

Controller's Office

To the Honorable Mayor and City Council of the City of Houston, Texas:

I hereby certify, with respect to the money required for the contract, agreement, obligation or expenditure contemplated by the ordinance set out below that:

- Funds have been encumbered out of funds previously appropriated for such purpose.
- Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.

Other - Grant Funds Available *Acceptance if awarded up to \$204,000.00*  
*Ronald C. [Signature]*

Date: 10-28, 2014 City Controller of the City of Houston, Texas  
*Jessie Holt*

*ms* FUND REF: 1000-1000-529430 AMOUNT: \$568,467.00 ENCUMB. NO.: PR 10196104

City of Houston, Texas Ordinance No. 2014-991

AN ORDINANCE AUTHORIZING THE DIRECTOR OF THE PLANNING AND DEVELOPMENT DEPARTMENT TO ACCEPT AND EXPEND GRANT FUNDS ("THE GRANT") FROM THE HOUSTON ENDOWMENT/BLUEPRINT HOUSTON AND APPLY FOR AND ACCEPT SUBSEQUENT AWARDS, IF ANY, PERTAINING TO THE GRANT; AWARDING A CONTRACT BETWEEN THE CITY OF HOUSTON AND DESIGN WORKSHOP, INC. FOR STRATEGIC PLANNING SERVICES FOR THE PLANNING AND DEVELOPMENT DEPARTMENT; CONTAINING PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.

\* \* \* \*

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

*JHS*

Section 1. The Director of the Planning and Development Department is hereby designated as the City's authorized official for the grant set out in the title of this ordinance, and is authorized to accept and expend the funds to be awarded and execute all grant award documents and related documents on behalf of the City of Houston, to apply for and accept subsequent grants or supplemental funding through this grant during the life of this grant, and is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreements or other undertakings described in the title of this ordinance, in the event of changed circumstances. In the event such grant is not awarded or received by the City, wholly or partly, the general fund will absorb the remaining cost of the contract, agreement, or other undertaking described in the title of this ordinance.

Section 2. Having duly advertised for and received requests for qualification for the work described in the title of this ordinance, the City Council hereby finds and determines that the respondent named in the title hereof is the respondent that offers the best value to the City. The contract for said work is hereby awarded to said respondent.

Section 3. The City Council hereby awards the contract, agreement, or other undertaking described in the title of this ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 4. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking referenced in the title of this ordinance, in the event of changed circumstances.

Section 5. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from Council.

Section 6. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 5<sup>th</sup> day of November, 2014.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is NOV 11 2014.



City Secretary

(Prepared by Legal Dept.  
 (LAC/dw 10/28/14)  
 (Requested by Calvin D. Wells, City Purchasing Agent, Administration & Regulatory Affairs Department )  
 (L.D. File No. 061-1400126-001)



Assistant City Attorney

AYE	NO	
✓		<b>MAYOR PARKER</b>
....	....	<b>COUNCIL MEMBERS</b>
✓		STARDIG
✓		DAVIS
✓		COHEN
✓		BOYKINS
✓		MARTIN
✓		NGUYEN
✓		PENNINGTON
✓		GONZALEZ
✓		GALLEGOS
✓		LASTER
✓		GREEN
✓		COSTELLO
✓		ROBINSON
✓		KUBOSH
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	

THE STATE OF TEXAS       §  
  §  
COUNTY OF HARRIS       §

**CONTRACT FOR STRATEGIC PLANNING SERVICES**

**I. PARTIES**

This **CONTRACT FOR STRATEGIC PLANNING SERVICES** ("Agreement") is made on the countersignature date ("Effective Date") between the **CITY OF HOUSTON, TEXAS** ("City"), a home-rule city of the State of Texas, and **DESIGN WORKSHOP, INC.** ("Consultant"), a corporation authorized to do business in Texas.

The Parties agree as follows:

A.     ADDRESSES

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> Patrick Walsh Director Planning and Development Department 611 Walker Street, 6 <sup>th</sup> Floor Houston, TX 77002	<u>Consultant</u> J. Rebecca Leonard President Design Workshop, Inc. 410 Pierce Street, Suite 331 Houston, TX 77002
<u>With Copy To</u> City Attorney City of Houston PO Box 368 Houston, TX 77001	<u>With Copy To</u> Mark Feldmann 1390 Lawrence Street, Suite 200 Design Workshop, Inc. Denver, CO 80402

B.     TABLE OF CONTENTS, SCHEDULES AND EXHIBITS

This Agreement consists of the following sections and exhibits:

TABLE OF CONTENTS

Page No.

I. PARTIES.....	1
A. Address.....	1
B. Table of Contents and Exhibits.....	2
C. Parts Incorporated.....	3
D. Signatures.....	4
II. DEFINITIONS.....	5
III. SCOPE OF SERVICES.....	6
A. Scope of Services.....	6
B. Coordinate Performance.....	6
C. Start Date.....	6
D. Work by the City.....	6
IV. DUTIES OF CONSULTANT.....	6
A. Consultant's Representative.....	6
B. Service Performance Standards.....	7
C. Invoicing.....	7
D. RELEASE.....	8
E. INDEMNIFICATION.....	8
F. RELEASE AND INDEMNIFICATION - (PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT).....	9
G. Insurance.....	10
Table 1: Required Coverages.....	10
H. Warranties.....	12
I. Confidentiality.....	12
J. Ownership and Use of Documents.....	13
K. Licenses and Permits.....	13
L. Minority and Small Business Enterprises.....	13
M. Drug Abuse Detection and Deterrence.....	13
N. Safety.....	14
O. Pay or Play.....	14
V. DUTIES OF CITY.....	14
A. Payments and Completion.....	14
B. Disputed Payments.....	15
C. Taxes.....	15
D. Limit of Appropriation.....	15
D. Changes.....	15
D. Access to Data.....	17
D. Reappropriation of Budget Items.....	17
VI. TERM AND TERMINATION OF THE AGREEMENT.....	17
A. Term.....	17
B. Termination for Convenience by the City.....	17
C. Termination for Cause by the City.....	18
VII. MISCELLANEOUS.....	18
A. Independent Contractor.....	18
B. Force Majeure.....	18
C. Severability.....	19
D. Entire Agreement.....	19
E. Written Amendment.....	19

F.	Applicable Laws .....	19
G.	Notices .....	19
H.	Captions.....	19
I.	Non-Waiver .....	20
J.	Inspections and Audits .....	20
K.	Enforcement .....	20
L.	Ambiguities.....	20
M.	Controlling Parts .....	20
N.	Survival .....	20
O.	Publicity .....	20
P.	Parties In Interest.....	21
Q.	Successors and Assigns .....	21
R.	Business Structure and Assignments .....	21
S.	Remedies Cumulative.....	21
T.	Consultant's Debt .....	21

**EXHIBITS**

- A. SCOPE OF SERVICES
- B, EQUAL EMPLOYMENT OPPORTUNITY
- C. DRUG POLICY COMPLIANCE AGREEMENT
- D. NO SAFETY IMPACT POSITIONS
- E. DRUG POLICY COMPLIANCE DECLARATION

C. **PARTS INCORPORATED**

All of the above-described sections and exhibits are incorporated into this Agreement.

*[Signature page follows]*

E. SIGNATURES

The Parties have executed this Agreement in multiple copies, each of which is an original.

**CONSULTANT:**

**DESIGN WORKSHOP, INC.**

\_\_\_\_\_  
Mark Feldmann  
Chief Financial Officer

**ATTEST/SEAL:**

\_\_\_\_\_  
Name:

Tax Identification No.:

**CITY:**

**CITY OF HOUSTON, TEXAS**

Signed by:

\_\_\_\_\_  
Mayor

**ATTEST/SEAL:**

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

**APPROVED:**

\_\_\_\_\_  
Director, Planning and Development  
Department

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Assistant City Attorney  
L.D. File No. 061-1400146-001

**COUNTERSIGNED BY:**

\_\_\_\_\_  
City Controller

**DATE COUNTERSIGNED:**

\_\_\_\_\_  
("Effective Date")

## II. DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

"Agreement" means this contract between the Parties, including all schedules, exhibits and written amendments authorized by City Council and Consultant and duly authorized Change Orders.

"City" is defined in the **Article I** of this Agreement and includes its successors and assigns.

"Consultant" is defined in **Article I** of this Agreement and includes its successors and assigns and its authorized representative.

"Consultant's Representative" means the individual who shall directly manage and direct the Services under this Agreement and who has authority to act for the Consultant, but who may or may not have the authority to bind Consultant contractually.

"Contract Price" means the total amount due for the Services set forth in **Exhibit A**.

"Day" or "Days" means calendar days, provided however, that if a deadline falls on a Saturday, Sunday or City Holiday, then the deadline shall be automatically extended to the next day.

"Director" means the Director of the City of Houston Planning and Development Department or the person he or she designates.

"Documents" means the original and any non-identical copy of all written, typed, or printed matter, or electronically stored information, of any kind or description. 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).

"Effective Date" means the date the City Controller countersigns the signature page of this Agreement and the Agreement becomes effective and binding.

"Include" and "including", and words or similar import, shall be deemed to be followed by the words "without limitation".

"Parties" means City and Consultant who are bound by this Agreement.

"Services" means all professional and planning services required by or reasonably inferable from the Agreement and **Exhibit A** (Scope of Services), including all labor, materials, tools, supplies, equipment, transportation, mobilization, insurance, subcontracts, supervision, management, reports, incidentals, quality control, and other items necessary or incidental by Consultant to fulfilling Consultant's obligations.

### III. SCOPE OF SERVICES

#### A. SCOPE OF SERVICES

In consideration of the payments specified in this Agreement, Consultant shall provide all labor, material, and supervision necessary to perform the Services described in **Exhibit A** ("Scope of Services").

#### B. COORDINATE PERFORMANCE

Consultant shall coordinate all of its performance with the Director and such other person(s) as the Director may specify. Consultant shall keep said person(s) currently advised at a minimum on a biweekly basis of developments relating to the performance of this Agreement, and Consultant shall promptly inform the Director or such other person(s) of all significant events relating to the performance of this Agreement.

#### C. START DATE

Consultant shall begin its performance of Services on the Effective Date. Consultant acknowledges that time is of the essence.

#### D. REPORTS

Consultant shall submit all reports and progress updates required by the Director.

#### E. TIME EXTENSIONS

If Consultant requests an extension of time to complete its performance, then the Director 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. Consultant is not entitled to damages for delay(s) regardless of the cause of the delay(s).

#### F. PAYMENT OF SUBCONTRACTORS

Consultant shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. CONSULTANT SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONSULTANT'S FAILURE TO MAKE THESE PAYMENTS.

#### G. WORK BY THE CITY

The City reserves the right to undertake or award contracts for the performance of similar type work as contemplated herein, and to do so will not breach or otherwise violate the Agreement.

### IV. DUTIES OF CONSULTANT

#### A. CONSULTANT REPRESENTATIVE

At all times during performance of the Services and until the Services is completed and accepted, Consultant shall manage, supervise, and direct the Services under this Agreement.

Prior to the start of performance of the Services, Consultant shall advise the Director in writing of the Consultant Representative's contact phone numbers and email. Consultant's Representative will have management responsibility for the Services and to receive and act on technical matters and resolve problems of a contractual nature.

Prior to substituting another individual for Consultant's Representative, Consultant shall notify the Director

reasonably in advance and shall submit justification in sufficient detail to permit evaluation of the impact on the Services. No such substitution shall be made by Consultant without first securing the Director's written approval, such approval not to be unreasonably conditioned, delayed or withheld.

**B. SERVICE PERFORMANCE STANDARDS**

- (1) Consultant shall supervise and direct the Services, using Consultant's full skill and attention. Consultant shall be solely responsible for and have control over means, methods, techniques, sequences and procedures and for coordinating all portions of the Services under the Agreement, unless the Agreement or Director gives contrary specific written instructions concerning these matters.
- (2) Unless otherwise provided in this Agreement, Consultant shall provide and pay for labor, materials, tools, equipment and machinery necessary for the proper execution and completion of the Services.
- (3) Consultant shall enforce strict discipline and good order among Consultant's employees, agents, subcontractors and other persons carrying out the Services.
- (4) Consultant shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Services.
- (5) Consultant shall take all precautions to ensure that no damage to private or public property results from its operations. Consultant must repair or replace items damaged by it at no cost to the City.
- (6) Consultant shall comply with all applicable state and federal laws and regulations, and the City Charter and Code of Ordinances.
- (7) Consultant shall comply with the City's **Equal Employment Opportunity Ordinance** as set out in **Exhibit B**.

**C. INVOICING**

Consultant shall submit its invoices on forms approved in advance by the Director, which may include electronic format, accompanied by support documents as may be requested by the Director. Each invoice Consultant submits must include the documents required to support the charges it contains. Each invoice must be identified by the Contract name and Contract number. All invoices are to be delivered or mailed to the following location:

Jennifer Ostlind  
Division Manager, Development Services Division  
Planning and Development Department  
611 Walker Street, 6<sup>th</sup> Floor  
Houston, TX 77002

**D. RELEASE**

**CONSULTANT AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.**

**E. INDEMNIFICATION**

- (1) CONSULTANT AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:
  - a. CONSULTANT'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONSULTANTS' OR SUBCONTRACTORS' (COLLECTIVELY IN THIS ARTICLE IV, SECTION E., "CONSULTANT") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
  - b. THE CITY'S AND CONSULTANT'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONSULTANT IS IMMUNE FROM LIABILITY OR NOT; OR
  - c. THE CITY'S AND CONSULTANT'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONSULTANT IS IMMUNE FROM LIABILITY OR NOT.
- (2) CONSULTANT SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONSULTANT SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.
- (3) NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE LIABILITY OF CONSULTANT FOR THE CITY'S CONCURRENT NEGLIGENCE SHALL NOT EXCEED \$1,000,000, OR THE STATUTORY MAXIMUM, WHICHEVER IS GREATER.
- (4) INDEMNIFICATION PROCEDURES

**Notice of Indemnification Claims:** If the City or Consultant 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 10 Days. The notice must include the following:

- a. a description of the indemnification event in reasonable detail,
- b. the basis on which indemnification may be due, and
- c. the anticipated amount of the indemnified loss.

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 10-Day period, the City does not waive any right to indemnification except to the extent that Consultant is prejudiced, suffers loss, or incurs expense because of the delay.

**(5) DEFENSE OF INDEMNIFICATION CLAIMS**

- a. **Assumption of Defense:** Consultant may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Consultant shall then control the defense and any negotiations to settle the claim. Within 10 Days after receiving written notice of the indemnification request, Consultant must advise the City as to whether or not it will defend the claim. If Consultant does not assume the defense, the City shall assume and control the defense, and all defense expenses shall be reimbursed monthly and be in addition to any indemnified losses.
- b. **Continued Participation:** If Consultant 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. Consultant may settle the claim without the consent or agreement of the City, unless it:
  - i. would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City;
  - ii. would require the City to pay amounts that Consultant does not fund in full, or
  - iii. would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

**(6) INDEMNIFICATION-SUBCONTRACTOR'S INDEMNITY**

CONSULTANT 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.

**F. RELEASE AND INDEMNIFICATION - (PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT)**

- (1) CONSULTANT 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 CONSULTANT, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONSULTANT FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONSULTANT SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.
- (2) CONSULTANT 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.
- (3) WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONSULTANT 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 CONSULTANT SHALL REFUND THE PURCHASE PRICE.

G. INSURANCE

Consultant shall provide and maintain certain insurance in full force and effect at all times during the term of this Agreement and any extensions thereto. Such insurance is described as follows:

- (1) Risks and Limits of Liability. Consultant shall maintain the following coverage and limits of liability:

<b>Table 1</b>	
<b>REQUIRED COVERAGE</b>	
<b>Coverage</b>	<b>Limit of Liability</b>
Workers' Compensation	Statutory Limits of Workers' Compensation
Employer's Liability	Bodily Injury by Accident \$100,000 (each accident) Bodily Injury by Disease \$100,000 (policy limit) Bodily Injury by Disease \$100,000 (each employee)
Commercial General Liability Including Consultant's Protective, Broad Form Property Damage, Contractual Liability, Explosion, Underground and Collapse, Bodily Injury, Personal Injury, and Products and Completed Operations (for a period of one year following completion of the Services).	Combined single limit of \$500,000 (each occurrence), subject to general aggregate of \$1,000,000
Automobile Liability Insurance (For automobiles furnished by Consultant in the course of its performance under this Agreement, including Employer's Non-Owned and Hired Auto Coverage)	\$1,000,000 combined single limit each occurrence
Professional Liability	\$1,000,000 per claim; \$1,000,000 per aggregate
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

If professional liability coverage is written on a "claims made" basis, Consultant shall also provide proof of renewal each year for two years after substantial completion of the Services, 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.

- (2) Forms of Policies. The insurance may be in one or more policies of insurance, the form of which must be approved by the Director and City Attorney; however such approval shall never excuse non-compliance with the terms of this Section.
- (3) Issuers of Policies. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall 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 edition of Best's Key Rating Guide.

- (4) Additional Insured Parties. The City shall be named as an additional insured under this Agreement. Each policy, except those for Worker's Compensation, Employer's Liability, and Professional Liability, must name the City (and its officers, agents, and employees) as Additional Insured parties on the original policy and all renewals or replacement.
- (5) Deductibles. Consultant shall be responsible for and pay any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, agents, or employees.
- (6) Cancellation. Consultant shall notify the Director in writing 30 days prior to any cancellation or material change to Consultant's insurance coverage. Within the 30 day period, Consultant shall provide other suitable policies in lieu of those about to be canceled or nonrenewed so as to maintain in effect the required coverage. If Consultant does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Consultant from any further performance under this Contract and begin procedures to terminate for default.
- (7) Subrogation. Consultant waives any claim or right of subrogation to recover against the City, its officers, agents, or employees and each policy, except Professional Liability, must contain an endorsement waiving such claim.
- (8) Endorsement of Primary Insurance. Each policy, except Workers' Compensation and Professional Liability, must 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.
- (9) Liability for Premium. Consultant shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.
- (10) Subcontractors. Consultant shall require all subcontractors whose subcontracts exceed \$100,000 to provide proof of professional liability 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.
- (11) Delivery of Policies.
  - a. At the time this Agreement is signed and as long as this Agreement continues, Consultant must furnish to the Director certificates of insurance, including any necessary endorsements, that meet the requirements of Article IV, Section G of this Agreement. These certificates must bear the Consultant's name in which it is insured. If requested by the Director, Consultant must provide the originals of all policies referred to above, or copies certified by the agent or attorney-in-fact issuing them. Consultant shall provide updated certificates of insurance to the Director upon request. Every certificate of insurance Consultant delivers for the Services provided under this Agreement shall:
    - i. be less than 12 months old;
    - ii. include all pertinent identification information for the Insurer, including the company name and address, policy number, NAIC number or AMB number, and authorized signature;

- iii. include the Contract name and reference numbers and indicates the name and address of the City department in the Certificate Holder Box; and
  - iv. be appropriately marked to accurately identify:
    - a. all coverages and limits of the policy;
    - b. effective and expiration dates; and
    - c. contain endorsements for waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and Worker's Compensation/Employers' Liability.
  - b. Consultant shall continuously and without interruption, maintain in force the required insurance coverage specified in Section G. If Consultant does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Consultant from any further performance under this Agreement and begin procedures to terminate for default.
  - c. The City shall never waive or be estopped to assert its rights to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.
  - d. Consultant shall, upon the City's request, deliver an assurance letter from Consultant's insurer stating that the insurer intends to issue Consultant a new policy that meets the terms of Section G.
- (12) If requested by the Director, Consultant shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Consultant's operations under this Agreement.

H. WARRANTIES

Consultant'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 Consultant provides under this Agreement. Consultant shall perform all work using trained and skilled persons having experience performing the work required under this Agreement.

**CONSULTANT WARRANTS THE SERVICES IT PROVIDES HEREUNDER WILL CONFORM SUBSTANTIALLY WITH THE REQUIREMENTS IN THE SCOPE OF SERVICES.**

I. CONFIDENTIALITY

Consultant and its agents, employees, consultants and subcontractors shall hold all City information, data, and documents (collectively, "Information") that they receive, prepare, or to which they have access, in strictest confidence. Consultant, its agents, employees, consultants and subcontractors shall not disclose, disseminate, or use the Information other than in connection with the performance of the Services and to its employees, directors, officers, members, agents, contractors, advisors, lenders, financial partners and other representatives who (a) are actively and directly participating in the Services or who otherwise have a need to know the Information and (b) have been informed of the terms of this Agreement and agreed to act in accordance with such terms or substantially similar restrictions on the use and disclosure of such Information ("Representatives") unless the Director authorizes it in writing. Consultant shall establish procedures to ensure confidentiality of the Information and to prevent its unauthorized use and disclosure. Consultant shall obtain written agreements from its agents, employees, consultants and subcontractors who perform work under this Agreement, which bind them to the terms in this Section or substantially similar restrictions on the use and disclosure of Information.

J. OWNERSHIP AND USE OF DOCUMENTS

- (1) Consultant conveys and assigns to the City its entire interest and full ownership worldwide in and to any work, invention, and all Documents, and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively "Proprietary Rights") that Consultant, its agents, employees, contractors, and subcontractors (collectively "Authors") develop, write, or produce under this Agreement (collectively "Works").
- (2) The Authors shall not claim or exercise any Proprietary Rights related to the Works. If requested by the Director, Consultant shall place a conspicuous notation on any Works which indicates that the City owns the Proprietary Rights.
- (3) Consultant shall execute all documents required by the Director to further evidence this assignment and ownership. Consultant shall cooperate with the City in registering, creating, and enforcing Proprietary Rights arising under this Agreement. If Consultant's assistance is requested and rendered under this Section, the City shall reimburse Consultant for all out-of-pocket expenses it incurs in rendering assistance, subject to the availability of funds. On termination of this Agreement, or if requested by the Director, Consultant shall deliver all Works to the City. Consultant shall obtain written agreements from the Authors which bind them to the terms in this Section.
- (4) All Works developed, written, or produced under this Agreement for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, are "works made for hire."
- (5) Consultant may retain copies of the Works for its archives. Consultant shall not otherwise use, sell, license, or market the Works.

K. LICENSES AND PERMITS

Unless otherwise provided in the Agreement, Consultant shall secure and pay for all inspections, licenses, certificates, including any professional licenses required by any statute, ordinance, rule or regulation of any regulatory body having jurisdiction over the conduct of its operations hereunder and necessary for proper execution and completion of the Services. Consultant shall maintain any required professional licenses during the term of this Agreement. Any failure of the Consultant to maintain such professional licenses or any revocation or suspension thereof, even if probated, shall entitle the Director in his sole discretion, to immediately terminate this Agreement. Consultant shall immediately notify the Director of any suspension, revocation or other detrimental action against his license.

L. MINORITY AND SMALL BUSINESS ENTERPRISES

Consultant 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. Consultant shall make good faith efforts to award subcontracts or supply agreements in at least 11% of the value of this Agreement to MWBEs. Consultant 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.

M. DRUG ABUSE DETECTION AND DETERRENCE

- (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 consultants while on City Premises is prohibited. Consultant shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and

Deterrence Procedures for Consultants, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

- (2) Before the City signs this Agreement, Consultant shall file with the Contract Compliance Officer for Drug Testing ("CCODT"),
  - (a) a copy of its drug-free workplace policy,
  - (b) 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
  - (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in **Exhibit D**.

If Consultant 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**. Consultant 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 Consultant begins work under this Agreement.

- (3) Consultant also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Consultant's employee work force.
- (4) Consultant shall require that its subcontractors comply with the Executive Order and Consultant shall secure and maintain the required documents for City inspection.

N. SAFETY.

Consultant shall abide by all applicable City rules, regulations, programs, ordinances and codes with regard to safety.

O. PAY OR PLAY

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

## V. DUTIES OF CITY

A. PAYMENTS AND COMPLETION

- (1) The City shall pay a total of **\$568,667.00** for the Services Consultant performs under this Agreement subject to the terms and conditions of this Agreement.
- (2) The City will pay Consultant on the basis of monthly invoices showing the percentage of total Services performed during the preceding month.
- (3) The City shall pay Consultant within 30 Days of the receipt and approval of the invoice.

B. DISPUTED PAYMENTS

- (1) If the City disputes any items in an invoice Consultant 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 Consultant of the dispute and request remedial action. After the dispute is settled, Consultant shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

C. TAXES

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Consultant'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 Consultant if requested.

D. LIMIT OF APPROPRIATION

- (1) The City's duty to pay money to Consultant under the Agreement is limited in its entirety by the provisions of this Paragraph.
- (2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of **\$568,667.00** to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:
- (3) The City makes a Supplemental Allocation by issuing to Consultant a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

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

- (4) 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. Consultant must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Consultant'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.

E. CHANGES

- (1) At any time during the Agreement Term, the Director may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Consultant shall furnish the services or deliverables in the Change Order in accordance

with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.

- (2) The Director will issue the Change Order in substantially the following form:

<b><u>CHANGE ORDER</u></b>	
TO:	[Name of Consultant]
FROM:	City of Houston, Texas (the "City")
DATE:	[Date of Notice]
SUBJECT:	Change Order under the Agreement between the City and [Name of Consultant] countersigned by the City Controller on [Date of countersignature of the Agreement]
Subject to all terms and conditions of the Agreement, the City requests that Consultant provide the following:	
<b>[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]</b>	
Signed:	
[Signature of Director]	

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

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

F. ACCESS TO DATA

- (1) The City shall, to the extent permitted by law, allow Consultant to access and make copies of documents in the possession or control of the City or available to it that are reasonably necessary for Consultant to perform under this Agreement.
- (2) The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for Consultant's use.

G. REAPPROPRIATION OF BUDGET ITEMS

The City may reduce the funds allocated and the Services required under this Agreement at its discretion. The Director shall notify Consultant in writing of this reduction. Consultant shall not perform any Services subtracted from the Agreement. The deobligation of funds does not require any formal amendment of this Agreement but shall be evidenced by a revised budget approved by the Director, a copy of which must be furnished to the City Controller.

**VI. TERM AND TERMINATION OF THE AGREEMENT**

A. TERM

This Agreement is effective on the Effective Date and remains in effect for one year from the Effective Date or until the Services is completed and accepted by the City; such acceptance to occur upon payment of any fees due to Consultant under this Agreement, whichever comes first, unless sooner terminated under the terms of this Agreement.

B. TERMINATION FOR CONVENIENCE BY CITY

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

On receiving the notice, Consultant 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, Consultant 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 Consultant for Services actually performed, but not already paid for, in the same manner as prescribed in Article IV, Section C unless the fees exceed the allocated funds remaining under this Agreement.

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

C. TERMINATION FOR CAUSE BY CITY

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

- (1) Consultant fails to perform any of its duties under this Agreement;
- (2) Consultant becomes insolvent;
- (3) all or a substantial part of Consultant's assets are assigned for the benefit of its creditors; or
- (4) a receiver or trustee is appointed for Consultant.

If a default occurs, the Director may, but is not obligated to, deliver a written notice to Consultant 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 Consultant to cure the default and Consultant does so to the Director's satisfaction before the termination date, then the termination is ineffective. If Consultant does not cure the default before the termination date, then the Director may terminate this Agreement on the termination date, at no further obligation of the City.

To effect final termination, the Director must notify Consultant in writing. After receiving the notice, Consultant shall, unless the notice directs otherwise, immediately discontinue all Services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

**VII. MISCELLANEOUS**

A. INDEPENDENT CONTRACTOR

Consultant is an independent contractor and shall perform the Services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Consultants' performance under this Agreement. All personnel Consultant uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Consultant is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all worker's compensation benefits coverage.

B. FORCE MAJEURE

- (1) Timely performance by both Parties is essential to this Agreement. However, neither Party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure that was not within the control of the Party claiming such inability to perform and that could not have been avoided by its exercise of due diligence and care. In this Agreement, Force Majeure means fires, natural disasters, hurricanes, and other acts of God, explosions, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.
- (2) This relief is not applicable unless the Party claiming the inability to perform does the following:
  - (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible; and
  - (b) provides the other Party with prompt written notice of the cause and its anticipated effect and length of delay.

- (3) The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by the City.
- (4) If the Force Majeure continues for more than 30 Days, the Director may terminate this Agreement by giving 7 Days written notice to Consultant. This termination is not a default or breach of this Agreement. CONSULTANT WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.
- (5) The Director shall determine when a Force Majeure condition has been removed. Consultant shall then resume its performance of the Services under this Agreement.
- (6) Consultant is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Consultant shall employ only fully trained and qualified personnel during a strike.

C. SEVERABILITY

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

D. ENTIRE AGREEMENT

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

E. WRITTEN AMENDMENT

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

F. APPLICABLE LAWS

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction, without reference to their choice of law provisions. The Parties consent to Venue for any litigation relating to this Agreement being Harris County, Texas.

G. NOTICES

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, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Article I, Section I 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.

H. CAPTIONS

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

I. NON-WAIVER

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.

An approval by the Director, or by any other employee or agent of the City, of any part of Consultant'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. Except as provided for in this Agreement, The Director is not authorized to vary the terms of this Agreement.

J. INSPECTIONS AND AUDITS

City representatives have the right to perform, or to have performed, (1) audits of Consultant's books and records pertaining to this Agreement, and (2) inspections of all places where work is undertaken in connection with this Agreement. Consultant shall keep its books and records available for this purpose for at least 4 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

K. ENFORCEMENT

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

L. AMBIGUITIES

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

M. CONTROLLING PARTS

The Sections and Exhibits are intended to be complementary. What is set forth in one document is as binding as if set forth in each document. In some cases they each may address similar terms and requirements. If a conflict among the Sections and Exhibits arises, the following order of priority controls:

- (1) Sections
- (2) Exhibits

N. SURVIVAL

The Parties shall remain obligated under provisions of this Agreement, which by their nature survive termination, including, but not limited to, warranty, indemnification and confidentiality, for a period of 4 years after termination of this Agreement or the completion of the last Services performed and accepted under this Agreement, whichever occurs first.

O. PUBLICITY

Consultant 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.

P. PARTIES IN INTEREST

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

Q. SUCCESSORS AND ASSIGNS

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

R. BUSINESS STRUCTURE AND ASSIGNMENTS

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

Consultant shall not delegate any portion of its performance under this Agreement without the Director and City Attorney's prior written consent, such consent not to be unreasonably withheld or delayed provided that the City is not deprived of any rights or protections.

S. REMEDIES CUMULATIVE

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

T. CONSULTANT DEBT

**IF CONSULTANT, 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 CITY CONTROLLER IN WRITING. IF CITY CONTROLLER BECOMES AWARE THAT CONSULTANT HAS INCURRED A DEBT, IT SHALL IMMEDIATELY NOTIFY CONSULTANT IN WRITING. IF CONSULTANT DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONSULTANT UNDER THIS AGREEMENT, AND CONSULTANT WAIVES ANY RECOURSE THEREFOR. CONSULTANT SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.**

## EXHIBIT "A" SCOPE OF SERVICES

Consultant will provide expertise to the City in creating a general plan for the City (hereinafter referred to as the "Project"). Tasks are listed chronologically, but occasionally tasks run concurrently.

### CONTENT SCOPE

#### **Task 1. Kick Off**

The intent of this phase is to align the City and Consultant ensuring success throughout the project. This will be done by creating a Project Management Plan and a Strategic Kick Off. Consultant believes that strong, proactive project management is the backbone of every project. Each phase of the Project will involve project management from both the principal-in-charge and the project manager. Consultant strives to ensure quality assurance and quality control through clear communication and dialogue with the City.

Specific subtasks include:

- 1.1. Project Management Plan – Consultant will develop a project management plan that includes the City's vision and critical success factors for the Project, statement of key challenge and approach, goals, roles and responsibilities, quality management plan, risk management plan, communication plan, scope, and schedule.
- 1.2. Strategic Kick Off Meeting – Consultant will conduct a Kick off Meeting with project leadership including the City's Leadership Team to confirm the Project's scope and schedule and determine the Client's Vision and Critical Success Factors. The following items will serve as the basis for this meeting:
  - 1.2.1. Introduce team members, their roles and the communications plan.
  - 1.2.2. Discuss the scope, schedule, and services of Consultant.
  - 1.2.3. Identify Project goals. A minimum of four goals will be identified within the categories of environment, economics, art and community. Metrics will be established from these goals.
  - 1.2.4. Review of existing and needed information that will help the future tasks.
  - 1.2.5. Identify Management Team concerns and anticipated outcomes.
  - 1.2.6. Verify list of key stakeholders for the various engagement steps.

#### *Deliverables:*

- Agenda, presentation and summary of Strategic Kick Off Meeting
- Monthly invoices with outline of accomplishments
- Detailed Project Management Plan with Project Vision and Critical Success Factors. (approximately 5-10 pages)
- Agenda/summary of conference calls

#### *Meetings:*

- Weekly client conference calls, as needed.
- Strategic Kick Off Meeting

#### **Task 2. Stakeholder Engagement**

Consultant believes the incredibly thoughtful process laid out in the City of Houston General Plan Scoping Study (Attachment B of the RFP) is a strong approach. Consultant understands that the plan will rely on the results of past community engagement and visioning exercises and that the plan will include limited new community engagement. Consultant also understands that the City staff will lead this limited engagement process, with advice and strategy and some limited participation provided by Consultant.

Specific subtasks include:

- 2.1. Stakeholder Engagement Strategy – After the Strategic Kick-off Meeting a stakeholder analysis will be developed that organizes stakeholders into those that need to be informed, consulted, collaborated with and empowered. This will then be folded into a Stakeholder Engagement Strategy (SES) that describes how each stakeholder will be involved in the Project. The SES will outline the approach for outreach, format for engagement efforts and how the information collected will have an influence on the overall Project.
- 2.2. Beta Site – In addition to the planning, neighborhood and development stakeholders, Consultant would like to engage the civic innovation and technology communities at the very beginning of the Project. January Advisors has demonstrated a modern approach to citizen engagement through the Houston Hackathon and other projects. At the beginning of this Project, Consultant will set up a Drupal-based temporary website to encourage blogging and discussion, provide background about the Project, manage social media accounts and build awareness of the Project (this will integrate with a MindMixer platform). There will be regular, public meet-ups of this community to guide the site design. Consultant will promote the existence and functionality of the website to external stakeholder groups throughout the duration of the project. This will include facilitation and promotion of the MindMixer tool, online social engagement and offline activation. The following tools will be utilized:
  - 2.2.1. Content Creation Strategy for all website marketing materials to ensure consistency across platforms.
  - 2.2.2. Community Ambassadors from other related, interested communities such as technology, civic innovation, real estate and biking communities to provide consistent updates and information on the Project.
  - 2.2.3. Pre-Meeting Promotion which communicates key meeting dates to stakeholder groups and creates content on the Project website to house meeting information in a centralized location.
- 2.3. Stakeholder Meeting Support – Consultant will support the City in up to eight (8) meetings with stakeholders. These may be specific public meetings or special presentations at events already scheduled around the City. Consultant will help prepare presentations much like a "meeting in a box" that can be used repeatedly to facilitate dialogue with interested organizations. Consultant uses Turning Point technology (a.k.a. keypad polling devices) to help give equal voice to all participants at public and committee meetings across the country. Consultant can support the City staff with this technology during public meetings.
- 2.4. Media Packets – Consultant understands that the City is in the process of creating a Public Relations and Messaging Strategy. Consultant will contribute to media packets at key milestones to summarize Project activity and progress.
- 2.5. Optional Media Packet Services – Consultant can work internally with HTV to produce content for City television broadcast shows as well as content for existing shows. Consultant can provide coaching and training for internal stakeholders who need to communicate with the press.
- 2.6. Optional On-line Webinar and Polls – Consultant has had tremendous success with on-line webinars and accompanying polls to engage stakeholders that would not otherwise come to a meeting. Consultant will support the City in developing these recorded events and engagement platforms. Consultant will promote the online webinar and polls, including providing messaging, online marketing and data collection / reporting. Consultant will also support these efforts by creating strategies to share webinars, polls and other web content on all available social media platforms and aid in this implementation.

### *Deliverables:*

- Draft Stakeholder Engagement Strategy (approximately 5-10 pages)
- Final Stakeholder Engagement Strategy (approximately 5-10 pages)
- Draft Beta Site
- Final Beta Site
- Agendas, presentations and summaries for up to 8 meetings
- Up to 2 – 2 hour long webinars, optional
- Up to 2 – on-line polls (maximum 20 questions each), optional
- Up to 4 media packets

### *Meetings:*

- Up to 20 hours of meetings with stakeholders (Consultant will have up to 2 people present at each of the 20 hours of meetings).

### **Task 3. Neighborhood Enhancement Strategies**

Consultant will work with City staff to develop the optimal approach for working with the community and project leadership to perform an evaluation of the City's neighborhood enhancement strategies. Examples of neighborhood enhancement strategies include neighborhood character preservation tools, reduction of blight and substandard living conditions, cleanup and beautification projects, etc. The goal is that this evaluation will result in community consensus on next steps in accomplishing the neighborhood enhancement goals.

Specific subtasks include:

- 3.1. Analysis – Using database developed by City staff, Consultant will analyze and categorize current neighborhood enhancement strategies. These include regulations, policies and programs.
- 3.2. Evaluation and Appraisal Report (EAR) – Once collected, Consultant will prepare an evaluation and appraisal report to assess the city's progress toward implementing current and past visions, plans, policies and strategies. To do this, Consultant will develop an EAR template to complete evaluations and appraisals of the various planning documents that will be integrated into the General Plan. Consultant will work with a group of key City staff organized as a "Plan Alignment Team" to document in the EAR template the status and effectiveness of the actions taken to implement identified visions, plans, policies and strategies. Consultant will rely on the accuracy, completeness and timeliness of information supplied by the Plan Alignment Team.
- 3.3. Alignment – In addition Consultant will develop a Policy Alignment Matrix as a tool to assess and manage the internal consistency of strategies for neighborhood enhancement and growth and development as contained in current and past planning documents, as well as consistency with the vision and associated goals provided by the City. Minor adjustments to the vision and goals may be provided at this time. The Policy Alignment Matrix will be applied as an analytical tool to compare neighborhood enhancement strategies to vision and goals, as well as to growth and development strategies.
- 3.4. Best Practices Toolkit – Consultant will inventory national best practices for neighborhood enhancement, growth and development and methods of implementation to be used as benchmarks to identify gaps and opportunities to advance the effectiveness of current strategies.
- 3.5. Diagnosis and Draft Recommendations – Consultant will conduct a high-level analysis of the effectiveness of existing strategies. Conflicts and internal inconsistencies among various strategies will be identified. National best practices for neighborhood enhancement will be identified and used as benchmarks from which to assess the adequacy of current

neighborhood strategies, and to identify gaps and opportunities for improvements to existing strategies. The need for additional analysis to accomplish the City's vision will be identified. Consultant will prepare draft recommendations for improving neighborhood enhancement strategies.

- 3.6. Final Recommendations and Review – Consultant will incorporate revisions to neighborhood strategy analysis and recommendations requested by the Plan Alignment Team and will assist the City in presenting recommendations to the Steering Committee and other project committees. Consultant will incorporate revisions to the neighborhood strategy analysis and recommendations requested by the Steering Committee and other project committees with strategies completed for presentation to the community in the interactive web page in February 2015. City staff will conduct all public meetings, with report and presentation materials provided by Consultant as described in Task 2. The Steering Committee and Plan Alignment Team will review public comments and advise Consultant of any necessary refinement of strategies based on community input.

*Deliverables:*

- Agenda, presentation and summary of Steering Committee Meeting
- Evaluation and Appraisal template
- Policy Alignment matrix
- Working Paper: Draft Neighborhood Enhancement Strategy (up to 50-page document submitted electronically in Word), including
  - Evaluation and Appraisal Report (EAR)
  - Policy Alignment evaluation
  - Best Practices toolkit
- Materials for the Steering Committee Meeting (which will be packaged in such a way that the City staff can use it for other project committees as needed)
- Working Paper: Final Neighborhood Enhancement Strategy (up to 50-page document submitted electronically in Word), including
  - Evaluation and Appraisal Report (EAR)
  - Policy Alignment evaluation
  - Best practices toolkit

*Meetings:*

- Plan Alignment Team Meeting – (2 Consultant employees)
- Steering Committee Meeting – (2 Consultant employees)

**Task 4. Growth and Development Strategies**

Consultant will work with City staff to develop the optimal approach for working with the community and project leadership to perform an evaluation of the City's growth and development strategies. Examples of growth and development strategies include development regulations, capital projects, 380 agreements and TIRZ/management districts. The goal is community consensus on next steps in accomplishing the growth and development goals.

Specific subtasks include:

- 4.1. Analysis – Using database developed by City staff, Consultant will analyze and categorize current growth and development strategies. These include regulations, policies and programs including development regulations, capital projects, 380 agreements and TIRZ / management districts. Document and assess status of implementation activity based on input from the Plan Alignment Committee.
- 4.2. Evaluation and Appraisal Report (EAR) – Once collected, Consultant will prepare an evaluation and appraisal report to assess the city's progress toward implementing current and past visions, plans, policies and strategies. To do this, Consultant will develop an EAR

template to complete evaluations and appraisals of the various planning documents that will be integrated into the General Plan. Consultant will work with a group of key City staff organized as a "Plan Alignment Team" to document in the EAR template the status and effectiveness of the actions taken to implement identified visions, plans, policies and strategies. Consultant will rely on the accuracy, completeness and timeliness of information supplied by the Plan Alignment Team.

- 4.3. Alignment – The Policy Matrix will be applied as an analytical tool to compare growth and development strategies to vision and goals provided by the City and to neighborhood enhancement strategies. Minor adjustments to the vision and goals may be provided at this time.
- 4.4. Best Practices Toolkit – Consultant will inventory national best practices for neighborhood enhancement, growth and development and methods of implementation to be used as benchmarks to identify gaps and opportunities to advance the effectiveness of current strategies.
- 4.5. Diagnosis and Draft Recommendations – Consultant, working collaboratively with the Plan Alignment Team, will conduct a high-level analysis of the effectiveness of existing strategies. Conflicts and internal inconsistencies among various strategies will be identified. National best practices for growth and development will be identified and used as benchmarks from which to assess the adequacy of current strategies, and to identify gaps and opportunities for improvements to existing strategies. Consultant will prepare draft recommendations for improving growth and development strategies.
- 4.6. Final Recommendations and Review – Consultant will incorporate revisions to growth and development strategy analysis and recommendations requested by the Plan Alignment Team and will assist the City in presenting recommendations to the Steering Committee and other project committees. Consultant will incorporate revisions to the growth and development strategy analysis and recommendations requested by the Steering Committee and other project committees with strategies completed for presentation to the community in the interactive web page in February 2015. City staff will conduct all public meetings, with report and presentation materials provided by Consultant. The Steering Committee and Plan Alignment Team will review public comments and advise Consultant of any necessary refinement of strategies based on community input.

#### *Deliverables:*

- Agenda, presentation and summary of Steering Committee Meeting
- Evaluation and Appraisal template
- Policy Alignment matrix
- Working Paper: Draft Growth and Development Strategy Analysis (up to 50-page document submitted electronically in Word), including
  - Evaluation and Appraisal Report (EAR)
  - Policy Alignment evaluation
  - Best practices toolkit
- Materials for the Steering Committee Meeting (which will be packaged in such a way that the City staff can use it for other project committees as needed) Working Paper: Final Growth and Development Strategy Analysis (up to 50-page document submitted electronically in Word), including
  - Evaluation and Appraisal Report (EAR)
  - Policy Alignment evaluation
  - Best practices toolkit

#### *Meetings:*

- Plan Alignment Team Meeting – (2 Consultant employees)
- Steering Committee Meeting – (2 Consultant employees)

## Task 5. Performance Indicators

Consultant understands that the City has numerous performance indicators in place. Consultant wants to develop key performance indicators (KPIs) that align with the existing metrics gathered and reported by the City. As such, Consultant will work with the Performance Improvement division of the Finance department to validate our proposed KPIs for the General Plan, ensuring they are in line with the best practices already in place. The question is, are these indicators tracking the correct things and in a consistent manner? The performance indicators should measure the accomplishment of the City in progress towards the vision and goals set forth in this General Plan process. The format for these indicators shall be one that allows the City staff to perpetually update them.

Specific subtasks include:

- 5.1. Analysis – Consultant will analyze and categorize existing City performance indicators. These include the City's "Performance Improvement Portal", a City website that provides insight into how the City measures its departments and responds to citizen requests as well as the Performance Insights quarterly report published by the Finance department. Consultant has worked with this division, developing and promoting the Performance Improvement Portal, and will provide strategic guidance and assist with stakeholder management.
- 5.2. Alignment – Consultant will compare existing community indicators to vision statement provided by the City to assess usefulness. Minor adjustments to the vision and goals may be provided at this time.
- 5.3. Diagnosis – Once the analysis is completed, Consultant will identify gaps in existing indicators and propose new indicators. Indicators should set a benchmark and gauge progress on plan implementation. Consultant will document this methodology for the purpose of presenting this to the Mayor and public, as well as to help with future updates.
- 5.4. Final Recommendations and Review – Consultant will assist the City in presenting recommendations to the community on the interactive website by May 2015. Consultant will incorporate revisions to the indicators. The Steering Committee will review public comments and advise Consultant of any necessary refinement of strategies based on community input.

### *Deliverables:*

- Agenda, presentation and summary of Steering Committee Meeting
- Draft Performance Indicators Analysis and Recommendations (with methodology)
- Draft Best Practices Toolkit
- Materials for the Steering Committee Meeting (which will be packaged in such a way that the City staff can use if for other project committees as needed)
- Final Best Practices Toolkit
- Final Performance Indicators Analysis and Recommendations

### *Meetings:*

- Steering Committee Meeting

## Task 6. Implementation strategy

The Implementation Strategy will include recommended projects, programs and policies that will be needed to implement the Houston General Plan. The plan will include recommendations for packaging and pitching the recommendations to potential partners. The desired characteristics of the implementation strategy are that the strategy be achievable with backing from decision makers, stakeholders and implementers involved; the strategy is based on the reality of the market place; and the strategy will have implementation broken down into projects, program and policies.

Specific subtasks include:

- 6.1. Draft Implementation Plan – Consultant will consolidate findings from the Project, including the analysis of neighborhood enhancement strategies and the growth and development strategies. Consultant will develop an implementation work plan that lists all the strategies and actions that the City should take to systematically implement the General Plan, prioritized and arrayed according to factors such as implementation timeframe, action type (program, capital project, regulation, etc.), lead implementer, potential partners and potential funding sources. After completing the implementation strategy Consultant will assist the City in presenting recommendations to the Steering Committee and other project committees in early April 2015. Comments will be addressed and the implementation strategies will be completed for presentation to community in the interactive web site by May 2015.
- 6.2. Final Implementation Plan – Consultant will refine and finalize the implementation strategy based on community input and deliver a final draft to the City.

*Deliverables:*

- Agenda, presentation and summary of Steering Committee Meeting
- Draft Implementation Strategy #1 (with methodology)
- Materials for the Steering Committee Meeting (which will be packaged in such a way that the City staff can use if for other project committees as needed)
- Draft Implementation Strategy #2 (with amended methodology)
- Final Implementation Strategy

*Meetings:*

- Steering Committee Meeting

**Task 7. Develop planning coordination tool**

This website and planning tool represents a fantastic opportunity to create a modern, user-friendly, interactive site of planning vision and implementation. Consultant will incorporate the existing database of plans to a front-end navigation tool, similar to MyCity but customized specifically for visibility into the planning process. After a short discovery period with City, Consultant will determine the best approach for site development.

Specific subtasks include:

- 7.1. Technology discovery with City stakeholders – Consultant will present various solutions for the planning website, and uncover specific use cases for city stakeholders and citizens. After the initial discovery, we will provide a report that details stakeholder feedback and our approach.
- 7.2. Discovery with citizens – Consultant will work with various stakeholders including groups within the startup, civic innovation, and technology communities to determine the variety of citizen use cases (hackathons, city council petitions, etc.) and to engage in a process of open input about the site and its development.
- 7.3. Consolidate existing geospatial data – Working with the City's initial Microsoft Access database, Consultant will test and migrate the data into the selected GIS planning tool.
- 7.4. Consolidate existing plans/visions – Using plans gathered by City staff, Consultant will implement an interactive web-based tool that identifies plans of various local entities. Consultant will organize and consolidate the existing plans and vision statements in a simple, easy-to-use map and cohesive presentation, for use by technical staff and the general public. The entities expected to participate include governmental agencies such as tax increment reinvestment zones and management districts; non-profit agencies with geographically bounded plans; transportation agencies; and possibly other groups. See Appendix B for further information.

- 7.5. Wireframe the planning tool – Once Consultant has an idea of all of the information and tools to be included, Consultant will provide a site wireframe for City review.
- 7.6. Design the website – Upon approval of the wireframes, Consultant will provide fully designed mockups of the website for review. Consultant will ensure the planning tool's web page is able to be maintained by COH staff.
- 7.7. Code the website – Upon approval of the site design, Consultant will code the website according to the standards of the chosen technology stack. Consultant will pay special consideration to making the planning coordination tool integrate with the City's Drupal CMS through an iFrame ensuring elements like the General Plan Map will be able to be displayed on various City department pages.
- 7.8. Assist with user acceptance testing – Consultant will assist with various user acceptance testing tasks. The full scope of these tasks will be outlined in an ARC1 task list that is approved by the City and Consultant and is incorporated by reference into this scope.
- 7.9. Train the City – Consultant will provide training for 2 to 4 City employees on how to update and maintain the coordination tool prior to launch.
- 7.10. Assist with launch promotion – Consultant will guide the launch of the planning website and assist the City with promotion and question handling.

*Deliverables:*

- Technology discovery report
- Citizen discovery report
- Website wireframe and design
- Website code
- Training & transitioning

*Meetings:*

- Technology committee meeting
- Individual stakeholder meetings (up to 3)
- Steering Committee Meeting

**Task 8. Develop general plan web site**

Finally, all or a portion of the site will function as a planning "front end" for the public. As such, it is extremely important that the website be user-friendly, easy to use, conform to modern HTML5 development standards, and provide accurate information.

The website will be the primary resource for all publicly available planning data. Using selected Drupal modules, Consultant will also provide collaboration and communication tools within the website that allows for city-to-city, city-to-citizen, citizen-to-city, and citizen-to-citizen collaboration.

Specific subtasks include:

- 8.1. Development – Consultant will develop, in consultation with City staff, the optimal strategy, organization, layout, and graphics to display the City's general plan. The City desires a simple, clean, simple to use and graphically engaging web site for displaying its general plan. The web site will include all general plan components, including the vision statement, neighborhood enhancement and growth and development strategies, performance indicators, planning coordination tool, and implementation strategies. Consultant will create collaboration and communication modules, and a section will be provided to post and update planning

vision, updates, and news. There will be a user experience overview and proposed UX guidelines for making the site user friendly and easy to understand. The HTML5 design will be responsive and attractive on mobile, tablet, and monitor screen sizes. Finally, an embedded map from the planning coordination tool will be employed that can be updated by City staff.

- 8.2. Turnkey Training – Consultant will train and transition City staff so that they may lead the implementation of the functionality of the site, using the graphics and layout developed by the selected firm(s).

*Deliverables:*

- User experience (UX) guidelines
- General plan website design
- General plan website code (Drupal compatible, HTML5/responsive markup)
- City staff training

*Meetings:*

- Technology committee meeting
- Individual stakeholder meetings(up to 3)
- Steering Committee Meeting

**EXHIBIT "B"**  
**EQUAL EMPLOYMENT OPPORTUNITY**

1. Consultant, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. Consultant, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. Consultant, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by City setting forth the provisions of this Equal Employment Opportunity Clause.
2. Consultant, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. Consultant, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of Consultant's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. Consultant, subcontractors, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Consultant Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. Consultant, subcontractors, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times are directed shall contain information as to the employment practice policies, program, and work force statistics of Consultant, subcontractors, vendor, supplier, or lessee.
6. In the event of Consultant's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and Consultant, subcontractors, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. Consultant shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause 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 No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractors or vendor. Consultant will take such action with respect to any subcontractors or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Consultant becomes involved in, or is threatened with litigation with a subcontractors or vendor as a result of such direction by the contracting agency, Consultant may request the United States to enter into such litigation to protect the interests of the United States.
8. Consultant shall file and shall cause of his subcontractors, if any, to file compliance reports with City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of Consultant and each subcontractor.

**EXHIBIT "C"**  
**DRUG POLICY COMPLIANCE AGREEMENT**

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

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

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for Consultant 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 Consultants (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Consultant Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**EXHIBIT "D"**  
**CONSULTANT'S CERTIFICATION**  
**OF NO SAFETY IMPACT POSITIONS**  
**IN PERFORMANCE OF A CITY CONTRACT**

I, \_\_\_\_\_, \_\_\_\_\_, (Consultant)  
(Name) (Title)

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

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

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

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

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

**EXHIBIT "E"**  
**DRUG POLICY COMPLIANCE DECLARATION**

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

\_\_\_\_\_ (Consultant - Name of Company) have personal knowledge and full authority to make the following declarations:

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

\_\_\_\_\_ (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 Consultants, 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 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

	<i>Random</i>	<i>Reasonable Suspicion</i>	<i>Post Accident</i>	<i>Total</i>
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)