deliverables to be provided as indicated on the appended timeline.
- Budget: \$30,096

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H. Schedule



City of Houston | Sidewalk Plan for Gulfton and Kashmere Gardens



- Kashmere Gardens/Gulfton Stakeholder Meeting
- City-Wide Toolkit Stakeholder
- Community Workshops
- Focus Group/Other Community Meetings
- Internal Meeting
- Questionnaire
- Monthly Progress Reports
- Major Deliverables

EXHIBIT "C"

DRUG POLICY COMPLIANCE AGREEMENT

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

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

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

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

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

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

Date

Contractor Name

Signature

Title

EXHIBIT "D"

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

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

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

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

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

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "E"

DRUG POLICY COMPLIANCE DECLARATION

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

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

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

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

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

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

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

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

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

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

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

(Date) _____

(Typed or Printed Name) _____

(Signature) _____

(Title) _____

EXHIBIT "F"

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the SUBRECIPIENT (referred to herein as the "prospective participant") is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- Covered Transaction," without modification, in all covered transactions and in all solicitations for covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION— COVERED TRANSACTIONS

- (1) The prospective participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Contractor Company Name

Contract Number

Name

Title

Signature

Date

EXHIBIT "G"

ANTI-LOBBYING CERTIFICATION

The undersigned Subrecipient certifies, to the best of his or her knowledge, 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 City contract, 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 subcontractors, subgrants, and Agreements 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 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

The undersigned Subrecipient, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Subrecipient understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Contractor Name:	
President:	
Name of Authorized Official:	
Signature:	
Date:	

EXHIBIT "H"

HURRICANE HARVEY CDBG-DR REQUIREMENTS NON-EXCLUSIVE LIST OF APPLICABLE LAWS, REGULATIONS, AND RULES

If applicable to a Community Development Block Grant – Disaster Recovery ("CDBG-DR") funded project, Subrecipient 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 Agreement, and Subrecipient acknowledges that this list may not include all such applicable laws, rules, and regulations.

Subrecipient is deemed to have read and understands the requirements of each of the following, if applicable to the Project under this Agreement:

GENERALLY

Texas General Land Office ("GLO") Contract No. 19-147-001-B489 and any amendments thereto ("2019 Subrecipient Agreement");

GLO Contract No. 21-134-000-C788 ("2021 Subrecipient Agreement") On the date the U.S. Department of Housing and Urban Development ("HUD") approves Action Plan Amendment 8 (as such plan is described in the 2021 Subrecipient Agreement), the City's 2019 Subrecipient Agreement shall automatically terminate and the 2021 Subrecipient Agreement will become effective to govern this Agreement from that date forward;

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

The Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Public Law 115-123);

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);

The State of Texas Plan for Disaster Recovery: Hurricane Harvey – Round 1 ("Action Plan"), as amended from time to time (available at:

<https://recovery.texas.gov/action-plans/hurricane-harvey/index.html>);

The Texas General Land Office Disaster Recovery Implementation Manual (available at <https://recovery.texas.gov/local-government/hud-requirements-reports/implementation-manual/index.html>);

The Texas General Land Office Hurricane Harvey Disaster Recovery Housing Guidelines, as amended (available at <https://recovery.texas.gov/local-government/hud-requirements-reports/housing-guidelines/index.html>);

City of Houston CDBG-DR program Guidelines, as amended (available at <https://recovery.houstontx.gov/hud-requirements-guidelines/>); and
State of Texas Plan for Disaster Recovery: Hurricane Harvey – Round 1 (available at <https://recovery.texas.gov/action-plans/hurricane-harvey/index.html>).

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 Subrecipient 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 Agreement, Subrecipient 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 Agreements Subject to the Agreement Work Hours and Safety Standards Act) (29 C.F.R. Part 5); and

Federal Executive Order 11246, as amended; and

Department of Labor Regulations at 29 C.F.R. Parts 1, 3, 5, 6 and 7.

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.

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

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);

Suspension and Debarment (2 C.F.R. § 200.213); and

Non-procurement Suspension and Debarment (2 C.F.R. Part 2424).

OTHER REQUIREMENTS

Chapter 522, Texas Government Code, the Texas Public Information Act, unless a valid exception exists, and Chapter 2306 of the Texas Government Code.

BROADBAND REQUIREMENTS

Any new construction or substantial rehabilitation, as defined by 24 C.F.R § 5.100, of a building with more than four (4) rental units must include installation of broadband infrastructure. For the purposes of this program, broadband service can either be hardwired or wireless, but it must be provided and 25 Mbps down and 3 Mbps up.

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, 24 C.F.R. § 570.606 and 49 C.F.R. Part 24 (URA), as modified by waivers at 83 Fed. Reg. 5844;

Housing and Community Development Act of 1974, as amended by 24 C.F.R. § 42 and as modified by waivers at 83 Fed. Reg. 5844;

The Protecting Tenants at Foreclosure Act of 2009; and

City of Houston Housing and Community Development Department's Residential Anti-Displacement Policy, as the same may be amended (available at <https://recovery.texas.gov/files/housing-guidelines-requirements-reports/residential-anti-displacement-and-relocation-assistance-plan.pdf>).

FAITH-BASED ACTIVITIES

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

CONSTRUCTION AND INSPECTION

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 *et seq.*) and regulations and guidelines promulgated thereunder, including without limitation 24 C.F.R. Part 8;

Fair Housing Act and regulations and guidelines promulgated thereunder, including without limitation 24 C.F.R. Part 100;

24 C.F.R. §§ 982-401 (Section 8 Housing Quality Standards for Existing Housing);

The requirements of 24 C.F.R. § 570.614, which applies the standards of the Architectural Barriers Act (42 U.S.C. §§ 4151-4157) and the Americans with Disabilities Act (42 U.S.C. §§ 155, 201, 218 and 225) to CDBG-funded activities;

Green Building Standards at 83 Fed. Reg. 5844;

Texas Architectural Barriers Act, Article 9102, Tex. Civ. Stat. Ann. (1994) and the regulations and guidelines promulgated thereunder;

Chapter 10, Subsection 60 of the Texas Administrative Code and the regulations and guidelines promulgated thereunder; and

City of Houston's Minimum Property Standards, as amended from time to time.

APPRAISAL

49 C.F.R. § 24.2(a)(3) and 49 C.F.R. § 24.103.

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EXHIBIT "H-1"

FEDERAL CONTRACT REQUIREMENTS

All references to "Contractor" in this Exhibit shall apply to any contractor, or subcontractor performing work on behalf of the Contractor pursuant to the foregoing Agreement/Contract. The following Federal Contract Requirements will generally apply to all Contractors. Also see 2 CFR Part 200; applicable federal program requirements at 24 CFR Part 570 (CDBG), 24 CFR Part 92 (HOME), 24 CFR Part 574 (HOPWA), 24 CFR Part 576 (Emergency Solutions Grant); and applicable laws, rules and regulations relating to other programs administered by the U.S. Department of Housing and Urban Development ("HUD").

SECTION 1

Public Law 88-352 and Public Law 90-284; Affirmatively Furthering Fair Housing; Executive Order 11063

A. The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352 42 U.S.C. §2000d et seq.) ("Title VI") and with Title 24 Code of Federal Regulations (CFR) Part 1, which implements Title VI. In accordance with Title VI, no person in the United States shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Contractor receives federal financial assistance. The Contractor will immediately take any measures necessary to comply with Title VI. If any real property or structure thereon is provided or improved with the aid of federal financial assistance, this clause shall obligate the owner, or in the case of any transfer of such property, any transferee, to comply with the requirements and restrictions contained in this clause for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

B. The Contractor shall comply with Public Law 90-284, which refers to Title VII of the Civil Rights Act of 1968, also known as the Fair Housing Act (42 U.S.C. §3601 et seq.), which provides that it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States and prohibits any person from discriminating in the sale of rental of housing, the financing of housing, or the provision of brokerage services, including otherwise making unavailable or denying a dwelling to any person, because of race, color, religion, sex or national origin. In accordance with the Fair Housing Act, the Secretary of HUD requires that grantees administer all programs and activities related to housing and urban development in a manner to affirmatively further the policies of the Fair Housing Act. Furthermore, in accordance with section 104(b)(2) of the Act, for each community receiving a grant, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to take meaningful actions to further the goals identified in the grantee's AFH conducted in accordance with the requirements of 24 CFR §5.150 through 5.180 and take no action that is materially inconsistent with its obligation to affirmatively further fair

housing.

C. Executive Order 11063, as amended by Executive Order 12259 (3 CFR §1959-1963 Com., p. 652; 3 CFR §1980 Comp., p 307) (Equal Opportunity in Housing), and implementing regulations in 24 CFR Part 107, as applicable.

SECTION 2
Non-Discrimination in Programs and Activities

The Contractor shall comply with the Age Discrimination Act of 1975 and implementing federal regulations, **42 U.S.C. §6101 et seq.**, issued pursuant to the Act. Any prohibition against discrimination on the basis of age under the Age Discrimination Act, or with respect to an otherwise qualified handicapped individual as provided in Chapter 126 of Title 42 and chapter 5 of Title 47 shall also apply to any Federal program or activity. (Also see 29 U.S.C.A. §794)

SECTION 3
National Flood Insurance Program

A. If applicable, this Agreement is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234) for areas identified by HUD as having special flood hazards. The use of any funds provided for acquisition or construction in identified areas shall be subject to the Mandatory Purchase of Flood Insurance requirements of section 102(a) of said act.

B. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared, or improved with assistance provided under this Agreement shall contain, if the land is located in an area identified by HUD as having a special flood hazard, provisions which obligate the transferee and its successors or assigns to obtain and maintain, during the life of the project, flood insurance as required under section 102(a) of the Flood Disaster Protection Act of 1973, as amended. These provisions shall be required notwithstanding the fact that the construction on the land is not itself funded with funds provided under this Agreement.

SECTION 4
Displacement, Relocation, Acquisition and Replacement of Housing

Contractor understands that projects funded hereunder may be subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. §4601-4655), as applicable; and that individuals or businesses that are required to move from real property, permanently or involuntarily as a direct result of rehabilitation, demolition, or acquisition for the project assisted hereunder must be compensated pursuant to the URA.

SECTION 5
Employment and Contracting Opportunities

A. **Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (Equal Employment Opportunity)**

The Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion sex, or national origin. Contractor will take affirmative action to ensure applicants are employed, and employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided by the City, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor set forth at 41 CFR Part 60.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of the U.S. Department of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September

24, 1965, as amended, other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of the U.S. Department of Labor, or as otherwise provided by law.

(7) The Contractor will include provisions similar to paragraph 1 through 7 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of the U.S. Department of Labor, issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon subcontractors or vendors. The Contractor will take such action with respect to any subcontract or purchase order as the City may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the City, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

B. Section 3 of The Housing and Urban Development Act of 1968

(1) The work to be performed under this Agreement is on a project assisted under a program providing federal financial assistance from the Department of Housing and Urban Development (HUD). Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. §1701u, "Section 3") and implementing regulations at 24 CFR Part 135 apply to the Agreement. Under Section 3, to the greatest extent feasible, for any contract award in excess of \$100,000, the Contractor shall give opportunities for training and employment to lower-income residents of the City and shall award contracts for work in connection with the project to business concerns which are located in or owned in substantial part by persons residing in the City.

(2) The Contractor will comply with the provisions of Section 3, and all applicable rules and orders of HUD issued thereunder prior to the execution of the Agreement. The Contractor certifies and agrees that there is no contractual or other disability which would prevent compliance with these requirements.

(3) The Contractor shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the labor organization or workers' representative of the commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

(4) The Contractor will include or have included a Section 3 clause in every subcontract for work in connection with the project. The Contractor shall, at the direction of the City, take appropriate action pursuant to any subcontract upon a finding that the subcontractor is in violation of this Section 3 clause. The

Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135. The Contractor shall not let any subcontract unless the subcontractor has provided the Contractor with a preliminary statement of ability to comply with the requirements of this Section 3 clause.

(5) Compliance with the provisions of Section 3, and all applicable rules and orders of HUD issued thereunder prior to the execution of this Agreement shall be a condition of the federal financial assistance provided to the project. These provisions are binding upon the City, its contractors and subcontractors, their successors and assigns. Failure to fulfill these requirements shall subject the City, its contractors and subcontractors, their successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided.

(6) The Contractor shall have completed, signed and delivered a Voluntary Compliance Form (provided by the City) to the Director prior to the execution of this Agreement.

SECTION 6 **Lead-Based Paint Poisoning Prevention Act**

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §4851-4856), and the implementing regulations at 24 CFR Part 35, Subparts A, B, J, K and R may apply to activities under the Agreement.

SECTION 7 **Use Of Debarred, Suspended, Or Ineligible Contractors or Subrecipients**

(a) The Contractor shall not employ, award contracts to, or otherwise engage the services of any contractor or subcontractor during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 5 or under the authority of the City.

(b) The Contractor shall not use federal funds for any contract for the construction, alteration or repair of the project funded under this Agreement with any contractor or subcontractor listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR Part 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

SECTION 8 **Uniform Administrative Requirements, Cost Principles and Audit Requirements**

The Contractor shall comply with "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards" as set forth under 2 CFR Part 200, as applicable.

SECTION 9
Conflict Of Interest

A. In the procurement of supplies, equipment, construction, and services by the City or a subrecipient, the conflict of interest provisions in 2 CFR §200.112, shall apply. In all cases not governed by 2 CFR Part 200, the provisions of this section shall apply. Such cases include, but may not be limited to, the acquisition and disposition of real property and the provision of assistance by the recipient, by its subrecipients, or to individuals, businesses or other private entities under eligible activities which authorize such assistance (e.g. rehabilitation, preservation, and other improvements of private properties or facilities).

- (i) No persons described in paragraph (ii) (below) who exercise or have exercised any functions or responsibilities with respect to federal activities or who are in a position to participate in a decision-making process or gain inside information with regard to federal assisted activities, may obtain a personal or financial interest or benefit from, or have any interest in any contract, subcontract, or agreement or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter with respect to the federal assisted activity, or with respect to the proceeds of the federal assisted activity.
- (ii) The requirements of paragraph (i) apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, of any designated public agency, or subrecipient which receives funds under the federal award.

SECTION 10
Eligibility for Aliens Not lawfully Present in U.S.

Contractor understands that aliens not lawfully present in the U.S., as described in 49 CFR §24.208, are not eligible to apply for benefits under certain federal activities.

SECTION 11
Compliance With Clean Air And Water Acts

This Agreement may be subject to the requirements of the Clean Air Act, as amended (42 U.S.C. §7401-7671q), the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251-1387) and the regulations issued pursuant to the Clean Air Act and by the Environmental Protection Agency. In compliance herewith, the Contractor agrees that:

A. No facility to be utilized in the project or program is on the list of Violating Facilities issued by the U.S. Environmental Protection Agency (EPA) pursuant to **40 CFR §15.20**.

B. The Contractor will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, (42 U.S.C. §7401-7671q) the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251-1387).

C. As a condition for the award of this Agreement, the Contractor shall give prompt notice to the City of any notification of violations received from the Office of Federal Activities or the EPA, indicating that a facility utilized or to be utilized is under consideration to be listed on the EPA List of Violating Facilities.

D. The Contractor will include or cause to be included the requirements contained in paragraphs A through C of this clause in every lower-tier nonexempt contract and will take such action as the City may direct as a means of enforcing such provisions.

E. In no event shall any amount of the funds provided under the Agreement be utilized with respect to a facility which has given rise to a conviction under section 113(c)(1) of the Clean Air Act or section 309(c) of the Federal Water Pollution Control Act.

F. Contractors who receive subcontracts/subgrants of amounts in excess of \$150,000 are required to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §1251-1387).

G. Any violations of this Section 11 must be reported to the Federal awarding agency, the Regional Office of the Environmental Protection Agency (EPA), and the City.

SECTION 12 **Architectural Barriers Act**

The Architectural Barriers Act of 1968 (42 U.S.C. §4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that ensure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 CFR §40.2 or the definition of "building" as defined in 41 CFR §101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. §4151-4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 CFR Part 40 for residential structures, and Appendix A to 41 CFR Part 101-19, Subpart 10119.6, for general type buildings).

SECTION 13 **The Americans with Disabilities Act**

The Americans with Disabilities Act, also referred to as the ADA (42 U.S.C. §12131; 47 U.S.C. §§155, 201, 218 and 225), provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 25, 1993 that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable--that is, easily accomplishable and able to be carried out without much difficulty or expense.

SECTION 14 **Records For Audit Purposes**

Without limitation to any other provision of the foregoing Agreement/Contract the Contractor shall maintain all records concerning the program or project financed under this Agreement which the City reasonably requires from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient pursuant to 2 CFR §200.333. The Contractor shall maintain records required by **24 CFR §135.92** for the period required under 2 CFR §200.333. The Contractor will give the City, HUD, the Comptroller General of United States, the General Accounting Office, or any of their authorized representatives access to and the right to examine, copy, or reproduce all records pertaining to the acquisition and construction of the project and the operation of the program or project. The right to access shall continue as long as the records are required to be maintained **under 2 CFR §200.336**.

SECTION 15 **Audit Requirements**

a. Limited Scope Audit - Contractor understands that Non-Federal entities that expend less than \$750,000 a year in Federal awards are exempt from Federal audit requirements for that year, but records must be available to review and audit as described hereinabove at Section 17. Contractor further understands that limited scope audits can and may be required by the City for non-Federal entities that expend less than \$750,000. If the City requires such limited scope audits, same shall be performed in accordance with 2 CFR Part 200, Subpart F - Audit Requirements.

b. Single Audit - Single Audit - Contractor further understands that non-Federal entities that expend \$750,000 or more a year in Federal awards shall have a single audit conducted pursuant to 2 CFR Part 200, Subpart F - Audit Requirements, except when an election is made to have a program specific audit pursuant to and described in 2 CFR Part 200, Subpart F - Audit Requirements. Once the Contract is executed, Contractor understands that it is barred from considering such audit and must have a single audit conducted as described hereinabove.

SECTION 16
Additional Federal Requirements Under 2 CFR PART 200, Appendix II, As
Applicable

(A) **Simplified Acquisition Threshold.** Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. §1908, as may be amended from time to time, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) **Contract Minimum for Termination for Cause and Convenience.** All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

(C) **Davis Bacon Act, as amended (40 U.S.C. §3141–3148).** When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(D) **Copeland Anti-Kick Back Act.** Contracts must also include a provision for compliance with the Copeland “Antikickback” Act (40 U.S.C. §3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) **Contract Work Hours and Safety Standards Act (40 U.S.C. §3701–3708).** Where applicable, all contracts awarded by the nonfederal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §3702 and §3704, as supplemented by Department of Labor regulations

(29 CFR Part 5). Under 40 U.S.C. §3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. §3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) **Energy Policy and Conservation Act.** Contractor must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6201).

(H) **Byrd Anti-Lobbying Amendment (31 U.S.C. §1352).** Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. §1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(I) **Procurement of Recovered Materials.** See 2 CFR §200.323.

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EXHIBIT "I"

EQUAL OPPORTUNITY CLAUSE

The applicant/Contractor hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause quoted and bolded below:

"During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives

of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States."

The applicant/Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided, That if the applicant/Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.*

The applicant/Contractor agrees that it will assist and cooperate actively with the GLO and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the GLO and the Secretary of Labor such information

as they may require for the supervision of such compliance, and that it will otherwise assist the GLO in the discharge of the GLO's primary responsibility for securing compliance.

The applicant/Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts, as defined in 41 C.F.R. § 60-1.3, and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, applicant/Contractor agrees that if it fails or refuses to comply with these undertakings, the GLO may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this Contract; refrain from extending any further assistance to Contractor under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from Contractor; and refer the case to the Department of Justice for appropriate legal proceedings.

The applicant/Contractor may make such necessary changes in language in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

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EXHIBIT J

TITLE VI: NON-DISCRIMINATION

During the performance of this Agreement, Contractor, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations - The Contractor shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation ("DOT") 49 CFR Part 21, as may be amended from time to time ("Regulations"), which are incorporated by reference and made a part of this Agreement.
2. Non-discrimination - The Contractor, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of Subcontractors, including procurement of materials and Agreements of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment - In all solicitation, either by competitive bidding or negotiation, made by the Contractor for work to be performed under a subcontract, including procurement of materials or Agreements of equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports - The Contractor shall provide all information and reports required by the regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the FAA to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance - In the event of the Contractor's noncompliance with the non-discrimination provisions of this Agreement, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including but not limited to:
 - 5.1. withholding of payments to the Contractor under the Agreement until the Contractor complies, and/or

5.2. cancellation, termination, or suspension of the Agreement, in whole or in part.

6. Incorporation of Provisions - The Contractor shall include the provisions of paragraphs 1-5 above in every subcontract, including procurement of materials and Agreements of equipment, unless exempt by the regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. If the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the Contractor may request the United States of America to enter into such litigation to protect the interests of the United States.

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**EXHIBIT K
GLO HARVEY CONTRACT**

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

(“2019 Subrecipient Agreement”, includes initial subrecipient agreement between the City and the GLO and Amendment No. 1)

For purposes of this Exhibit K, "Subrecipient" shall also refer to "Contractor" and "GLO" shall also refer to the "City," as applicable.

The 2019 Subrecipient Agreement shall automatically terminate on the date HUD approves the eighth amendment to the State of Texas Plan for Disaster Recovery: Hurricane Harvey Round 1, as amended from time to time, found at <https://www.recovery.texas.gov/action-plans/hurricane-harvey/index.html>.

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**EXHIBIT K-1
GLO HARVEY CONTRACT**

**GLO CONTRACT No. 21-134-000-C788
COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY PROGRAM
NON-RESEARCH & DEVELOPMENT
HURRICANE HARVEY FUNDING**

("2021 SUBRECIPIENT AGREEMENT")

The 2021 Subrecipient Agreement to become effective to govern this Agreement on the date HUD approves the eighth amendment to the State of Texas Plan for Disaster Recovery: Hurricane Harvey Round 1, as amended from time to time, found at <https://www.recovery.texas.gov/action-plans/hurricane-harvey/index.html>.

For purposes of this Exhibit K-1, "Subrecipient" shall also refer to "Contractor" and "GLO" shall also refer to the "City," as applicable.

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