

**AGREEMENT FOR MASTER PROGRAM MANAGEMENT SERVICES FOR  
DISASTER RELATED PROJECTS**

4600014676  
2018-0007

THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

**THIS AGREEMENT FOR MASTER PROGRAM MANAGEMENT SERVICES FOR DISASTER RELATED PROJECTS** (“Agreement”) is made on the date countersigned by the City Controller (“Effective Date”), by and between the **CITY OF HOUSTON, TEXAS** (the “City”), a Home Rule City of the State of Texas principally situated in Harris County, and **Aptim Environmental & Infrastructure, Inc.** (the “Consultant”), a Louisiana corporation doing business in Texas.

The Parties agree as follows:

**ARTICLE 1. PARTIES**

**1.1. ADDRESS**

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

<u>City</u>	<u>Consultant</u>
Director or Designee Housing and Community Development Department City of Houston P. O. Box 1562 Houston, Texas 77251	Aptim Environmental & Infrastructure, Inc. 4171 Essen Lane Baton Rouge, Louisiana 70809 Attention: Tyson Hackenberg
	With copy to: Aptim Environmental & Infrastructure, Inc. 4171 Essen Lane Baton Rouge, Louisiana 70809 Attention: Legal Department

**1.2. TABLE OF CONTENTS**

1.2.1. This Agreement consists of the following articles and exhibits:

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**1.3. PARTS INCORPORATED**

1.3.1. The above described articles and exhibits are incorporated into this Agreement.

**1.4. CONTROLLING PARTS**

1.4.1. If a conflict among the articles and exhibits arises, the articles control over the exhibits.




**1.5 SIGNATURES**


1.5.1 The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

**CONSULTANT:**

**APTIM ENVIRONMENTAL & INFRASTRUCTURE, INC.**

By:   
NAME: Tyson Hackenberg  
POSITION: Vice President


**ATTEST/SEAL (if a corporation):  
Witness (if not a corporation):**

By:   
NAME: \_\_\_\_\_

**LORI WEST  
NOTARY PUBLIC, ID# 133126  
STATE OF LOUISIANA  
PARISH OF POINTE COUPEE  
My Commission is for Life**

**CITY:**

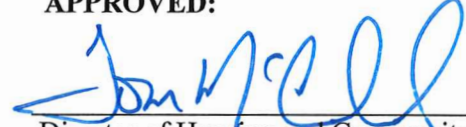
**CITY OF HOUSTON, TEXAS**

By:   
Mayor

**ATTEST/SEAL:**

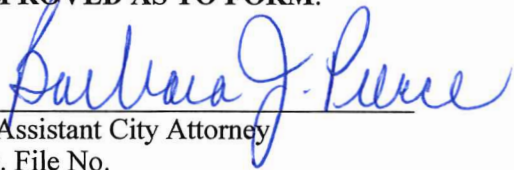
  
City Secretary

**APPROVED:**


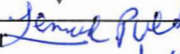
  
Director of Housing and Community  
Development Department

  
Chief Procurement Officer  
Strategic Purchasing Department

**APPROVED AS TO FORM:**

  
Sr. Assistant City Attorney  
L.D. File No. \_\_\_\_\_

**COUNTERSIGNED BY:**

  
City Controller   
Date Countersigned: 1-12-18

## ARTICLE 2. DEFINITIONS

2.1. In addition to the words and terms defined elsewhere in this Agreement, the following terms have the meanings set out below:

- 2.1.1. "*Agreement*" means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Consultant.
- 2.1.2. "*City*" is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.1.3. "*City Attorney*" means the City Attorney of the City or any person designated by the City Attorney to perform one or more of the duties of the City Attorney under this Agreement.
- 2.1.4. "*City's Project Manager*" is a City employee designated by the Director with the responsibility and authority to manage a Project or Projects for a City Department.
- 2.1.5. "*City Personnel*" means all City employees, but not elected officials.
- 2.1.6. "*Confidential Information*" means all non-public Documents or Information of a Party to this Agreement, including without limitation any such Documents or Information that is identified as or would be reasonably understood to be confidential, proprietary, and/or sensitive.
- 2.1.7. "*Consultant*" is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.1.8. "*Director*" means the Director of the City's Housing and Community Development Department, or any person designated by the Director to perform one or more of the Director's duties under this Agreement.
- 2.1.9. "*Disclosing Party*" means a Party who discloses, supplies, or provides Confidential Information to another Party or whose Confidential Information is otherwise in the possession, custody, or control of another Party.
- 2.1.10. "*Documents*" means all original and non-identical copy of any written, typed, or printed matter, or electronically stored information, of any kind or description.
  - 2.1.10.1. 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).

- 2.1.11. "*Effective Date*" means the date the City Controller countersigns the signature page of this Agreement and the Agreement becomes effective and binding.
- 2.1.12. "*GLO Contract*" means the Interlocal Agreement (Non-Research & Development) between the Texas General Land Office and the City of Houston, GLO Contract No. 18-210-007, which is attached as Exhibit H.
- 2.1.13. "*Labor Rate*" means the labor rates by category as shown on Exhibit B attached hereto and, by reference, incorporated.
- 2.1.14. "*Notice to Proceed*" means a written communication from the Director to Consultant instructing Consultant to begin performance under this Agreement.
- 2.1.15. "*Party*" or "*Parties*" means City and Consultant who are bound by this Agreement, individually or collectively as indicated in the context by which it appears.
- 2.1.16. "*Project*" means all work involved in the administration and implementation of housing program design and housing program management services for housing recovery for the Housing and Community Development Department, including but not limited to those set forth under Exhibit A.
- 2.1.17. "*Project Manager*" is a person designated by the Consultant and given the responsibility and authority to manage all or an identified portion of the Project.
- 2.1.18. "*Services*" means the professional housing program management services that are the purpose of this Agreement.
- 2.1.19. "*Subconsultant*" or "*Subcontractor*" means a person under contract with Consultant to perform services under this Agreement.

- 2.1.20. "*Subcontract Cost*" means the actual cost of subcontracts made by Consultant with prior approval of the Director for services rendered under this Agreement.
  - 2.1.21. "*Task Order*" is an individual project assignment with a defined scope of services, budget and schedule issued by the Director under this Agreement.
  - 2.1.22. "*Term*" means the entire period during which this Agreement is in effect, starting on the Effective Date and continuing through the final date of termination or expiration of this Agreement, including any renewals or extensions thereof.
  - 2.1.23. "*Work*" is the entire completed Project, including all labor, materials, equipment and services provided in connection with housing program design and housing program management services under this Agreement.
  - 2.1.24. "*Work Products*" means all Documents or Information that the City and/or Consultant creates, develops, modifies, prepares, produces, or writes under, pursuant to, or in connection with this Agreement. "Work Products" does not mean or include software, source code, or object code.
- 2.2. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular include the plural.
- 2.3. The word "*shall*" is always mandatory and not merely permissive.

## **ARTICLE 3. DUTIES OF CONSULTANT**

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

- 3.1.1. For and in consideration of the payments specified in this Agreement, Consultant shall provide all services necessary to execute the Project. Consultant shall provide all labor and supervision and materials not specifically listed as a Reimbursable Expense that are necessary to perform the services as set out in this Agreement, as specifically described in Exhibit A and in individual Task Orders.
- 3.1.2. Consultant shall not perform professional engineering, architectural, or legal services under this Agreement.
- 3.1.3. Consultant shall perform services in connection with this Agreement only in response to a Task Order signed by the Director. Task Orders must not vary the terms of this Agreement. Task Orders with an initial cost to the City of more than \$500,000 must be reviewed by the City Attorney and the CPO. Task Orders must include the following:
  - 3.1.3.1. Agreement number;
  - 3.1.3.2. Project Manager's responsibilities, name, address, and telephone number;
  - 3.1.3.3. Task Order number, date, and funding source;

- 3.1.3.4. Identity of the Consultant's key personnel who will perform Services under the Task Order. (The Director must approve the proposed number of staff for a Task Order or portions of Task Order under which Consultant is paid pursuant to the Labor Rates in Exhibit B.);
- 3.1.3.5. A scope of services specifically identifying the services to be performed;
- 3.1.3.6. Time of performance;
- 3.1.3.7. Place of performance;
- 3.1.3.8. The name of the City Project Manager designated by the Director for the Task Order;
- 3.1.3.9. A breakout to include identification, by line item, of the required position classifications to perform the services, the estimated hours, and the Labor Rates as defined in this Agreement.
- 3.1.3.10. Identification of the estimated amount of services to be performed by Minority and Women Business Enterprises, if applicable;
- 3.1.3.11. A total not-to-exceed amount for services to be performed;
- 3.1.3.12. A breakout of all Reimbursable Expenses, by line item, to include the estimated quantity of the item required, the unit cost, and an extended "not to exceed" dollar amount;
- 3.1.3.13. Submittal requirements, including schedule and deliverables, (i.e., reports, analyses, statements, etc.);
- 3.1.3.14. A breakout of subcontractor costs;
- 3.1.3.15. Metrics, performance measures, or benchmarks the Consultant must reach along with the effect of attaining or failing to attain the metrics, performance measures, or benchmarks, which results may include, but are not limited to actual damages from the harm the City will suffer, liquidated damages, percentage discounts on the maximum hourly rates as defined in this Agreement, or other items mutually agreed upon by the Director and Consultant;
- 3.1.3.16. A list of Consultant's non-cancellable commitments related to the Task Order and any associated costs to the City in case of the City's termination of this Agreement for convenience, subject to a not-to-exceed amount agreed to by the Director, 10 provided that the not-to-exceed amount must not exceed the lesser of 25% of the value of the Task Order or \$100,000 and further subject to City Council's appropriation of funds therefor; and
- 3.1.3.17. Any other information necessary to perform the services, or as required by the Director.

3.1.4. Upon the Consultant's written request, the Director, in his sole discretion, may grant extensions for completion of services under individual Task Orders for delays caused by the City or other agencies with which the work must be coordinated and for other reasonable causes over which the Consultant has no control. The Director's approval of the extension must be in writing. Task Orders continue in effect until all requirements have been met and a written acceptance of the services performed has been made by the Director or until the Consultant receives written notification from the Director to discontinue services. The Director may amend Task Orders in the same manner as they are issued.

3.1.5. The City shall not be obligated to pay for any services under a Task Order that exceeds the scope of this Agreement, is not signed by the Director, or is not in compliance with the strict requirements of this Agreement, including but not limited to this Section 3.

### **3.2. COORDINATE PERFORMANCE**

3.2.1. Consultant shall coordinate its performance with the Director. Consultant shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

### **3.3. REPORTS**

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

### **3.4. PAYMENT OF SUBCONTRACTORS**

3.4.1. In accordance with the Texas Prompt Payment Act, Consultant shall make timely payments to all persons and entities supplying labor, materials, equipment, or services 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. Consultant shall submit disputes relating to payment of MWBE subcontractors to mediation in the same manner as any other disputes under the MWBE subcontract if directed to do so by the Director of the Office of Business Opportunity. Failure of Consultant to pay its employees and subcontractors as required by law shall constitute a default under this Agreement, 11 for which Consultant and its surety, if any, shall be liable on Consultant's performance security, if any, if Consultant fails to cure the default as provided under this Agreement.

### **3.5 SCHEDULE OF PERFORMANCE**

#### **3.5.1. Time of Performance**

3.5.1.1. The Director shall provide Consultant with a written Notice to Proceed specifying a date to begin performance under this Agreement.

#### **3.5.2. Time Extensions**

3.5.2.1. If Consultant requests an extension of time to complete its performance, then the Director may, in consultation with the CPO, extend the time so long as the extension does not exceed 180 calendar 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).

### **3.6 RELEASE**

**3.6.1 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. CONSULTANT HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.**

### **3.7 INDEMNIFICATION**

**3.7.1 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 ARISING OUT OF CONSULTANT'S (AS DEFINED IN SECTION 3.7.1.1) PERFORMANCE UNDER THIS AGREEMENT TO THE EXTENT CAUSED BY:**

**3.7.1.1 CONSULTANT'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS, OR SUBCONTRACTORS' (COLLECTIVELY REFERRED TO AS "CONSULTANT") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**

**3.7.1.2 CONSULTANT'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONSULTANT IS IMMUNE FROM LIABILITY OR NOT, BUT ONLY TO THE EXTENT OF CONSULTANT'S NEGLIGENCE; AND**

**3.7.1.3 CONSULTANT'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONSULTANT IS IMMUNE FROM LIABILITY OR NOT.**



**3.7.2. CONSULTANT SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS AS PROVIDED IN THE PRECEDING SECTION DURING THE TERM OF THIS AGREEMENT AND FOR FIVE YEARS AFTER THE AGREEMENT TERMINATES. CONSULTANT SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.**

### **3.8 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.**

### **3.9 INDEMNIFICATION PROCEDURES**

#### *3.9.1 Notice of Claims.*

3.9.1.1 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:

3.9.1.1.1 a description of the indemnification event in reasonable detail, and

3.9.1.1.2 the basis on which indemnification may be due, and

3.9.1.1.3 the anticipated amount of the indemnified loss.

3.9.1.2 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, it does not waive any right to indemnification except to the extent that Consultant is prejudiced, suffers loss, or incurs expense because of the delay. If Consultant does not provide this notice within the 10-day period, it does not waive any right to indemnification except to the extent that City is prejudiced, suffers loss or incurs expenses because of the delay.

#### *3.9.2 Defense of Claims.*

3.9.2.1 *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 Attorney. If Consultant assumes the defense of the claim, Consultant shall then control the defense and any negotiations to settle the claim, subject to the City Attorney's consent or agreement to the settlement, which consent or agreement shall not



be unreasonably withheld. Consultant shall notify the City Attorney of any and all offers to settle the claim. If Consultant does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

3.9.2.2 *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.

### 3.10 INSURANCE

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

<u>Coverage</u>	<u>Limit of Liability</u>
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	<input type="checkbox"/> Bodily Injury by Accident \$500,000 (each accident) <input type="checkbox"/> Bodily Injury by Disease \$500,000 (policy limit) <input type="checkbox"/> Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence, and \$2,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Professional Liability	\$1,000,000 per occurrence; \$2,000,000 aggregate
Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability and Automobile Liability	\$1,000,000.00
<b>Aggregate Limits are per 12-month policy period unless otherwise indicated.</b>	

3.10.2 *Insurance Coverage.* At all times during the term of this Agreement and any extensions or renewals, Consultant shall provide and maintain insurance coverage that meets the requirements of the Agreement. Prior to beginning performance under the Agreement, at any time upon the Director's request, or each time coverage is renewed or updated, Consultant shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents

agents, or employees. Consultant shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

- 3.10.3 *Form of Insurance.* The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Agreement. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide.
- 3.10.4 *Required Coverage.* The City shall be an Additional Insured under this Agreement, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other provisions of this Agreement. Consultant waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Consultant's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement. If professional liability coverage is written on a "claims made" basis, Consultant shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Contract with a duration of two years after substantial completion.
- 3.10.5 *Notice.* **CONSULTANT SHALL GIVE A 30-DAY ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the 30-day period, Consultant shall provide other suitable policies in order to maintain the required coverage. If Consultant does not comply with this requirement, the Director, at his sole discretion, may immediately suspend Consultant from any further performance under this Agreement and begin procedures to terminate for default.

### **3.11 PROFESSIONAL STANDARDS**

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

### **3.12 WARRANTIES**

Consultant assigns all manufacturer's warranties on any deliverables to the City and will deliver all related documentation to the Director within 5 days after execution of this Agreement.

### **3.13 USE AND OWNERSHIP OF DATA AND WORK PRODUCTS**

- 3.13.1 The City may use and shall be permitted to use all City Data, Consultant Data, and Work Products.
- 3.13.2 Consultant warrants that it owns the copyright to Consultant Data.
- 3.13.3 Consultant conveys and assigns to the City its entire interest and full ownership worldwide in and to all Work Products and all Proprietary Rights therein.
- 3.13.4 Consultant shall not claim or exercise any Proprietary Rights in or to the Work Products. If requested by the Director, Consultant shall place a conspicuous notation on any Work Products indicating that the City owns the Work Products and the Proprietary Rights therein.
- 3.13.5 Consultant's assignment of its interest in the Work Products and the Proprietary Rights therein to the City does not constitute a mere license or franchise to the City
- 3.13.6 Consultant shall execute all documents required by the Director to further evidence Consultant's assignment and the City's ownership of the Work Products and the Proprietary Rights therein. Consultant shall cooperate with City in registering, creating, and enforcing the City's ownership of the Work Products and the Proprietary Rights therein.
- 3.13.7 All Work Products are "works made for hire."
- 3.13.8 Consultant shall deliver to the Director all or any part of the original City Data, Consultant Data, Work Products, and/or all other files and materials that Consultant produces or gathers during its performance under this Agreement, in the format and on the media specified by Director, within five Business Days after written request from Director or after this Agreement terminates or otherwise expires.

- 3.13.9 Consultant may retain copies of the Work Products for its archives. Consultant shall not otherwise use, sell, license, or market the Work Products.
- 3.13.10 Notwithstanding anything to the contrary, the City is, will be, and shall remain at all times the sole owner of all City Documents and all Work Products. Consultant expressly acknowledges that the City has all right, title, or other ownership interest in all City Documents and all Work Products. Consultant shall not possess or assert any lien or other right against any City Documents or Work Products.

### **3.14 CONFIDENTIALITY**

- 3.14.1 Except as otherwise provided in this Agreement, each Receiving Party shall:
- 3.14.1.1 Hold all Confidential Information of a Disclosing Party in strict confidence;
  - 3.14.1.2 Protect all Confidential Information of a Disclosing Party with at least the same degree of care and in accordance with the security regulations by which it protects its own Confidential Information;
  - 3.14.1.3 Not use, reproduce, or copy any Confidential Information of Disclosing Party except as necessary for purposes of performing any duties or exercising any rights under, pursuant to, or in connection with this Agreement unless the Disclosing Party otherwise agrees in writing;
  - 3.14.1.4 Not disclose any Confidential Information of a Disclosing Party to any person or entity except the Receiving Party's agents, Consultants, employees, and representatives with a need to know for purposes of performing any duties or exercising any rights under, pursuant to, or in connection with this Agreement unless the Disclosing Party otherwise agrees in writing;
  - 3.14.1.5 Not remove any Confidential Information of a Disclosing Party from the continental United States;
  - 3.14.1.6 Return or destroy all Confidential Information of a Disclosing Party and any copies of such Confidential Information upon request of the Disclosing Party and, in any event, when no longer needed or permitted for use under, pursuant to, or in connection with this Agreement; and
  - 3.14.1.7 Advise its agents, Consultants, employees, and representatives of their obligations with respect to the Confidential Information of a Disclosing Party.
- 3.14.2 No Receiving Party shall have any obligation under this Section (Confidentiality) as to any Confidential Information of a Disclosing Party that:

- 3.14.2.1 Was previously known to it free and clear of any obligation to keep it confidential;
  - 3.14.2.2 Except as otherwise provided under this Agreement, is disclosed to third parties by the Disclosing Party without restriction; 18
  - 3.14.2.3 Is or becomes publicly available by other than unauthorized disclosure;
  - 3.14.2.4 Is independently developed by it; or
  - 3.14.2.5 Is disclosed in response to requests made under the Texas Public Information Act or a court order. However, the Receiving Party ordered to disclose the Confidential Information shall: (i) give the Disclosing Party of the Confidential Information prompt written notice of all such requests, and (ii) cooperate with the Disclosing Party's efforts to obtain a protective order protecting the Confidential Information from disclosure.
- 3.14.3 No Receiving Party shall be liable for the inadvertent or accidental disclosure of Confidential Information of a Disclosing Party, if the at least as disclosure occurs despite the exercise of a reasonable degree of care, which is great as the care the Receiving Party normally takes to protect its own Confidential Information of a similar nature.
- 3.14.4 Consultant shall obtain written agreements from its agents, employees, Consultants, and subcontractors that bind them to the terms of this Section (Confidentiality).

### **3.15 USE OF WORK PRODUCTS**

- 3.15.1 The City may use all notes, plans, computations, databases, tabulations, exhibits, photographs, reports, underlying data and other work products Consultant prepares or obtains under this Agreement.
- 3.15.2 Consultant warrants that it owns the copyright to the Documents.
- 3.15.3 Consultant shall deliver the original Documents to the Director on request. Within five working days after this Agreement terminates, Consultant shall deliver to the Director the original Documents, and all other files and materials Consultant produces or gathers during its performance under this Agreement, in a format determined by the Director.

### **3.16 LICENSES AND PERMITS**

- 3.16.1 Consultant shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Consultant shall immediately notify the Director of any suspension, revocation, or other detrimental action against his license.

### **3.17 COMPLIANCE WITH LAWS**

- 3.17.1 Consultant shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.

### **3.18 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE**

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

### **3.19 CONFLICTS OF INTEREST**

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

### **3.20 NON-DISCRIMINATION**

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

### **3.21 DRUG ABUSE DETECTION AND DETERRENCE**

- 3.21.1 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.
- 3.21.2 Before the City signs this Agreement, Consultant shall file with the City Contract Compliance Officer for Drug Testing ("CCODT"):
- 3.21.2.1 a copy of its drug-free workplace policy,

- 3.21.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit D, together with a written designation of all safety impact positions and,
- 3.21.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit E.
- 3.21.3 If Consultant files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six months during the performance of this Agreement (or on completion of this Agreement if performance is less than six (6) months), a Drug Policy Compliance Declaration in a form substantially similar to Exhibit F. Consultant shall submit the Drug Policy Compliance Declaration to the CCODT within thirty (30) days of the expiration of each 6-month period of performance and within thirty (30) days of completion of this Agreement. The first six-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.
- 3.21.4 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.
- 3.21.5 Consultant shall require that its subcontractors comply with the Executive Order, and Consultant shall secure and maintain the required documents for City inspection.

### **3.22 CONSULTANT'S PERFORMANCE**

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

### **3.23 PAY OR PLAY**

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

### 3.24 ACCEPTANCE AND REJECTION

- 3.24.1. Consultant shall not be entitled to payment and the City shall have no duty to pay Consultant unless the Director has accepted the Services and other deliverables as set forth in a Task Order.
- 3.24.2. Consultant shall provide written notice to the Director upon completion and/or delivery of the Services and other deliverables as set forth in a Task Order. The Director shall accept in writing such Services and other deliverables on or before the 20th Business Day after the date of receipt of such notice by the Director unless, prior to such 20th Business Day, the Director sends written notice to Consultant stating the reason(s) why any Services and other deliverables have been rejected and not Accepted.
- 3.24.3. Notwithstanding anything to the contrary in Task Order or elsewhere, the Director may, in his sole discretion, approve in writing a partial acceptance of the Services and other deliverables set forth in a Task Order.
- 3.24.4. If the Director rejects any Services or other deliverables, Consultant shall have 10 Business Days after the Director sends written notice of rejection to correct or otherwise replace such Services or other deliverables as necessary to conform to this Agreement, at no additional cost to the City. Consultant shall provide written notice to the Director upon completion of any such correction(s) or replacement(s) after the receipt of which the Director shall continue to either accept or reject (as provided under this Section) and Consultant shall continue to make any necessary correction(s) or replacement(s) (as provided under this Section) until the Director accepts in writing all previously rejected Services or other deliverables.
- 3.24.5. Notwithstanding anything to the contrary herein or elsewhere, if the Director does not accept any Services or other deliverables after one or more attempted correction(s) or replacement(s) of such Services or other deliverables by Consultant, the Director may, in his sole discretion, issue a final rejection notice to Consultant for all Services and other deliverables (whether or not previously accepted), the City shall return all equipment and software to Consultant at no cost to the City, the City shall have no obligation to pay any amount whatsoever relating to those Services or other deliverables (or portions thereof) that are the subject of the final rejection notice, Consultant shall immediately refund any and all amounts paid by City relating to those Services or other deliverables (or portions thereof) that are the subject of the final rejection notice, and this Agreement shall immediately terminate.
- 3.24.6. The City reserves all other available rights and remedies at law or in equity, including without limitation all rights and remedies and rights under Article 2 of the Texas Business and Commercial Code.



### 3.25 MWBE COMPLIANCE

- 3.25.1. In its performance under this Agreement, 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 **39%** 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.
- 3.25.2 Consultant shall adhere to and comply with 2 CFR §200.321 if subcontracts are to be let under this Agreement. The Consultant, if subcontracts are to be let, is required to take the following affirmative steps to ensure that small business firms, minority business firms, women's business enterprises, and labor surplus area firms are used when possible pursuant to 2 CFR Section §200.321. Affirmative steps must include: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- 3.25.3 Consultant must clearly document the communication and outreach to the certified business. Documentation may include mail logs, phone logs, or similar records documenting the use of the above identified sources of information about MWSBE firms, the efforts to contact them, and other efforts to meet the above requirements.

## ARTICLE 4. DUTIES OF CITY

### 4.1. PAYMENT TERMS

- 4.1.1. For services described in **Exhibit A** and other Task Orders, the City shall pay and Consultant shall accept the fees set forth in **Section 4.2** as full compensation for all Services rendered and Deliverables furnished by Consultant under this Agreement, excluding any Reimbursable Expenses. The fees must be paid from allocated funds as provided in **Section 4.7**, inclusive of all sections therein.

## 4.2 COMPENSATION FOR CONSULTANT'S SERVICES

4.2.1. Compensation to the Consultant, excluding Reimbursable Expenses, shall be a not-to-exceed amount agreed upon by the Consultant and Director that will be set forth in each Task Order, subject to the following:

4.2.1.1. If the Director performs a cost analysis that documents any Labor Rate adjustments and the Director determines the adjustments are reasonable and based primarily on customary increases over time, then beginning twelve (12) months after the Effective Date and each year thereafter, Consultant may increase its Labor Rates by no more than the percentage of increase in the average Consumer Price Index ("CPI") plus three percent (3%) for Greater Houston as published by the U.S. Department of Labor for the current year over the average CPI for the first twelve months of the Agreement upon thirty (30) days written notice to the City.

4.2.1.2. All rates in the Labor Rates schedule, Exhibit B, shall remain firm and unchanged for at least 365 days after the Effective Date. If the Consultant seeks to adjust the Labor Rates in Exhibit B to become effective after the first 365 days after the Effective Date, then at least one hundred and twenty (120) days prior to the end of each Agreement Year, Consultant shall submit a written rate Labor Rate adjustment request to the Director and propose new rates for each labor category for which Consultant seeks an increase. Consultant may request to increase its Labor Rates by no more than the percentage of increase in the average Consumer Price Index ("CPI") plus three percent (3%) for Greater Houston as published by the U.S. Department of Labor for the current year over the average CPI for the first twelve months of the Agreement. An Agreement Year means the one (1) year period beginning on the Effective Date, and each succeeding twelve (12) month period thereafter during the Term of this Agreement, including any renewals (referred to as the Second Agreement Year, Third Agreement Year, etc.). In communicating its anticipated increases for the Director's review, verification, and approval, Consultant shall submit the following:

- i. its anticipated increase calculations and all underlying data and formulas,
- ii. the published index of the CPI-U referenced below,
- iii. detailed statement describing any changes to Consultant's operations or the breadth of services provided under the Agreement, costs or expenses outside of Consultant's control, actual documented price increases from Consultant's suppliers, the value proposition for the price increase or cost adjustment, and any other bases unrelated to the CPI-U that justify the anticipated price increase,

- iv. supporting documentation demonstrating the bases and justifications described in the detailed statement; and
  - v. any other information reasonably requested by the Director to assist the Director in performing a cost analysis of rates.
- 4.2.2. If the time initially established for completion of the Project is extended, through no fault of the Consultant, for more than 90 calendar days, the Consultant may request compensation for any required extension of services, which, if authorized, shall be paid in accordance with the provisions of Section 4.2.
- 4.2.3. Payments for Consultant's Services may be made monthly upon presentation of the Consultant's statement of services rendered and expenses incurred, including invoices, on forms provided by the City, and any other documentation reasonably required by the Director.

#### **4.3 REIMBURSABLE EXPENSES**

- 4.3.1. The City shall pay Consultant for reimbursable expenses if any, at documented actual costs, upon receipt and Director's approval of Consultant's itemized invoice.
- 4.3.2. Consultant shall propose a maximum amount for each Reimbursable Expense at the time that services requiring such expenses are requested by the Director. The Director must approve the categories and amounts of Reimbursable Expenses in writing before Consultant incurs them. The compensation for Reimbursable Expenses shall never exceed the agreed-upon maximum amount set out in a Task Order. Reimbursable Expenses are the actual expenditures Consultant and its subcontractors make while performing services for the project requested by the Director. They include travel costs outside the City and its extraterritorial jurisdiction (not to exceed the amounts established under the City's then-current travel reimbursement policy for its employees), if requested in writing by the Director and such travel is reasonably necessary to accomplish a task in connection with the Project, plus living expenses in connection with out-of-town travel, long distance communications, and fees paid for securing approval of authorities having jurisdiction over the Project. Expenses for reproductions for submittals or correction of submittals required under the design phases, reproductions for the office use of the Consultant the Consultant's subcontractors are not reimbursable.

#### **4.4 COMPENSATION FOR REIMBURSABLE EXPENSES**

- 4.4.1 Payments for Reimbursable Expenses, if any, shall be paid at documented actual costs and may be made monthly upon presentation of the Consultant's monthly invoice.

4.4.2 For Reimbursable Expenses, as described in Article 4.3, compensation to the Consultant shall be documented actual amounts expended by the Consultant, the Consultant's employees and/or subcontractors in the interest of the Project.

4.4.3 Compensation for Reimbursable Expenses as described in Article 4.3, shall not exceed the total dollar limit for Reimbursable Expenses set forth in each Task Order. The compensation for Reimbursable Expenses must be paid from allocated funds as provided in **Section 4.7**, inclusive of all sections thereof.

#### **4.5 TAXES**

4.5.1 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.

#### **4.6 METHOD OF PAYMENT**

4.6.1. The City shall pay Consultant on the basis of invoices submitted by Consultant and approved by the Director in such detail showing the Services performed and Deliverables provided and the attendant fee. The City shall make payments to Consultant at its address for notices within thirty (30) days of receipt of an approved invoice.

4.6.2. If the Director disputes an invoice Consultant submits for any reason, including lack of supporting documentation (as may be required by the Director in his reasonable discretion), 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.

#### **4.6.3 Early Payment Discount**

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

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

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

#### **4.7 LIMIT OF APPROPRIATION**

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

**4.7.2** 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 zero dollars (\$0) 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:

**4.7.2.1** 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.

**NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS.**

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

**4.7.2.2** The Original Allocation plus all supplemental allocations are the "Allocated Funds". The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Consultant must assure itself that sufficient allocations have been made to pay for Services it provides. Notwithstanding anything to the contrary in this Agreement, Consultant's obligation to perform services is contingent on the City's obligation to pay. If Allocated Funds are exhausted or should the City fail to make arrangements to make payments through the supplemental allocations process referenced in this Section 4.7, then (i) Consultant shall have no further obligation to perform Services under this Agreement; (ii) Consultant's only remedy is suspension or termination of its

performance under this Agreement, and (iii) Consultant has no other remedy in law or in equity against the City and no right to damages of any kind.

It is Consultant's responsibility to closely monitor expenditures under each Task Order and to notify the City Project Manager, in writing, prior to when Consultant's fees and expenses equal 80% of the total value of the Task Order that have been invoiced to the City by the Consultant. **THE CITY HAS NO OBLIGATION TO PAY FOR INVOICED AMOUNTS IN EXCESS OF THE 80% ALLOCATION FOR EACH TASK ORDER IN THE ABSENCE OF PRIOR, WRITTEN APPROVAL FROM THE CITY PROJECT MANAGER OR THE DIRECTOR.**

#### 4.8 ACCESS TO DATA

- 4.8.1. 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.
- 4.8.2. 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.
- 4.8.3. For any raw data created, assembled, used, maintained, collected, or stored by the Consultant for or on behalf of the City, Consultant shall provide the City either the raw data itself or the ability to extract the raw data in a format mutually agreed upon by both parties at no additional cost to the City.

#### 4.9 NO QUANTITY GUARANTEE

- 4.9.1 This Agreement does not create an exclusive right in Consultant to perform all services concerning the subject of this Agreement. The City may procure and execute contracts with other consulting firms for the same, similar, or additional services as those set forth in this Agreement or any Scope of Services or Change Order.
- 4.9.2 The City makes no express or implied representations, warranties, or guarantees whatsoever, that any particular quantity, type, task area, or dollar amount of services will be procured or purchased from Consultant through this Agreement or any Scope of Services; nor does the City make any express or implied representations, warranties, or guarantees, whatsoever for the amount or value of revenue that Consultant may ultimately derive from or through this Agreement or any Scope of Services.

## **ARTICLE 5. TERM AND TERMINATION**

### **5.1. TERM**

5.1.1. This Agreement is effective on the Effective Date and expires three (3) years after the Effective Date ("Initial Term"), unless sooner terminated in accordance with the terms and conditions of this Agreement. The Director may issue Task Orders at any time during the Initial Term and any renewal period. Each Task Order may be issued for the period set forth in the Task Order, which shall not exceed one (1) year. If the Director, at his sole discretion, makes a written request for renewal of a Task Order and if sufficient funds are allocated, then the Task Order may be renewed for up to two successive one-year periods. If, upon the final expiration or other termination of this Agreement, a Task Order is still in effect, then this Agreement shall likewise remain in effect for those purposes necessary and appropriate for the Task Order to continue to its own expiration or termination.

### **5.2. RENEWALS**

5.2.1. If the Director, at his or her sole discretion, makes a written request for renewal to Consultant at least 30 days before expiration of the Initial Term and if sufficient funds are allocated, then, upon expiration of the Initial Term, this Agreement may be renewed for two (2) successive one-year terms upon the same terms and conditions.

### **5.3. TERMINATION FOR CONVENIENCE BY THE CITY**

5.3.1. The Director may terminate this Agreement and/or any and all Task Orders at any time by giving 30 days' written notice to Consultant. The City's right to terminate this Agreement or any Task Order for convenience is cumulative of all rights and remedies which exist now or in the future. Termination of one or more Task Orders does not terminate this Agreement.

5.3.2. On receiving the notice, Consultant shall, unless the notice directs otherwise, immediately discontinue all Services under this Agreement or Task Order, as applicable, and cancel all existing orders and subcontracts that are chargeable to this Agreement or Task Order. As soon as practicable after receiving the termination notice, Consultant shall submit a final invoice marked "FINAL" showing in detail the Services performed under this Agreement or Task Order up to the termination date.

5.3.3. TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED, IF ANY, 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.

#### **5.4. TERMINATION FOR CAUSE BY THE CITY**

- 5.4.1. 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:
- 5.4.1.1. Consultant fails to perform any of its material duties under this Agreement or a Task Order;
  - 5.4.1.2. Consultant becomes insolvent;
  - 5.4.1.3. all or a substantial part of Consultant's assets are assigned for the benefit of its creditors; or 5.4.1.4. a receiver or trustee is appointed for Consultant.
- 5.4.2. 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 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 and pay Consultant for all Services performed, if any, through such date.
- 5.4.3. 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.

### **ARTICLE 6. MISCELLANEOUS**

#### **6.1. INDEPENDENT CONTRACTOR**

- 6.1.1. Consultant shall perform its obligations under this Agreement as an independent Contractor and not as an employee of the City.

#### **6.2. FORCE MAJEURE**

- 6.2.1. Timely performance by both Parties is essential to this Agreement. However, neither Party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Consultant. The event of Force Majeure may



permit a reasonable delay in performance but does not excuse a Party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Consultant, riots, court orders, and the acts of superior governmental or military authority, and which the affected Party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Consultant to any reimbursement of expenses or any other payment whatsoever.

- 6.2.2. This relief is not applicable unless the affected Party does the following:
  - 6.2.2.1. uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
  - 6.2.2.2. provides the other Party with prompt written notice of the cause and its anticipated effect.
- 6.2.3. The Director will review claims that a Force Majeure that directly impacts the City or Consultant has occurred and render a written decision within fourteen (14) days. The decision of the Director is final.
- 6.2.4. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.
- 6.2.5. If the Force Majeure continues for more than five days from the date performance is affected, the Director may terminate this Agreement by giving seven (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 UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**
- 6.2.6. 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.

### **6.3 SEVERABILITY**

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

### **6.4. ENTIRE AGREEMENT**

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

### **6.5. WRITTEN AMENDMENT**

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

### **6.6. APPLICABLE LAWS**

- 6.6.1. 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.
- 6.6.2. Exclusive venue for any litigation relating to this Agreement is Harris County, Texas.

### **6.7. NOTICES**

- 6.7.1. All notices to either Party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the Party to whom the notice is given at its address set out in Section 1.1. of this Agreement or other address, the receiving Party has designated previously by proper notice to the sending Party. Postage or delivery charges must be paid by the Party giving the notice.

### **6.8. CAPTIONS**

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

## **6.9. NON-WAIVER**

- 6.9.1. If either Party fails to require the other to perform a term of this Agreement, that failure does not prevent the Party from later enforcing that term and all other terms. If either Party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.
- 6.9.2. 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. The Director is not authorized to vary the terms of this Agreement.

## **6.10. INSPECTIONS AND AUDITS**

- 6.10.1. City, State of Texas and Federal Government (meaning the Federal Government of the United States, including, but not limited to, any of the agencies or departments that are or may provide funding for the Services to be completed under this Agreement, the Inspectors General, the Comptroller General, and any of their authorized representatives) authorized representatives may perform, or have performed, (i) audits of Consultant's books and records, and (ii) inspections of all places where work is undertaken in connection with this Agreement. Consultant shall keep its books and records available for (1) the time period required by 2 CFR Section 200.333 (retention requirements for records) in the event the City receives federal funds for all or a portion of this Agreement, or (ii) seven (7) years after the Agreement terminates, whichever is longer. For the avoidance of doubt, the time period required by CFR Section 200.333 is three (3) years from the date of submission of the final expenditure report, as interpreted by FEMA to mean the date the State submits the quarterly Federal Financial Report that represents the final costs claimed by the City for all projects the City has related to Hurricane Harvey. If the books and records are located outside of Harris County, Texas, Contractor agrees to make them available in Harris County, Texas. This provision does not affect the applicable statute of limitations.
- 6.10.2. Upon reasonable written notice, not less than twenty-four (24) hours, City representatives have the right to perform or have performed audits and inspections;
- 6.10.3. Consultant has been advised that the City is the subrecipient of federal funds under Federal Award No. HSFE06-17-0-0002, awarded September 22, 2017, administered by the General Land Office under CFDA No. 97.048, Federal Disaster Assistance to Individuals and Households in Presidential Declared Disaster Areas. The City is a party the GLO Contract, a copy of which has been made available to Consultant for review. Consultant shall comply with all terms of GLO Contract No. 18210-007 with respect to inspections and audits, and maintenance of records and Documents, as if it

were the City, including, but not limited to, Sections XIII, XIV, XVI, XXII and XXXI, as reproduced within Exhibit H to this Agreement. For purposes of Consultant's required compliance, "Subrecipient" shall refer to Consultant and "GLO" shall refer to the City within these Sections. Consultant shall cooperate fully with any request(s) made by the Director or any other entity with authority as provided therein in Exhibit H.

- 6.10.4 Consultant shall provide the Director, the Texas Department of Emergency Management, the FEMA Administrator, the Comptroller General of the United States, Inspectors General or any of their authorized representatives access to any books, documents, papers, and records of the Consultant which are directly pertinent to this Agreement for the purposes of making copies, audits, examinations, excerpts, and transcriptions. Consultant shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 6.10.5 Consultant shall provide the Director, the FEMA Administrator or his authorized representatives, or any other authorized representatives of these individuals or the State of Texas or Federal Government, as defined in Section 6.10.1, access to work sites pertaining to the work being completed
- 6.10.6 If any audit or inspection performed by FEMA, GLO, City or any other local, state or federal entity providing funding to pay for Consultant's services under this Agreement, results in the disallowance, recapture, repayment, refund, return and/or reimbursement of funds used by the City to pay fees and/or expenses for Consultant's services, based on Consultant's performance under this Agreement, Consultant shall repay, refund, and/or reimburse the City for all of such fees and/or expenses required to be paid by the City or in the case of a City audit, amounts requested or disallowed by the City, as unallowed, unauthorized, or otherwise inconsistent with this Agreement or Task Order. Consultant shall be given a reasonable opportunity to review and dispute in writing the findings of such audit or inspection. Any adjustments or payments that must be made as a result of any such audit or inspection of the Consultant's performance under the Agreement, including invoices or records, shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the written findings by the City to the Consultant. In no event will Consultant be responsible for disallowed, recaptured or reimbursed amounts that the City has paid to any party other than Consultant. Each Party shall bear its own costs of any such audit.

## **6.11. ENFORCEMENT**

- 6.11.1. The City Attorney may enforce all legal rights and obligations under this Agreement without further authorization. Consultant shall provide to the City Attorney all documents and records 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.

## **6.12. AMBIGUITIES**

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

## **6.13. SURVIVAL**

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

## **6.14. PUBLICITY**

6.14.1. 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.

## **6.15. RISK OF LOSS**

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

## **6.16. PARTIES IN INTEREST**

6.16.1.1. Except as may be specifically set forth in this Agreement and/or GLO Contract No. 18-210-007, which is attached as Exhibit H, (i) nothing expressed or referred to in this Agreement or a Task Order shall be construed to give any person, body, or legal entity, other than the City and Consultant, any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement or Task Order issued hereunder; and (ii) there are no third-party beneficiaries to this Agreement, and this Agreement and all of its provisions are for the sole and exclusive benefit of the City and Consultant.

## **6.17. SUCCESSORS AND ASSIGNS**

6.17.1. This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in **Section 6.18**. This Agreement does not create any personal liability on the part of any officer or agent of the City.

## **6.18. BUSINESS STRUCTURE AND ASSIGNMENTS**

6.18.1. 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 Section 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.

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

#### **6.19. DISPUTE RESOLUTION**

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

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

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

- 6.19.2.2. If Consultant desires to appeal a decision of the Project Administrator, Consultant must submit a written appeal to the Director. Consultant must file its written appeal within seven Business Days following receipt of the Project Administrator's original decision. The Director shall provide Consultant with a written response to the appeal within 14 Business Days following its receipt. The decision of the Director is final decision of the City. If Consultant disagrees with the decision of the Director, Consultant is permitted to pursue any legal rights and remedies in accordance with applicable law.

#### **6.20. REMEDIES CUMULATIVE**

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

## **6.21 CONSULTANT DEBT**

6.21.1. 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 THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONSULTANT HAS INCURRED A DEBT, CONSULTANT SHALL IMMEDIATELY BE NOTIFIED IN WRITING. IF CONSULTANT DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO 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.

## **6.22 FEMA REQUIREMENTS**

The parties acknowledge that City intends to seek reimbursement from the Federal Emergency Management Agency ("FEMA") for costs incurred under this Agreement. The parties agree to comply with all FEMA requirements outlined in the FEMA Addendum to this Contract, attached hereto as Exhibit G (and including Exhibits G-1, G-2, and G-3) and made a part hereof.

## **6.23 ANTI – BOYCOTT OF ISRAEL**

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

## **6.24 ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES**

The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Consultant has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of the Agreement's Effective Date. Consultant shall notify the City's Chief Procurement Officer, City Attorney, and Director of any information regarding possible violation of the Consultant or its subcontractors providing services or goods under this Agreement.

## 6.25 FLOW-THROUGH PROVISIONS

- 6.25.1 The City is a subrecipient of federal funds under Federal Award No. HSFE06-17-0-0002, awarded September 22, 2017, administered by the General Land Office under CFDA No. 97.048, Federal Disaster Assistance to Individuals and Households in Presidential Declared Disaster Areas. The City is a party to the GLO Contract that contains the provisions set out in Exhibit H to this Agreement. Consultant shall comply with the terms set out in Exhibit H as if it were the City, except to the extent this Agreement specifically addresses a topic also covered in Exhibit H, in which case the terms of this Agreement shall apply. For example, and without limiting the generality of the foregoing, Consultant's indemnity obligations to the City are governed by Section 3.7 of this Agreement and not Article XV of the GLO Contract.
- 6.25.2 In the event the City is a recipient or subrecipient of other grant, federal, or state funds or the City otherwise uses restricted funds to pay Consultant for services or expenses provided under this Agreement, Consultant shall agree, in writing, to be bound by the same contract or grant terms and conditions, laws, and regulations as the City, to the extent relevant to Consultant's scope of work, ("Additional Flow Down Provisions"). Consultant's agreement to the Additional Flow Down Provisions must be in writing, signed by the Consultant and Director and approved by the City Attorney or designee. Such written agreement does not require amendment of this Agreement but shall be incorporated into this Agreement as if fully referenced herein. If within a reasonable time after receipt of a written request from the Director (not to exceed 15 business days), the Parties are unable to reach a written agreement on the relevant Additional Flow Down Provisions following good faith negotiations, the Director, at his sole discretion may (i) immediately suspend Consultant from any further performance under the applicable Task Order(s), or (ii) terminate the applicable Task Order(s).

## 6.26 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

**NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR (I) ANY AMOUNTS REQUIRED TO BE PAID OR REIMBURSED BY CONSULTANT PURSUANT TO SECTION 6.10.6 AND (II) CONSULTANT'S OBLIGATIONS PURSUANT TO CONSULTANT'S BREACH OF ITS DATA SECURITY AND/OR CONFIDENTIALITY OBLIGATIONS AS SET FORTH IN EXHIBIT H TO THIS AGREEMENT, NEITHER CONSULTANT NOR THE CITY, NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, ELECTED OFFICIALS, REPRESENTATIVES, AFFILIATES, SUBSIDIARIES, SUCCESSORS OR ASSIGNS WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF FUNDING AND/OR DEFUNDING, LOSS OF USE, LOSS OF OPERATION TIME, OR BUSINESS INTERRUPTION, HOWSOEVER CAUSED, WHETHER ARISING OUT OF AGREEMENT, TORT, STRICT LIABILITY, INDEMNITY, WARRANTY,**



**PROFESSIONAL LIABILITY, CONTRIBUTION, EQUITY, OR OTHERWISE.**

**6.27 LIMITATION OF LIABILITY**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR:**

- (I) ANY AMOUNTS REQUIRED TO BE PAID OR REIMBURSED BY CONSULTANT PURSUANT TO SECTION 6.10.6;**
- (II) AMOUNTS OWED UNDER THE INDEMNITY PROVISIONS OF THIS AGREEMENT WITH REGARD TO CLAIMS MADE BY THIRD PARTIES, AND**
- (III) CONSULTANT'S VIOLATION OF APPLICABLE LAW, AND**
- (IV) CONSULTANT'S BREACH OF ITS DATA SECURITY AND/OR CONFIDENTIALITY OBLIGATIONS AS SET FORTH IN EXHIBIT H TO THIS AGREEMENT,**

**CONSULTANT'S MAXIMUM LIABILITY IN THE AGGREGATE FOR ALL DAMAGES, CLAIMS, LOSSES, EXPENSES, COSTS, REMEDIES, OR LIABILITY OF ANY KIND WHATSOEVER ARISING OUT OF OR RELATED TO THIS AGREEMENT, AND THE CITY'S REMEDY FOR ALL CAUSES OF ACTION ARISING HEREUNDER, WHETHER BASED IN AGREEMENT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, INDEMNITY, EQUITY, OR ANY OTHER CAUSE OF ACTION, SHALL BE LIMITED TO AND NOT EXCEED THE GREATER OF THE AMOUNT OF ONE MILLION DOLLARS (\$1,000,000.00) OR THE VALUE OF THE TASK ORDER(S) UNDER WHICH SUCH LIABILITY AROSE. FOR THE AVOIDANCE OF DOUBT, THE NOT-TO-EXCEED AMOUNT APPLIES INDIVIDUALLY TO EACH TASK ORDER.**

**EXHIBIT "A"**  
**TASK ORDER**

Date: \_\_\_\_\_  
Task Order Number 1 \_\_\_\_\_  
Agreement Number \_\_\_\_\_

Aptim Environmental & Infrastructure, Inc.  
2500 City West Blvd.  
Suite 1700  
Houston, TX 77042

Re: Consultant Agreement between the City of Houston and Consultant effective \_\_\_\_\_

This Task Order is established between City of Houston ("City") and Consultant ("Consultant"). This Task Order is entered into pursuant to and incorporates by reference all the terms of the Agreement for Master Program Management Services for Disaster Related Projects, with the City effective \_\_\_\_\_ ("Agreement"). In the event the terms of this Task Order are inconsistent with the Agreement, the Agreement shall control. This Task Order is to be identified from other task orders by the number of this Task Order. The services authorized under this Task Order are described below:

Scope of Task Order

I. Services to be Performed:

- A. **Permanent Housing Construction and Repairs (PHC) and MHU/RV Programs.** Within 7 business days of Consultant's receipt of a Notice to Proceed, Consultant shall prepare a Program Plan defining metrics for the PHC and MHU/RV programs, which shall include specific timelines and incentive structures, and describe how Consultant will ensure successful program implementation. This Program Plan will be incorporated by reference into this Task Order.

Examples of the metrics to be defined by Consultant in such Program Plan, or to be adhered to by the Consultant, include the following:

- 1) Implementation of these programs is to begin within 21 business days of Consultant's receipt of a Notice to Proceed.
- 2) Determine the number of residents who are expected to be served under each program.
- 3) Determine when the City will begin receiving applicant referrals from FEMA/GLO.
- 4) Establish a process for coordinating with, and directing, procured contractors.
- 5) In the case of the MHU/RV program, determine expected installation times.
- 6) In the case of the MHU/RV program, determine options for disposal of units.

- 7) Establish quality control measures to facilitate efficient and timely coordination with FEMA applicants, contractors, and the GLO/FEMA, as well as to minimize delays, and cost overruns.
- 8) Establish a plan for coordinating with City staff and any external agencies regarding case management obligations and best practices.
- 9) In the case of PHC, define target home completion times (which are not to exceed 60 days).
- 10) Require contractors make an initial site visit within 3 business days of being assigned a project.

**B. Direct Lease and Multi-Family Lease & Repair (MLR).** Within 14 business days of Consultant's receipt of a Notice to Proceed, Consultant shall prepare a Program Plan defining metrics for the Direct Lease and MLR programs, which shall include specific timelines and incentive structures, and describe how Consultant will ensure successful program implementation. This Program Plan will be incorporated by reference into this Task Order.

Examples of the metrics to be defined by Consultant in such Program Plan, or to be adhered to by the Consultant, include the following:

- 1) Implementation of these programs is to begin within 28 business days of Consultant's receipt of a Notice to Proceed, provided there is demonstrated supply for these programs at such time.
- 2) Determine the number of residents who are expected to be served under each program.
- 3) Determine when the City will begin receiving applicant referrals from FEMA/GLO related to these programs.
- 4) Establish a process for coordinating with, and directing, procured contractors and subject property owners.
- 5) Establish quality control measures to facilitate efficient and timely coordination with applicants, contractors, and the GLO/FEMA, as well as to minimize delays, and cost overruns.
- 6) Establish plan for coordinating with in-house staff and external agencies regarding case management obligations and best practices.
- 7) In the case of Multi-Family Lease & Repair, require each contractor to make an initial site visit within 3 business days of project assignment.
- 8) In the case of Direct Lease, validate an applicant is licensed into a home within 7 business days of a unit being secured.

**C. Program Management Office Support:** Establish and document program expectations and provide general program start-up services for the Master Program Management Office (Direct Lease, Multi Family Lease and Repair, Recreational Vehicles, Manufactured Housing Units, and Permanent Housing Construction and Repairs)

- 1) Outline program objectives in coordination with the GLO, COH and additional stakeholders through a series of kick-off meetings.

- 2) Develop draft local Policies and Procedures for the Direct Housing Assistance Program and City housing programs.
- 3) Assist with determining housing recovery demand and identify housing recovery strategy.
- 4) Create SharePoint Deliverable Site for individual housing programs – site will provide repository for contract deliverables and program documents.
- 5) Develop a draft Project Management Plan (PMP) – In consideration of the GLO's Implementation Plan, this plan will contain a description of the City's planned implementation of its housing programs.
- 6) Develop a draft Master Schedule – Schedule will provide the City with an anticipated timeline of major program events and deliverables.

**D. Data Management and Reporting:** Document system requirements to track funding from various grant program sources and create key performance metrics during program execution (Direct Lease, Multi Family Lease Repair, Recreational Vehicles, Manufactured Housing Units, and Permanent Housing Construction and Repairs)

- 1) Document system and plan requirements for grant tracking, progress tracking, and reporting.
- 2) Analyze and review system requirements for integration with the City of Houston systems and provide implementation recommendations.
- 3) Create draft Progress and Status Reports including a list and templates of standardized daily, weekly, and monthly reports that will be developed to demonstrate the monitoring systems that will be utilized to audit the program progress.
- 4) Routine progress report for status of Task Order deliverables.

**E. Communications and Outreach Planning:** Develop Communication and Stakeholder Management Plan to identify stakeholders and obtain community input, develop marketing strategies, and implement effective communications (Direct Lease, Multi-Family Lease and Repair, Recreation Vehicles, Manufactured Housing Units, and Permanent Housing Construction and Repairs).

**F. Procurement Document Development:** Provide assistance in developing solicitations for Construction Management and Case Management Services. The Consultant will work with City Purchasing staff to develop procurement documents compliant with Federal, State and Local requirements to procure vendors for certain services necessary to implement housing programs.

II. Key Personnel for purposes of this Task Order:

- John Moody
- Jo Carroll
- Sheila Manek
- Ayres Bradford
- Mary Shapiro

III. Compensation Basis: Subject to the terms of the Agreement and this Task Order and the issuance of a City purchase order, City will pay Consultant on a time and material expended basis in accordance with Section VI for the services performed hereunder. The City will reimburse Consultant up to \$20,000.00 for all expenses as detailed in the Task Order. Consultant represents that all of the services under this Task Order can be provided for an amount not to exceed the sum of \$2,549,535.00 (inclusive of authorized travel expenses as set forth in the City Agreement) ("the Aggregate Maximum Payment"). Consultant agrees that all costs incurred in excess of the Aggregate Maximum Payment are at the sole risk of the Consultant and shall be paid by the Consultant.

IV. Schedule: Task Commencement Date: \_\_\_\_\_

Task Completion Date: June 30<sup>th</sup>, 2018

V. Performance Metrics

<b>Program Deliverables</b>	<b>Deadline</b>
Develop list of metrics, timelines, and incentives for the FEMA temporary housing programs to serve as a guide for successful implementation.	7 or 14 business days after Notice to Proceed, as provided above.
Develop Initial Draft Policies & Procedures (Sec. 1.C)	60 Days after Notice to Proceed
Create SharePoint Deliverable Site (Sec. 1.C)	10 Days after Notice to Proceed
Develop Draft Project Management Plan (PMP) (Sec. 1.C)	60 Days after Notice to Proceed
Develop Draft Master Schedule (Sec. 1.C)	60 Days after Notice to Proceed
Document system plan and requirements (Sec. 1.C)	45 Days after Notice to Proceed
Analyze and Review system requirements for integration with City of Houston systems (Sec. 1.D)	60 Days after Notice to Proceed

Create Draft Progress and Status Reports (Sec. 1.D)	45 Days after Notice to Proceed
Routine progress report for status of Task Order deliverables (Sec. 1.D)	Every 7 Days after Creation of Draft Progress and Status Reports
Develop Draft Communication and Stakeholder Management Plan (Sec. 1.E)	30 Days after Notice to Proceed
Develop Procurement Documents (Sec. 1.F)	45 Days after Notice to Proceed

VI. Maximum Compensation

Task Order 1 - Labor Categories, Estimated Hourly Services, and Rates			
Labor Category	Rate	Total	
		Hrs	Total
Project Principal	\$245	30	\$0.00
Subject Matter Expert	\$200	2880	\$576,000.00
Project Manager	\$200	960	\$192,000.00
Deputy Project Manager	\$190	960	\$182,400.00
Senior Planner	\$161	2880	\$463,680.00
Planner	\$121	980	\$118,580.00
Consultant/Analyst III	\$150	2880	\$432,000.00
Consultant/Analyst II	\$120	1130	\$135,600.00
Consultant/Analyst I	\$110	1760	\$193,600.00
Senior Data Manager	\$161	315	\$50,715.00
Data Manager - Field	\$105	480	\$50,400.00
Senior Field Inspector	\$132	580	\$76,560.00
Field Inspector	\$104	100	\$10,400.00
Administrative Support	\$85	560	\$47,600.00
Reimbursable Expenses			\$20,000.00
Non-cancelable Expenses			\$0.00
<b>Total</b>		<b>16495</b>	<b>\$2,549,535.00</b>

Estimated Percentage of Minority and Women Business Enterprises (MWBE) under this Task Order - **25% (\$637,384.00)**

VII. City's Principal Contact and Address (for this Task Order only):

City of Houston  
Department of Housing and Community Development  
Tom McCasland, Director  
601 Sawyer Street  
Houston, Texas 77007  
phone: (832) 394-6282  
e-mail: Tom.McCasland@houstontx.gov

Consultant's Project Manager Contact and Address (for this Task Order only):

APTIM  
John Moody, PE  
2500 City West Blvd.  
Suite 1700  
Houston, TX 77042  
phone: 512-289-4676  
e-mail: John.Moody@aptim.com

VIII. Each invoice under this Task Order will be mailed to:

City of Houston  
Housing and Community Development Department  
601 Sawyer Street, 4<sup>th</sup> Floor  
Houston, Texas 77007

With a copy to:

City of Houston  
Office of the City Attorney  
900 Bagby Street  
Houston, Texas 77002  
Attn: \_\_\_\_\_

IX. Other terms and conditions

All invoices submitted pursuant to this Task Order must include supporting documentation for all claimed costs, including corresponding time sheets for labor costs and actual cost documentation for any claimed expenses.

This Task Order may be executed in multiple counterparts, any of which may constitute an electronic facsimile or .pdf, and all of which, taken together, shall constitute a single instrument.

For all services rendered and expenses incurred under this Task Order, Consultant shall reference on each invoice submitted to the City the job number and this Agreement.

Place of performance: City of Houston, Austin GLO

If the foregoing is satisfactory, please execute both originals of this Task Order and return one fully executed original to:

Housing and Community Development Department  
Director  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251

With a copy to:

City of Houston  
Office of the City Attorney  
900 Bagby Street  
Houston, Texas 77002  
Attn: \_\_\_\_\_

Very truly yours,

**CITY OF HOUSTON**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

**ACCEPTED AND AGREED TO:  
CONSULTANT**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT B**

**MAXIMUM LABOR RATES**

<b>Labor Category</b>	<b>Cost (Maximum Hourly Rate)</b>
Project Principal	\$245.00
Subject Matter Expert	\$200.00
Project Manager	\$200.00
Deputy Project Manager	\$190.00
Senior Planner - Field	\$161.00
Planner - Field	\$121.00
Consultant/Analyst III	\$150.00
Consultant/Analyst II	\$120.00
Consultant/Analyst I	\$110.00
Senior Data Manager	\$161.00
Data Manager - Field	\$105.00
Senior Field Inspector	\$132.00
Field Inspector	\$104.00
Administrative Support	\$85.00

## EXHIBIT C

### TITLE VI: NON-DISCRIMINATION

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

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

DRAFT FOR DISCUSSION

EXHIBIT D

DRUG POLICY COMPLIANCE AGREEMENT

I, Tyson Hackenberg, Vice President as an owner or officer of  
(Name) (Print/Type) (Title)

Aptim Environmental & Infrastructure, Inc. (Consultant)  
(Name of Company)

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.

12/13/17  
Date

Aptim Environmental & Infrastructure, Inc.

Consultant Name

  
\_\_\_\_\_

Signature

Vice President

Title

**EXHIBIT E**

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

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

as an owner or officer of \_\_\_\_\_ have  
authority to bind \_\_\_\_\_,  
(Name of Company)

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 Human  
Resources if any safety impact positions are established to provide services in performing this City  
Contract.

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

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

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

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

DRAFT FOR DISCUSSION

EXHIBIT F

DRUG POLICY COMPLIANCE DECLARATION

I, Tyson Hackenberg, Vice President as an owner or officer of  
(Name) (Print/Type) (Title)

Aptim Environmental + Infrastructure, Inc. (Consultant - Name of  
Company)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from July 1 to Dec 31, 2017

\_\_\_\_\_ (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 July 1, 2017 Start date) to Dec 31, 2017 End date) the following test has occurred

	RANDOM	REASONABLE SUSPICION	POST ACCIDENT	TOTAL
Number Employees Tested	2	0	0	2
Number Employees Positive	0	0	0	0
Percent Employees Positive	0%.	0%.	0%.	0%.


\_\_\_\_\_ (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.

12/13/17  
(Date)

Tyson Hackenberg  
(Typed or Printed Name)

  
(Signature)

Vice President  
(Title)

**EXHIBIT "G"**  
**FEMA ADDENDUM**

1. Consultant acknowledges that the Federal Government is not a party to this Addendum and Agreement and is not subject to any obligations or liabilities to the City, Consultant, or any other party pertaining to any matter resulting from this Addendum and Agreement.
2. Consultant acknowledges that Federal Emergency Management Agency (FEMA) financial assistance will be used to fund this Addendum and Agreement.
3. Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Consultant's actions pertaining to this Addendum and Agreement.
4. Consultant shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
5. Consultant shall comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures and directives.
6. Debarment and Suspension.
  - a. This Addendum and Agreement is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such the Contractor is required to verify that neither the Consultant, nor any of its principals (defined at 2 C.F.R. §180.995), or its affiliates (defined at 2 C.F.R. §180.905) are excluded (defined at 2 C.F.R. §180.940) or disqualified (defined at 2 C.F.R. §180.935).
  - b. Consultant shall comply with 2 C.F.R. Part 180, subpart C, and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
  - c. This certification as set out in more detail in **Exhibit "G-1"** is a material representation of fact relied upon by the City. If it is later determined that Consultant did not comply with 2 C.F.R. Part 180, subpart C, and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the City, the State of Texas (including an agency or division thereof) and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
  - d. Consultant shall comply with the requirements of 2 C.F.R. Part 180, subpart C, and 2 C.F.R. Part 3000, subpart C, while this offer is valid and throughout the period of any contract that may arise from this offer. Consultant further agrees to include a provision requiring such compliance in its lower tier covered transactions.

7. Byrd Anti-Lobbying Amendment.

- a. For any bid, offer, or contract exceeding \$100,000, Consultant shall file with the City a Certification Regarding Lobbying substantially in the form set out in Exhibit "G-2".
- b. Consultant shall comply with 31 U.S.C. §1352 and include a requirement to comply with 31 U.S.C. §1352, and any applicable implementing regulations, in any subcontractor or lower tier covered transaction it enters into. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an office or employee of any agency, member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant, or any other award covered by 31 U.S.C. §1352. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. Environmental Compliance.

- a. Consultant shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. §1251 et seq.).
- b. Consultant shall report all violations to the Texas Division of Emergency Management, FEMA and the regional office of the Environmental Protection Agency.
- c. Consultant shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
- d. Contractor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6201 et seq.)

9. Contract Work and Safety Standards.

- a. Overtime requirements. Neither Consultant or nor any subcontractor contracting for any part of the contract work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in this section, the Consultant and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Consultant and subcontractor shall be liable to the United States (for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth this section, in the sum of \$25 for each calendar

day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in this section.

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

10. Use of Products.

- a. In the performance of this Agreement, Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (i) competitively within a timeframe providing for compliance with the Agreement performance schedule; (ii) meeting Agreement performance requirements; or (iii) at a reasonable price.
  - i. Consultant shall abide by the list of EPA-designated items available on EPA's Comprehensive Procurement Guidelines web site: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

11. Consultant shall comply with the applicable Equal Opportunity Clause required by the United States of America, including but not limited to the provisions of 41 CFR §60-1.4(b). These provisions are inclusive of any amendments which may be made to such regulations. Further, Consultant shall include the summary of the provisions of 41 CFR § 60-1.4(b), as may be amended, in subcontracts it enters into under this Addendum and Agreement. This summary is set forth in Exhibit "G-3".



EXHIBIT "G-1"  
CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER  
RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

This Addendum and Agreement is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension). As such, Consultant is required to confirm that neither the Consultant, its principals (defined at 2 C.F.R. §180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. §180.940) or disqualified (defined at 2 C.F.R. § 180.935).

INSTRUCTIONS FOR CERTIFICATION

- 1) By signing this Addendum, the Consultant, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a Consultant to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded*, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Addendum that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this Addendum that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," as available through the United States Department of Homeland Security, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-Procurement Programs.
- 9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

CERTIFICATION

- 1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:
  - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency;
  - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

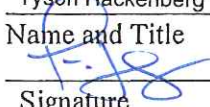
Aptim Enviromental and Infrastructure, Inc.	
Contractor Company Name	
Tyson Hackenberg - Vice President	
Name and Title	
	05/07/2018
Signature	Date

EXHIBIT "G-2"


ANTI-LOBBYING CERTIFICATION

The undersigned Consultant certifies, to the best of his or her knowledge, that:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any City agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 31 USC § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

Consultant Name:	Aptim Environmental & Infrastructure, Inc.
President:	Gary Baughman
Name of Authorized Official:	Tyson Hackenberg / Vice President
Signature:	
Date:	May 8, 2018



## EXHIBIT "G-3"

### EQUAL OPPORTUNITY CLAUSE

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

During the performance of this Agreement, the Consultant agrees as follows:

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

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

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

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

(4) The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other agreement or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

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

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

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

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

The applicant/Consultant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Consultant and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

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

**EXHIBIT H**

**FLOW-THROUGH PROVISIONS**

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

**INTERLOCAL AGREEMENT  
(NON-RESEARCH & DEVELOPMENT)  
BETWEEN THE TEXAS GENERAL LAND OFFICE  
AND THE CITY OF HOUSTON**

**I. Parties:**

The parties to this Interlocal Agreement ("Agreement") are The General Land Office ("GLO") and the City of Houston ("Subrecipient"), DUNS No. 053453569, each a "Party" and, collectively, the "Parties." The City of Houston is a Subrecipient of federal funds under Federal Award No. HSFE06-17-0-0002, awarded September 22<sup>nd</sup>, 2017, administered by the GLO under CFDA No. 97.048, Federal Disaster Assistance to Individuals and Households in Presidential Declared Disaster Areas.

**II. Authority:**

This Agreement is authorized by:

- A. Homeland Security Act of 2002, Pub. L. No. 107-296 (2002) (codified as amended at 6 U.S.C. § 101 *et seq.*).
- B. Sections 306 and 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288 (1974) (codified as amended at 42 U.S.C. §§ 5149 and 5174) ("Stafford Act").
- C. Department of Homeland Security Delegation of Authority No. 9001.1, *Delegation to the Administrator of the Federal Emergency Management Agency* (Dec. 10, 2010).
- D. Title 44 of the U.S. Code of Federal Regulations, Chapter I, Part 206.
- E. Texas Disaster Act of 1975 (Tex. Gov't Code Ch. 418).
- F. Texas Interlocal Cooperation Act (Tex. Gov't Code Ch. 791).
- G. Title 2 of the U.S. Code of Federal Regulations, Subtitle A, Chapter II, Part 200.
- H. Federal Grant and Cooperative Agreement Act, 31 U.S.C. § 6301 *et seq.*

### III. Background:

On August 25, 2017, the President declared major disaster DR-4332 for the State of Texas pursuant to his authority under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.). This declaration authorized the U.S. Department of Homeland Security's (DHS) Federal Emergency Management Agency ("FEMA") to provide financial assistance and direct services, under Section 408 of the Stafford Act, to individuals and households "who, as a direct result of a major disaster, have necessary expenses and serious needs in cases in which the individuals and households are unable to meet such expenses or needs through other means," such as insurance. FEMA may provide direct temporary housing when there is a lack of available housing resources. In addition, FEMA may authorize Permanent Housing Construction (PHC) in the form of direct or financial assistance when there are no alternate housing resources available and temporary housing assistance is not available, is infeasible, or not cost effective.

FEMA determined that due to the significant damage caused by Hurricane Harvey, the exigent need for housing requires the provision of direct housing assistance to eligible survivors under Section 408. FEMA is in need of support to execute the direct housing mission for DR-4332, and the GLO has entered into an Intergovernmental Service Agreement (the "IGSA") with FEMA to assist in the provision of direct housing assistance. The IGSA, all exhibits and addenda attached thereto are hereby incorporated into this Agreement and made a part hereof.

In furtherance of the direct housing mission under the IGSA, the GLO and the Subrecipient enter into this Interlocal Agreement with the GLO to provide support at a local level.

### IV. Project Description, Purpose of Agreement:

- A. The purpose of this Agreement is to establish an agreement between the GLO and the Subrecipient for the provision of direct housing assistance, under section 408 of the Stafford Act, to individuals and households who are displaced from their pre-disaster residences, or whose pre-disaster primary residences are rendered uninhabitable as a result of damage caused by Hurricane Harvey, and who are unable to meet the expenses associated with procuring housing by other means.
- B. This Agreement sets forth the responsibilities of the GLO and the Subrecipient, and states the services that the Subrecipient shall perform satisfactorily in order to receive payment from GLO.

### V. Services, Subaward, and Period of Performance:

- A. The Subrecipient shall provide assistance to the GLO in the delivery of direct temporary housing, and direct permanent housing construction assistance to Hurricane Harvey eligible disaster survivors residing within the areas declared by DR-4332. **See Attachment A, Program Implementation and Conditions.**

- B. **Not Applicable**

**C. Not Applicable:**

**D. Procurement Standards:** The Subrecipient shall comply with all applicable federal, state, and local laws and requirements, including but not limited to proper competitive solicitation processes where required, for any procurement which utilizes federal funds awarded under this Agreement in accordance with 2 C.F.R. §§200.318 - 200.326 and Appendix II to 2 C.F.R. Part 200 (A-C) and (E-J). The GLO may allow, through intergovernmental agreements contemplated under 2 C.F.R. § 200.318(e), the Subrecipient to procure from pool vendors qualified under a GLO procurement provided that such Subrecipient's procurement complies with 2 C.F.R. §§ 200.318 – 200.326, and any local procurement requirements, policies and procedures, if not suspended by the Governor. Any contract resulting from such a procurement shall name the GLO as a third-party beneficiary to the contract.

**VI. Federal and State Funding, Recapture, Redistribution, Retainage, and Overpayment of Funds**

**A. Federal Funding:** Funding for this Agreement is appropriated under the Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Public Law No. 115-56) for disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared in 2017 which are Presidentially-declared major disaster areas under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.). The fulfillment of this Agreement is based on those funds being made available to the GLO under the IGSA. ALL EXPENDITURES UNDER THIS CONTRACT MUST BE MADE IN ACCORDANCE WITH THIS AGREEMENT, AND ANY OTHER APPLICABLE LAWS. FURTHER, THE SUBRECIPIENT ACKNOWLEDGES THAT ALL FUNDS ARE SUBJECT TO RECAPTURE AND REPAYMENT FOR NON-COMPLIANCE.

**B. State funding:** This Agreement shall not be construed as creating any debt on behalf of the State of Texas and/or the GLO in violation of Texas Constitution, Article III, Section 49. In compliance with Texas Constitution, Article VIII, Section 6, it is understood that all obligations of the GLO hereunder are subject to the availability of state or federal funds. If such funds are not appropriated or become unavailable, this Agreement may be terminated. In that event, the Parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests, accrued up to the date of termination.

**C. Recapture of funds:** The Subrecipient shall conduct activities as set forth in the Agreement, in a satisfactory manner as determined by the GLO. The discretionary right of the GLO to terminate for convenience under this Article notwithstanding, it is expressly understood and agreed by the Subrecipient that the GLO shall have the right to terminate the Agreement and recapture, and be reimbursed for, any payments made by the GLO that the Subrecipient has not used in strict accordance with the terms and conditions of this Agreement.

**D. Not Applicable:**



- E. **Overpayment:** The Subrecipient understands and agrees that it shall be liable to the GLO for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Agreement. The Subrecipient further understands and agrees that reimbursement of such disallowed costs shall be paid by the Subrecipient from funds which were not provided or otherwise made available to the Subrecipient under this Agreement.

#### VII. Rates and Ceiling:

- A. Subject to GLO's payment from FEMA pursuant to the IGSA, GLO agrees to pay the Subrecipient for documented, reasonable, and allowable, and allocable costs related to assistance provided to applicants, in accordance with the terms of the IGSA, Federal law, and FEMA regulation and policy.
- B. 2 C.F.R. Part 200. The Subrecipient, by execution of this Agreement, certifies that the pricing established under this Agreement is in compliance the Cost Principles in 2 C.F.R. Part 200, Subpart E, and includes only allowable costs of performance under this Agreement.

#### VIII. Program Service Cost Controls

- A. Each program assistance service line item has a per-unit housing funding cap established.
- B. The program service cost-control methods will be applied, as detailed in **Attachment A**.
- C. Only FEMA may approve exceptions to the program service cost caps which exceed the amounts or justifications described in **Attachment A**.

#### IX. Administrative Costs

- A. The Subrecipient's administrative costs for the direct housing program will be calculated and managed for purposes of this agreement in an analogous manner to the current PA model delineated in 44 C.F.R. § 207.7(b) and (c).
- B. Administrative costs means any direct and indirect costs, administrative expenses, and any other expenses not directly chargeable to a specific project that are reasonably incurred by the Subrecipient in administering and managing this mission. Indirect costs means costs that are incurred by the State and the Subrecipient for a common or joint purpose benefiting more than one cost objective that are not readily assignable to the cost objectives specifically benefited.
- C. Administrative costs are not intended to cover direct costs of managing specific projects because these costs generally are eligible as part of the cost accounting for each project.

#### D. Not Applicable:

- E. Reimbursement of the Subrecipient's administrative costs are all subject to the IGSA.

- F. Final administrative costs accounting will be verified upon agreement closeout, and based on actuals, not initial projection amounts. Any surplus is subject to reimbursement.

#### **X. Program Funding**

- A. GLO will obligate funds to the Subrecipient upon approval and issuance of project orders under Section VII. This money will be drawn down upon via the invoicing procedures contained herein.
- B. Approved proper invoices will draw down against obligated projects on a reimbursable basis.

#### **XII. Invoicing and Payment:**

- A. Requests for reimbursement under this agreement must be received by the GLO not later than sixty (60) days from the date the Subrecipient incurs the expense, including invoices for expenses incurred by any Subcontractor. **Failure of the Subrecipient to comply with this sixty-day (60-day) requirement, may, at the GLO's sole discretion, result in denial of the request for reimbursement.**
- B. Each invoice submitted shall be supported by actual receipts, cancelled checks, and/or such other documentation that, in the judgment of the GLO, allows for the full substantiation of the costs incurred and shall contain the following information:
1. The date of invoice submission;
  2. Invoice date and number;
  3. Agreement number;
  4. Detail of the Services provided and work completed;
  5. Breakdown of the political subdivisions at which services were provided;
  6. Breakdown by service and associated Contract Line Item Number (CLIN);
  7. Itemized listing of all other charges;
  8. Supporting documentation;
  9. Name, title, and phone number of person to notify in event of defective invoice;
  10. Taxpayer Identification Number (TIN)
  11. Subaward CFDA Number.
- C. Invoices shall be submitted in a format prescribed by the GLO.
- D. Payment will be made by electronic funds transfer.

#### **XIII. Inspection and Audit**

- A. Pursuant to the audit and monitoring requirements in 2 C.F.R. Part 200, Texas Gov't Code Chapter 321, and Texas Gov't Code Chapter 2262 (collectively, the "Administrative and Audit Regulations"), the Subrecipient agrees that all relevant records related to this Agreement or any work product produced, including the records of its Subcontractors, shall be subject to the Administrative and Audit Regulations. The Subrecipient agrees that all relevant records related to this Agreement or any work product produced, including those of its subcontractors, shall be subject at any reasonable time to inspection, investigation, examination, audit, and

copying at any location where such records may be found, with or without notice by the State of Texas Auditor's Office, the GLO, its contracted examiners, the Texas Attorney General's Office, or other government entity with necessary legal authority. In addition, FEMA, the Comptroller General, the General Accounting Office, the Office of Inspector General, or any authorized representative of the U.S Government shall also have this right of inspection. The GLO reserves the right to perform periodic on-site monitoring of the Subrecipient's compliance with the terms and conditions of this Contract, assurance of non-duplication of beneficiaries and of the adequacy and timeliness of the Subrecipient's performances under this Agreement. After each monitoring visit, the GLO shall provide the Subrecipient with a written report of the findings. If the monitoring report notes deficiencies in the Subrecipient's performances under the terms of this Agreement, the monitoring report shall include requirements for the timely correction of such deficiencies by the Subrecipient. Failure by the Subrecipient to take action specified in the monitoring report may be cause for suspension or termination of this Agreement. The Subrecipient understands that acceptance of funds under this Agreement, directly or indirectly as a subcontractor, acts as acceptance of the authority of the State of Texas Auditor's Office to conduct an audit or investigation in connection with those funds. The Subrecipient further agrees to cooperate fully with any state entity the conduct of inspection, investigation, examination, audit, and copying, including providing all relevant records and information requested. THE SUBRECIPIENT SHALL ENSURE THAT ALL SUBCONTRACTS AWARDED REFLECT THE REQUIREMENTS OF THIS SECTION, AND THE REQUIREMENT TO COOPERATE.

- B. The Subrecipient will be deemed to have read and have knowledge of all applicable federal, state, and local laws, regulations, and rules, including, but not limited to those governing audit requirements pertaining to the Agreement.

#### **XIV. Subrecipient Self-Audit AND Targeted Audits**

- A. Subrecipient Self-Audit: The Subrecipient, upon approval of the GLO, may conduct an annual financial and compliance audit of funds received and performances rendered under this Agreement. The Subrecipient may utilize funds budgeted under this Agreement to pay for that portion of the cost of such audit services properly allocable to the activities funded by the GLO under this Agreement, provided however that the GLO shall not make payment for the cost of such audit services until the GLO has received from the Subrecipient a satisfactory audit report and invoice, as solely determined by the GLO. The invoice submitted for reimbursement should clearly show the percentage of cost relative to the total cost of the audit services. Therefore, the Subrecipient shall submit an invoice showing the total cost of the audit and the corresponding prorated charge per funding source. If applicable, an explanation shall be submitted with the reimbursement request, explaining why the percentage of audit fees exceeds the prorated amount allowable.
- B. Targeted Audits: In addition, the GLO shall have the right at any time to perform, or to instruct the performance of, an annual program and/or fiscal audit, or to conduct a special or targeted audit of any aspect of the operation of the Subrecipient, using an auditor of the GLO's choice. The Subrecipient shall maintain such

financial records and other records as may be prescribed by the GLO or by applicable federal and state laws, rules, and regulations. These records shall be made available during the term of this Contract and the subsequent period for examination, transcription, and audit.

#### **XV. Indemnity:**

A. TO THE EXTENT PERMITTED UNDER THE LAW, EXCEPT FOR DAMAGES DIRECTLY OR PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OF THE GLO, SUBRECIPIENT SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, THE GLO, AND THE OFFICERS, REPRESENTATIVES, AGENTS, AND EMPLOYEES OF THE STATE OF TEXAS AND THE GLO FROM ANY LOSSES, CLAIMS, SUITS, ACTIONS, DAMAGES, OR LIABILITY (INCLUDING ALL COSTS AND EXPENSES OF DEFENDING AGAINST ALL OF THE AFOREMENTIONED) ARISING IN CONNECTION WITH:

- THIS AGREEMENT;
- ANY NEGLIGENCE, ACT, OMISSION, OR MISCONDUCT IN THE PERFORMANCE OF THE SERVICES REFERENCED HEREIN; OR
- ANY CLAIMS OR AMOUNTS ARISING OR RECOVERABLE UNDER FEDERAL OR STATE WORKERS' COMPENSATION LAWS, THE TEXAS TORT CLAIMS ACT, OR ANY OTHER SUCH LAWS.

SUBRECIPIENT SHALL BE RESPONSIBLE FOR THE SAFETY AND WELL BEING OF ITS EMPLOYEES, CUSTOMERS, AND INVITEES. THESE REQUIREMENTS SHALL SURVIVE THE TERM OF THIS AGREEMENT UNTIL ALL CLAIMS HAVE BEEN SETTLED OR RESOLVED AND SUITABLE EVIDENCE TO THAT EFFECT HAS BEEN FURNISHED TO THE GLO. THE PROVISIONS OF THIS ARTICLE XV SHALL SURVIVE TERMINATION OF THIS CONTRACT.

#### **XVI. Financial Records:**

- A. Retention of Records: For purposes of state and federal examination and audit, and in accordance with 2 C.F.R. Part 200, Subpart D, all Agreement and financial records including, but not limited to, supporting documents, statistical records, and other records, pertinent contracts, or subordinate agreements under this Agreement shall be retained by the Subrecipient for three (3) years from the date of Subrecipient's final invoice or expenditure report. If any litigation, claim, negotiation, audit, or other action involving the records is initiated before the expiration of the three (3) year period, the records must be retained until completion of the action and resolution of all issues which arise from it or until the end of the regular three (3) year period, whichever is later.
- B. Access to Records: FEMA and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers or other records of the Subrecipient, its sub-recipients or its sub-contractors, which are pertinent to this Agreement, in order to make audits, examinations, excerpts, and transcripts. The rights of access must not be limited to the required retention period, but shall last as long as the records are retained.

- C. Delinquent Debt Collection: The Subrecipient shall be liable to the GLO for any overpayment, or any breach of this Agreement that results in a debt owed to the GLO, or in a debt owed to FEMA on behalf of the GLO resulting from any overpayment to the Subrecipient or any breach of this Agreement by the Subrecipient, including any interest or fees, if applicable.

**XVII. Non-Financial Records Retention:**

- A. Retention of Records: Applicant Personally Identifiable Information (PII) must be destroyed upon the expiration of the three (3) years from the date of Subrecipient's final invoice or expenditure report.
- B. The Subrecipient will also ensure that all staff and any contractor and subcontractor delivering direct housing understand their responsibilities in protecting and safeguarding PII and Sensitive Personally Identifiable Information (SPII) by completing the DHS web-based privacy awareness training course: Privacy at DHS: Protecting Personal Information, found on the DHS website: <http://www.dhs.gov/dhs-security-and-training-requirements-contractors>.
- C. The Subrecipient shall abide all DHS/FEMA rules and policies governing the proper creation, maintenance, use, and disposition of records.
- D. The Subrecipient is performing their responsibilities under this Agreement under a FEMA subaward, and any data or materials provided by FEMA remain the property of FEMA.

**XVIII. Not Applicable**

**XXII. Inspection:**

- A. Work described in the Agreement is subject to inspection by the GLO, FEMA, and other applicable Government agencies. The Subrecipient shall participate in responding to all requests for information and inspection or review findings by regulatory agencies. The Subrecipient shall allow the GLO, FEMA, or an entity or organization approved by GLO or FEMA, to conduct inspections of the housing units, as required, to ensure an acceptable level of services and acceptable conditions of housing as determined by the GLO or FEMA. No notice to the Subrecipient is required prior to an inspection.

**XXIII. Confidentiality and Nondisclosure:**

Under the terms and conditions of the FEMA-State of Texas Intergovernmental Service Agreement (IGSA) and the IGSA Implementation Plan, any sub contract or agreement for delivery of direct housing assistance by a Council of Government (COG), local entity, or other subcontractor for the State, will include the substance of the language in Section XVIII: Confidentiality and Nondisclosure in the IGSA and Section 4.0: Process for Receiving and Securing Personally Identifiable Information in the IGSA Implementation

information belonging to FEMA and FEMA applicants, any COG, local entity, or other subcontractor for the State shall be subject to the same terms and conditions in the IGSA and its implementation Plan, and after receipt thereof, treat such information as confidential and not appropriate such information to its own use or disclose such information to third parties unless specifically authorized by FEMA in writing.

The provisions in the IGSA and IGSA Implementation Plan regarding confidentiality and nondisclosure and sharing data are incorporated and made part of this Agreement, including but not limited to:

A. The Subrecipient is responsible for securing and protecting sensitive or proprietary business, technical or financial information belonging to FEMA and FEMA applicants once it has been received from the State/GLO. Furthermore, the Subrecipient shall ensure its contractors, sub-contractors, and contractor employees safeguard sensitive or proprietary business, technical or financial information belonging to FEMA and FEMA applicants under a process that meets the Federal and State standards outlined in this agreement.

B. The Subrecipient shall keep all assignment-related information strictly confidential by employing in direct housing assistance operations the requirements in the following:

1. The Privacy Act of 1974 (Privacy Act), as amended, 5 U.S.C. § 552a;
2. Homeland Security Acquisition Regulations (HSAR) Class Deviation 15 (Safeguarding Sensitive Information) and HSAR 3052.204-71; and
3. The Freedom of Information Act, 5 U.S.C. Section 552, as amended by Public Law No. 104-231, 110 Stat. 3048.

C. The Subrecipient shall ensure compliance with The Privacy Act of 1974 (Privacy Act), as amended, 5 U.S.C. § 552a, and all other federal privacy and non-disclosure laws listed above for the collection, maintenance, use, release, and dissemination of all personally identifiable information used or shared under this Agreement.

1. The Subrecipient shall only collect information that is necessary to carry out this Agreement.
2. The Subrecipient shall maintain the information in a secure fashion that meets Federal administrative, technical, and physical safeguards.
3. The Subrecipient shall use information under this Agreement only for the purpose for which it was collected.
4. The Subrecipient shall only permit the sharing of information with State officials and Local officials that have the need to know in order to implement and under a process that meets Federal and State standards identified in the requirements of this Agreement, the IGSA and the IGSA Implementation Plan. No other sharing or dissemination of information is permitted without the express permission from FEMA.

D. PII and SPII will be maintained and stored by the GLO. To the extent that Subrecipient is required to maintain or store PII or SPII, Subrecipient shall abide by the following Information Technology Security Conditions and PII and/or SPII Protection Requirements:

1. Subrecipient will ensure that it and its personnel will maintain and safeguard any and all PII and confidential information gathered pursuant to the provisions of this Agreement, whether in physical or electronic form, and comply with security and risk management provisions of the National Institutes of Standards and Technology (NIST) "Framework for Improving Critical Infrastructure Cybersecurity." Such safeguards include securing Information Technology (IT) networks and equipment and storing such information in places and in manner that is safe from access by unauthorized persons or from unauthorized use.
2. If the Subrecipient uses a cloud based system to house information received during the course of activities carried out under this Agreement, if any, meets or exceeds the baseline privacy and security controls for a moderate-impact system set forth under the Federal Risk and Authorization Management Program (a/k/a FedRAMP).
3. Each and every Subrecipient IT system, regardless of configuration or location, must undergo routine cybersecurity scans.
4. Subrecipient shall not include any sensitive information in the subject or body of any e-mail. To transmit sensitive information, the Subrecipient shall use at least 256-bit AES encryption to protect sensitive information in attachments to email. Passwords shall not be communicated in the same email as the attachment. A data breach, as described directly above in D.5 shall not, by itself, be interpreted as evidence that the Subrecipient has failed to provide adequate information security safeguards for sensitive information, or has otherwise failed to meet the requirements of the contract.
5. In the event of any unauthorized exposure, release, or misuse of personally identifiable information (PII), the Subrecipient will immediately report the incident to the GLO. The GLO will promptly forward the report to the FEMA Privacy Officer at (202) 212-5100 or [FEMA-Privacy@fema.dhs.gov](mailto:FEMA-Privacy@fema.dhs.gov).
6. GLO and the Subrecipient bear the costs associated with maintaining PII and SPII, including in the event of a data breach, as described directly above in D.5.
7. The Subrecipient shall have in place procedures and the capability to notify any individual whose PII or SPII resided in the Subrecipient IT system at the time of the data breach, as described above in D.5. of this Article XXIII, not later than 5 business days after being directed to notify individuals, unless otherwise approved by the GLO. The method and content of any notification by the Subrecipient shall be coordinated with, and subject to prior written approval by GLO, in consultation with the FEMA Privacy Officer, utilizing the DHS Privacy, Incident Handling Guidance. The Subrecipient shall not proceed with notification unless the GLO in consultation with the FEMA Privacy Officer, has determined in writing that notification is appropriate.
8. If a data breach, as described directly above in D.5 involves PII or SPII, Subrecipient shall also provide to the GLO as many of the following data elements that are

available at the time the incident is reported, with any remaining data elements provided within 24 hours of submission of the initial incident report:

- i. Point of contact (POC) if different than the POC set forth in this Agreement (address, position, telephone, email);
  - ii. Name of Subrecipient's contractor/subcontractor if this was an incident on a contractor or subcontractor network;
  - iii. The programs, platforms or systems involved;
  - iv. Location(s) of incident;
  - v. Date and time the incident was discovered;
  - vi. Server names and IP addresses where sensitive information resided at the time of the incident;
  - vii. Description of survivor PII and/or SPII contained within the system;
  - viii. Number of people potentially affected and the estimate or actual number of records exposed and/or contained within the system; and
  - ix. Any additional information relevant to the incident.
9. Subrecipient shall provide full access and cooperation for all activities determined by FEMA and GLO to be required to ensure an effective incident response, including providing all requested images, log files, and event information to facilitate rapid resolution of data breaches, as described directly above in D.5.
10. Incident response activities determined to be required by GLO with consultation from FEMA may include, but are not limited to, the following:
- i. Inspections,
  - ii. Investigations,
  - iii. Forensic reviews, and
  - iv. Data analyses and processing.
  - v. FEMA, at its sole discretion, may obtain the assistance from other Federal agencies and/or third-party firms to aid in incident response activities.
11. Subject to FEMA analysis of the incident and the terms of its instructions to GLO regarding any resulting notification, the notification method may consist of letters to affected individuals sent by first class mail, electronic means, or general public notice, as approved by GLO and FEMA. Notification may require the Subrecipient's use of address verification and/or address location services. At a minimum, the notification shall include:



- i. A brief description of the incident;
- ii. A description of the types of PII and SPII involved;
- iii. A statement as to whether the PII or SPII was encrypted or protected by other means;
- iv. Steps individuals may take to protect themselves;
- v. What the Subrecipient and/or GLO are doing to investigate the incident, to mitigate the incident, and to protect against any future incidents; and
- vi. Information identifying who individuals may contact for additional information.

12. Credit Monitoring Requirements: In the event that a data breach, as described directly above in D.5 involves PII or SPII, the Subrecipient may be required to, as directed by GLO and FEMA:

- i. Provide notification to affected individuals as described above; and/or
- ii. Provide credit monitoring services to individuals whose data was under the control of the Subrecipient or resided in the Subrecipient IT system at the time of the data breach, as described directly above in D.5 for a period beginning the date of the incident and extending not less than 18 months from the date the individual is notified. Credit monitoring services shall be provided from a company with which the Subrecipient has no affiliation. At a minimum, credit monitoring services shall include:
  1. Triple credit bureau monitoring;
  2. Daily customer service;
  3. Alerts provided to the individual for changes and fraud; and
  4. Assistance to the individual with enrollment in the services and the use of fraud alerts; and/or
- iii. Establish a dedicated call center. Call center services shall include:
  1. A dedicated telephone number to contact customer service within a fixed period;
  2. Information necessary for registrants/enrollees to access credit reports and credit scores;
  3. Weekly reports on call center volume, issue escalation (i.e., those calls that cannot be handled by call center staff and must be resolved by call center management or GLO, as appropriate;
  4. Customized FAQs, approved in writing by GLO in coordination with the FEMA Privacy Officer; and

5. Information for registrants to contact customer service representatives and fraud resolution representatives for credit monitoring assistance.
- E. To the extent allowed by law, the provisions contained in Article XXIII, Sections A - B will control if a conflict arises between the provisions in TAC Title 1, Part 10, Chapter 202; Chapter 2261 of the Texas Government Code (requiring the GLO to post this agreement on its website); and Chapter 552 of the Texas Government Code (governing the release of public information).
- F. The Subrecipient shall share sensitive or proprietary business, technical or financial information belonging to FEMA and FEMA applicants with the State/GLO in encrypted and password protected portable document file (".pdf") format or any other format agreed between FEMA and the State/GLO that meets the cybersecurity laws and regulation of FEMA and DHS.
- G. Failure of the Subrecipient to mark as "confidential" or "trade secret" any information it believes to be excepted from disclosure waives all claims the Subrecipient may make against the GLO for releasing such information without prior notice to Subrecipient.
- H. Press releases, marketing material, and any other printed or electronic documentation related to this project shall not be publicized without prior written approval from GLO and FEMA.

#### **XXIV. Security Requirements:**

Individuals that will access FEMA systems in the regular course of business shall be required to undergo a Tier 2 (Moderate) federal background check. Any information gathered during the background check process shall be maintained by FEMA Security.

Individuals that access federal data residing in GLO Information Systems shall be required to undergo a state background check. The Subrecipient shall submit to the GLO a roster of names of all employees and/or contractors who will be engaged in services set forth in Paragraph V. The GLO will be responsible for forwarding this information to FEMA, if required. The roster shall contain the following information about each individual:

- A. Name (last, first, and middle initial), including aliases
- B. Status (type of employment)
- C. Home address
- D. Phone number
- E. Date of birth
- F. Citizenship

#### **XXI. Stop Work Order:**

- A. The GLO may, at any time, by written order to the Subrecipient, require the Subrecipient to stop all, or any part, of the work called for by this Agreement for a period of 90 days after the order is delivered to the Subrecipient, and for any further period to which the parties may agree. The order shall be specifically identified as a

stop-work order. Upon receipt of the order, the Subrecipient shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

- B. Within a period of 90 days after a stop-work order is delivered to the Subrecipient, or within any extension of that period to which the parties shall have agreed, the GLO shall either—
  - 1. Cancel the stop-work order; or
  - 2. Terminate the Agreement.

#### **XXVI. Not Applicable**

#### **XXVII. Modification:**

- A. Pursuant to the IGSA, the FEMA Contracting Officer may at any time, by written order, and without notice to the GLO, make changes within the general scope of the IGSA in any one or more of the following:
  - 1. Reduction in the quantity of services to be provided; and
  - 2. Place of performance of the services.
- B. Any such changes in the underlying IGSA shall automatically be incorporated into this Agreement.
- C. The parties may modify all other terms of this Agreement upon the mutual written consent of each party.

#### **XXVIII. Insurance and Bond Requirements**

- A. Unless the Subrecipient is authorized pursuant to Chapter 2259 of the Texas Government Code, entitled "Self-Insurance by Governmental Units," to self-insure, the Subrecipient shall carry insurance for the duration of this Contract in types and amounts necessary and appropriate for carrying out direct housing assistance under this Agreement.
- B. The Subrecipient shall require all contractors, subcontractors, vendors, service providers, or any other person or entity performing work described in **Attachment A** to carry insurance for the duration of the Project in the types and amounts customarily carried by a person or entity providing such goods or services. Any person or entity required to obtain insurance under this Section must also be required to complete and file the declaration pages from the insurance policies with the Subrecipient whenever a previously identified policy period expires during the term of the Subrecipient's contract with the person or entity, as proof of continuing coverage. The Subrecipient's contract with any such person or entity shall clearly state that acceptance of the insurance policy declaration pages by the Subrecipient shall not relieve or decrease the liability of the person or entity. Persons or entities shall be required to update all expired policies prior to the Subrecipient's acceptance of an invoice for monthly payment from such parties.
- C. The Subrecipient shall require performance and payment bonds to the extent they are required under Chapter 2253 of the Texas Government Code.

- D. The Subrecipient shall require, on all constructions projects, that any person or entity required to provide Federal Construction Assurances shall timely complete SF-424D, entitled "Assurances- Construction Programs," and the Subrecipient shall maintain such documentation.

**XXIX. Other Provisions:**

- A. In the performance of this Contract, the Subrecipient shall comply with all applicable federal, state, and local laws, ordinances, and regulations, including, but not limited to, those listed in Attachment C, Attachment D, Attachment E, and Attachment F as further described in Article XXXIII of this Agreement. The Subrecipient shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations that in any manner affect performance under this Agreement. The Subrecipient will be deemed to have knowledge of these laws and regulations and be deemed to understand them.
- B. Nothing in this Agreement is intended to conflict with the IGSA, current law or regulation or the directives of the federal government, FEMA, DHS, or the State. If a term of this Agreement is inconsistent with such authority, then that term shall be invalid but the remaining terms and conditions of this Agreement shall remain in full force and effect.
- C. The Subrecipient, in its completion of its responsibilities under this Agreement, shall abide by all statutes, Executive Orders, regulations, and policies governing the provision of FEMA's direct housing assistance program in the same manner and to the same extent as would be required of FEMA in its own implementation of the program. The Subrecipient has no authority to waive FEMA policy.
- D. Nothing in this Agreement is intended to create any right or benefit, substantive or procedural, enforceable by law or equity, by the parties or by persons who are not a party to this Agreement against the parties, their officers or employees, or any other person.
- E. Each of the following shall constitute an event of default under this Agreement: (i) the Subrecipient's failure to comply with any term, covenant, or provision contained in this Agreement; (ii) the Subrecipient's makes a general assignment for the benefit of creditors or takes any similar action for the protection or benefit of creditors; or if at any time the Subrecipient makes any representation or warranty that is incorrect in any material respect to this Agreement, any request for payment submitted to the GLO, or any report submitted to the GLO related to this Agreement.
- F. Upon completion of all activities required under this Agreement, the GLO will close-out the Agreement in accordance with 2 C.F.R. §§ 200.343 – 200.345 and applicable GLO procedures and guidelines.
- G. DUNS Number. Subrecipient confirms its Data Universal Numbering Systems (DUNS) Number is accurate and is registered on [www.sams.gov](http://www.sams.gov). The DUNS Number is the nine-digit number established and assigned by Dun and Bradstreet, Inc., at 866/705-5711 or <http://fedgov.dnb.com/webform>
- H. Each Party hereto represents and warrants that the person executing this Agreement on its behalf has full power and authority to legally bind its respective entity. Subrecipient

acknowledges that this Agreement is effective for the period of time specified in the Agreement. Any work performed by Subrecipient after the Contract terminates is performed at the sole risk of the Subrecipient.

- I. The Subrecipient will maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts and will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
- J. Ownership and Use: (a) The Subrecipient shall not publish, release, or use any information, data, or materials generated in fulfillment of this Agreement except for in fulfillment of this Agreement.  
  
(b) The Parties to this Contract expressly agree that all right, title, and interest in, and to, all reports, drafts of reports, or other material, data, drawings, computer programs and codes associated with this Contract, and/or any copyright or other intellectual property rights, and any material or information developed and/or required to be delivered under this Contract shall be property of FEMA. (c) The GLO and FEMA are granted a royalty free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for U.S. Government purposes, all reports, drafts of reports, or other material, data, drawings, computer programs, and codes associated with this Contract, and/or any copyright or other intellectual property rights, and any material or information developed and/or required to be delivered under this Contract.
- K. The Subrecipient shall not seek reimbursement for any equipment or computer software not eligible as a reimbursable item under 44 C.F.R. Part 206 or 2 C.F.R. Part 200. Any purchase of equipment or computer software shall be made in accordance with all applicable laws, regulations, and rules including, but not limited to those listed in state and local law, 2 C.F.R. Part 200, and **Attachment C**. Title and possession of any equipment or computer software will remain the property of Subrecipient unless and until transferred to the GLO, upon written request of the GLO. The Subrecipient shall furnish, with its final request for reimbursement, a list of all equipment and computer software purchased with grant funds under the Agreement, including the name of the manufacturer, the model number, and the serial number. The disposition of any equipment or computer software shall be in accordance with all applicable laws, regulations, and rules, including but not limited to those listed in **Attachment C**.

### **XXX. Governing Law and Venue**

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

### **XXXI. Communication with Third Parties**

- A. The GLO and the authorities named in, Article XIII, shall have the right to initiate communications with any subcontractor, and may request access to any books, documents, papers, and records of a subcontractor which are directly pertinent to this grant. Such communications may be required to conduct audits and examinations and gather additional information as provided in ARTICLE XIII herein.
- B. **CITIZEN PARTICIPATION:** The Subrecipient must have written procedures to respond to written complaints within fifteen (15) business days of receipt of such complaint. Citizens must be made aware of the location and the days and hours the location is open for business so they may obtain a copy of these written procedures.

### **XXXII. Attachments**

- A. The following Attachments are incorporated into this Agreement:
  - 1. **Attachment A:** Program Implementation and Conditions;
  - 2. **Attachment B:** Detailed Eligible Permanent Housing Construction-Repairs;
  - 3. **Attachment C:** Non-Exclusive List of Applicable Laws, Rules, and Regulations;
  - 4. **Attachment D:** General Affirmations;
  - 5. **Attachment E:** Federal Assurances and Certifications; and
  - 6. **Attachment F:** Addition Terms and Conditions for FEMA-Related Contracts.
- B. The following document is hereby incorporated by reference and incorporated into this Agreement, as if attached:
  - 1. The GLO/FEMA Intergovernmental Service Agreement ("IGSA")
  - 2. Project Management Plan as developed by the GLO and approved by FEMA
  - 3. Administration Plan as developed by the GLO and approved by FEMA

### **XXXIII. Points of Contact:**

- A. The GLO points of contact for this Agreement is as follows:
  - 1. Pete Phillips- Pete.Phillips@GLO.TEXAS.GOV
  - 2. Heather Lagrone- Heather.Lagrone@GLO.TEXAS.GOV
- B. The Subrecipient point of contact for this Agreement is as follows:
  - City of Houston
  - 900 Bagby, 4<sup>th</sup> Floor
  - Houston, Texas 77002
  - Attn: City Attorney

**ATTACHED TO THIS CONTRACT:**

**ATTACHMENT A - PROGRAM IMPLEMENTATION AND CONDITIONS**

**ATTACHMENT B - DETAILED ELIGIBLE PERMANENT HOUSING CONSTRUCTION-  
REPAIRS**

**ATTACHMENT C - NONEXCLUSIVE LIST OF APPLICABLE LAWS, RULES, AND  
REGULATIONS**

**ATTACHMENT D - GENERAL AFFIRMATIONS**

**ATTACHMENT E - FEDERAL ASSURANCES AND CERTIFICATIONS**

**ATTACHMENT F - ADDITIONAL TERMS AND CONDITIONS FOR FEMA -RELATED  
CONTRACTS**

**INCORPORATED BY REFERENCE:**

**- INTER-GOVERNMENTAL SERVICE AGREEMENT AND ALL PLANS REQUIRED  
THEREUNDER**

**ATTACHMENTS FOLLOW**

## Attachment A: Program Implementation and Conditions

This document outlines conditions related to executing the Agreement with the GLO:

- General Program Administration Conditions
- Duplication of Benefits
- Compliance with Environmental and Historic Preservation Laws and Executive Orders
- Direct Temporary Housing Terms and Conditions
  - General Eligibility Conditions
  - Continued Assistance Conditions
  - Termination of Assistance Conditions
  - Direct Lease Conditions
  - Multi-Family Lease and Repair (MLR) Conditions
  - Recreation Vehicle (RV) Conditions
  - Manufactured Housing Unit (MHU) Conditions
  - RV and MHU Site Conditions
- Permanent Housing Construction (PHC) Terms and Conditions
  - Eligibility Conditions
  - PHC Repair Conditions

### Definitions

1. Direct Temporary Housing Assistance: A Temporary Housing Unit (THU) provided directly to eligible applicants in the form of MLR, Direct Lease, or a MHU or RV placed temporarily on a private, commercial, or group site.
2. Eligible Applicants: Individuals or households determined by FEMA to be eligible for Direct Housing Assistance under Section 408(b)(1) of the Stafford Act.
3. Multi-family Housing: A building that contains three or more dwelling units, with each unit providing complete and independent living facilities for one or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.
4. Recreation Vehicle: A travel trailer or fifth wheel.
5. Personally Identifiable Information (PII) and Sensitive Personally Identifiable Information (SPII): Information that can be used to distinguish or trace an individual's identity, such as name, social security number, or biometric records, either alone, or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth, or mother's maiden name. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. In performing this assessment, it is important for an agency to recognize that non-personally identifiable information can become personally identifiable information whenever additional information is made publicly available—in any medium and from any source—that, combined with other available information, could be used to identify an individual. PII is a subset of sensitive information. Examples of PII include, but are not limited to: name, date of birth, mailing address, telephone number, Social Security number (SSN), email address, zip code, account numbers, certificate/license numbers, vehicle identifiers biometric identifiers such as



fingerprint, voiceprint, iris scan, photographic facial images, or any other unique identifying number or characteristic, and any information where it is reasonably foreseeable that the information will be linked with other information to identify the individual, that permits the identity of an individual to be directly or indirectly inferred, including information linked or linkable to that individual. Examples include: name, personal address, and personal telephone number. Sensitive Personally Identifiable Information is Personally Identifiable Information, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual.

**General Program Administration Conditions**

1. The Project Management Plan, developed by the GLO and approved by FEMA, is incorporated into this Agreement by reference and made a part hereof.
2. The Subrecipient will ensure all Direct Housing Assistance options determined by FEMA are available to eligible applicants in all counties authorized for Direct Housing Assistance, unless specifically prohibited by local laws and ordinances.
3. In implementing this Agreement, the Subrecipient shall abide by all applicable statutes, regulations, Executive Orders, and policies governing the provision of FEMA's direct housing assistance program, including but not limited to:
  - a. The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, 42 U.S.C. §§ 5121 et seq.;
  - b. 44 C.F.R. §§ 206.110 – 206.118, Federal Assistance to Individuals and Households;
  - c. Individuals and Household Program Unified Guidance (IHPUG), FP 104-009-3, Federal Emergency Management Agency, September 30, 2016;
  - d. 44 C.F.R. part 9, Floodplain Management and Protection of Wetlands;
  - e. Executive Order 11990, Protection of Wetlands, 42 FR 26961 (1977);
  - f. Executive Order 11988, Floodplain Management, 42 FR 26951 (1977);
  - g. DHS Directive 023-01, Rev. 01 and Instruction Manual 023-01-001-01, Rev.01, 81 FR 56682 (2016), implementing the National Environmental Policy Act (NEPA), with component supplemental instructions in FEMA Directive 108-1 and FEMA Instruction 108-1-1 (2016);
  - h. 24 C.F.R. Part 3280, Manufactured Home Procedural and Enforcement Regulations; and
  - i. The Privacy Act of 1974 (Privacy Act), as amended, 5 U.S.C. § 552a.

4. Upon receipt from FEMA, the GLO will provide all necessary forms to the Subrecipient and detail when each form is required for use within 15 days of the execution of the Contract.
5. FEMA is responsible for making all applicant eligibility determinations for Direct Temporary Housing and Permanent Housing Construction under section 408 of the Stafford Act and notifying the applicant of their approval for Direct Temporary Housing Assistance or PHC. Based upon the casework being performed by the Subrecipient, any requested changes to the eligibility determined by FEMA must be reviewed and approved by FEMA. FEMA will retain determinations in the National Emergency Management Information System (NEMIS) and provide eligibility determinations to the GLO. The Subrecipient will be responsible for working with the applicant to implement or update the Direct Housing option, with approval from FEMA.
6. The GLO will provide the Subrecipient with a daily list of applicants approved for Direct Temporary Housing or PHC in a password protected Microsoft Excel format which will be transmitted to FEMA via a secure means of transmission, (FEMA retains sole discretion regarding any determination of the secure means of transmission). Subrecipient may use the AMRDEC Aviation and Missile RDEC Unclassified LAN Infrastructure (AMRULI) utilizing its Safe Access File Exchange (SAFE) system. In the event SAFE or an alternate system approved by FEMA are unavailable, such aforementioned data may be transmitted via email by using a password protected, encrypted file. Passwords must be transmitted via separate communication, e.g. by phone call or in a separate email message that doesn't include the data. Each list will contain the following information:
  - a. Applicant's Registration Identification (Reg ID) number;
  - b. Primary and Co-applicant's First and Last Name;
  - c. Primary and Co-applicant's current mailing address and telephone number, and any reasonable accommodation to ensure effective communication;
  - d. Primary and Co-applicant's pre-disaster residence address;
  - e. The number of bedrooms required;
  - f. Initial approved type of Direct Housing Assistance
  - g. Determination on whether individuals eligible for Direct Housing Assistance are located in Special Flood Hazard Area (SFHA);
  - h. Specific information on members of the household with a disability or other access and functional need, including any modification or reasonable accommodations required, but excluding protected health information as defined at 45 C.F.R. 160.103.

7. Upon receipt of the initial recommended direct housing solution from FEMA, the GLO will provide the Subrecipient with the recommended direct housing solution for each applicant. The Subrecipient, upon working with the applicant, will consider the below criteria and inform FEMA if the recommended Direct Housing solution has changed. After reviewing the Subrecipient's proposal, FEMA will provide final approval of updated Direct Housing determinations for applicants. The criteria are:

- a. Timeliness, availability, and cost;
- b. Suitability for the applicant's household, including specific accessibility modifications required for members of the household with disabilities or other access and functional needs;
- c. Location of available option, and
- d. Environmental and Historic Preservation compliance requirements, including consideration of options available outside the SFHA.

8. To ensure effectively monitor the federal award and to reach desired program outcomes, the Subrecipient shall provide weekly reports to GLO identifying for each applicant referred to the State by FEMA:

- a. The housing option recommended for each applicant;
- b. Justification for any change to FEMA's initial determination using the criteria identified above;
- c. The date the applicant begins occupying temporary housing provided by the State or repairs are complete;
- d. Any accessibility modification or other reasonable accommodations provided for applicants with disability or other access and functional need; and
- e. The continued Direct Temporary Housing Assistance eligibility recommendation for applicants placed in Direct Temporary Housing Assistance.
- f. Reports shall be organized by county and provided using templates agreed upon by FEMA and the State.

9. The Subrecipient shall develop a strategy for regular maintenance and repair for all forms of Direct Temporary Housing Assistance.

10. Direct Temporary Housing Assistance is limited to 18 months following the date of the disaster declaration. The period of assistance for this disaster began on August 25, 2017, and will end on February 25, 2019.

11. The Subrecipient shall work with applicants to establish a permanent housing plan to transition them from Direct Temporary Housing Assistance in anticipation of the program's termination.

12. GLO will monitor the Subrecipient based on the following established performance standards.
- a. The Subrecipient will make initial contact with an applicant within 10 business days of the referral from GLO.
  - b. The Subrecipient will inform GLO within 30 business days of contact with the applicant of any required changes to FEMA's initial eligibility determination or housing solution.
  - c. After the GLO review of the request it will be submitted to FEMA for approval.
  - d. FEMA will approve any recommended changes to the eligibility determination or housing solution as soon as possible, and no later than 5 days after receiving the change request from the State.
  - e. The Subrecipient will ensure any applicant placed into Direct Lease will be provided temporary housing within 30 business days of FEMA approval of the final housing solution for each applicant.
  - f. The Subrecipient will identify, assess, make final selection, and begin the process to contract with eligible MLR properties within 60 days of execution of this Contract.
  - g. The Subrecipient will ensure any applicant placed into an MLR unit will be provided temporary housing within 120 days of FEMA approval of the final housing solution for each applicant.
  - h. On commercial park locations or private sites, upon approval of the EHP review by FEMA, the Subrecipient within 15 days of receipt will place and make ready for occupancy the RV or MHU. The Subrecipient will then have 5 days to license the applicant into the unit.
  - i. The Subrecipient will ensure any applicant provided with Permanent Housing Construction in the form of repairs will have all repairs complete within 90 days from start of repair work for each applicant.
  - j. The Subrecipient will begin to conduct continued assistance verifications within 30 days of providing the applicant with temporary housing for submission to FEMA.
  - k. The Subrecipient will begin to coordinate with the GLO regarding close-out of the program or potential need for an extension of the program within 90 days of February 25, 2019.

#### **Duplication of Benefits**

1. A duplication of benefit (DOB) may occur when an insured direct temporary housing occupant receives Additional Living Expense (ALE) or Loss of Use (LOU) insurance benefits that cover the cost of renting alternative housing. When FEMA identifies a DOB

with ALE or LOU while making an eligibility determination, FEMA will initiate steps to collect the ALE or LOU benefits for housing costs. FEMA will base the amount of the monthly payment on the ALE or LOU amount not to exceed the Fair Market Rent (FMR) rate established by the U.S. Department of Housing and Urban Development (HUD) for the size (number of bedrooms) and location of the housing unit. FEMA will only collect payments until the total amount of the ALE or LOU insurance has been exhausted or the occupant vacates the direct THU, whichever is first. The Subrecipient will inform GLO when an applicant with ALE is placed in and vacates a direct temporary housing assistance option.

2. PHC represents a DOB with financial housing assistance: Applicants determined eligible for PHC who choose to receive PHC must provide documentation of the use of any previously provided FEMA financial housing assistance for Repair, and return all unused, previously provided financial housing assistance for Repair or Replacement to FEMA.

#### **Compliance with Environmental and Historic Preservation (EHP) Laws and Executive Orders**

1. The Subrecipient shall submit applicable project information to the GLO to allow for the EHP process to be submitted to FEMA for approval.
2. FEMA will provide the State a matrix of Environmental and Historic Preservation Compliance requirements, including the National Environmental Policy Act (NEPA), the National Historic Preservation Act, and Executive Order 11988 Floodplain Management (44 CFR Part 9) to help inform the choice of best housing option for the applicant's location.
3. FEMA is responsible for compliance with a number of environmental and historic preservation laws. These responsibilities cannot be delegated to the State or to the Subrecipient. FEMA will work with the State to gather the necessary information to ensure compliance.

#### **Direct Temporary Housing Terms and Conditions**

##### **Eligibility Conditions**

1. All eligibility determinations by FEMA for Direct Temporary Housing Assistance and continued Direct Temporary Housing Assistance will be made by FEMA in accordance with the Stafford Act, and implementing regulations, and IHPUG.

##### **Continued Direct Temporary Housing Assistance Conditions**

1. The Subrecipient will monitor the progress that Direct Temporary Housing occupants are making towards obtaining and occupying permanent housing within the 18 month period of assistance, based on the conditions outlined by FEMA's regulations at 44 C.F.R § 206.117(b)(1)(ii)(G).

2. The Subrecipient will provide the GLO with a recommendation for continued Direct Temporary Housing Assistance to individuals and households based on these conditions until February 25, 2019.
3. FEMA will make the final determination on an applicant's eligibility for continued Direct Temporary Housing Assistance based on the Subrecipient's recommendation.

Termination of Direct Temporary Housing Assistance Conditions

1. The Subrecipient may recommend to the GLO to terminate an occupant's Direct Temporary Housing Assistance for any reason not prohibited by the Stafford Act, FEMA's regulations at 44 C.F.R § 206.117(b)(1)(ii)(G), or IHPUG.
2. FEMA must approve all terminations and appeal decisions in a timely manner before the applicant is notified.
3. The Subrecipient shall utilize FEMA templates to notify the applicant of the termination and provide the GLO with copies of all termination notices, appeals, and appeal decisions within seven days of the date issued to ensure FEMA is able to record these documents in NEMIS.

Direct Lease Conditions

1. The Subrecipient may enter into lease on behalf of Eligible Applicants, existing residential property, not typically available to the general public, for use as temporary housing for eligible individuals and households.
2. The Subrecipient may lease properties that comply with Housing Quality Standards (HQS) established by the U.S. Department of Housing and Urban Development (HUD), to provide complete and independent living facilities for one or more persons, including permanent provisions for living, sleeping, cooking, and sanitation. All utilities, appliances, and other furnishings must be functional.
3. The Subrecipient shall evaluate properties according to the following factors:
  - a. Cost to the federal government: The Subrecipient shall lease properties with per-unit rent at or below the Fair Market Rent (FMR) established by HUD. If the Subrecipient is unable to obtain sufficient rental resources, the Subrecipient shall conduct an analysis of prevailing market rates and may increase leases to properties with per-unit rent of up to 125% of FMR. Properties with per-unit rent above 125% of the Fair Market Rate established by HUD must be approved by FEMA;
  - b. Landlord's demonstrated ability to manage and provide maintenance services;
  - c. Proximity to community and wrap-around services, such as accessible public transportation, schools, fire and emergency services, grocery stores, health care services, etc.;

- d. When selecting available properties, the Subrecipient may prioritize properties that are already accessible, include accessibility features, or can be easily made accessible; and are in proximity to accessible public transportation.
4. The estimated monthly cost per unit is up to \$1,300 unless approved by FEMA.
    - a. The Subrecipient can also provide one month's cost for a security deposit for each unit.
  5. Within 7 business days of completion, the Subrecipient must provide GLO the following documentation:
    - a. A copy of the inspection record confirming the property complies with HQS;
    - b. A copy of the lease contract specifying the monthly rent rates.
    - c. A copy of the lease agreement signed between the applicant and the property and the applicant and the Subrecipient, for each applicant.

Multi-Family Lease and Repair (MLR) Conditions

1. The Subrecipient may enter into lease agreements with owners of multi-family rental properties located in Individual Assistance designated counties to house Eligible Applicants and make repairs or improvements to existing multi-family housing units in order to provide temporary housing to Eligible Applicants.
2. Per the Stafford Act, under the terms of any lease agreement for property entered into under MLR, the value of the improvements or repairs shall be deducted from the value of the lease agreement and may not exceed the value of the lease. To determine the cost-effectiveness of the potential MLR property, the Subrecipient will deduct the estimated cost of repairs and improvements from the value of the lease as follows:
  - a. The Subrecipient will determine the estimated cost of repairs or improvements by performing an independent cost estimate for the necessary repairs and improvements, or receive an estimated cost for repairs and improvements from the building contractor.
  - b. The Subrecipient will determine the value of the lease agreement by multiplying the monthly FMR by the number of units, and then multiplying the number of months remaining between the date the repairs are completed and the end of the 18 month period of assistance, which is February 25, 2019.
  - c. The estimated total cost per unit is up to \$21,000 unless approved by FEMA.
    - i. This includes a minimal monthly maintenance cost per unit for the operation of the property.
    - ii. The Subrecipient can also provide one month's cost for a security deposit for each unit.
3. Properties located within a floodway, coastal high-hazard area, or Coastal Barrier Resource Unit are not eligible for this program.

iii. FEMA may approve an increase to the cap up to 25% for access and functional needs-related costs.

4. Prior to leasing a property, the Subrecipient shall provide for each property an initial inspection report to include:
  - a. Location, physical address and latitude and longitude;
  - b. Date of construction, and
  - c. An exterior photo.
5. The Subrecipient shall provide the following documentation to GLO within 7 days of leasing a property for temporary housing:
  - a. Completed property inspection report;
  - b. Itemized repair cost estimate;
  - c. The state or local government's valuation of the lease, including methodology used;
  - d. Copy of the tenant lease and application requirements; and
  - e. A copy of the executed lease agreement and repair contracts, specifying the expenditures for repairs, rent, property management, and maintenance.
6. Within 14 days of completion, the Subrecipient must provide GLO the following documentation:
  - a. Paid invoices documenting the expenses incurred for repairs and improvements;
  - b. A copy of the occupancy certificate issued by the local government; and
  - c. A copy of the lease agreement signed between the applicant and the property and the applicant and the Subrecipient, for each applicant.
7. All repairs shall be made in a manner consistent with current local building codes, standards, permitting, inspection requirements, and all applicable environmental planning and historic preservation (EHP) laws and regulations. Items will be repaired when feasible, but may be replaced when cost-effective to the government or when necessary to ensure the health and safety of the occupant. The Subrecipient will be responsible for obtaining local permits.

#### RV Conditions

1. The Subrecipient may provide and place RVs certified to comply with the Recreation Vehicle Industry Association (RVIA) standards established on July 1, 2012.
2. The Subrecipient will notify disaster survivors with access and functional needs who request a RV that a reasonable modification may be available upon request. If survivors are unable to occupy an RV due to access and functional needs:



- a. The Subrecipient, with approval from FEMA, may make other forms of direct temporary housing assistance available, which meets the survivor's access and functional needs, including Uniform Federal Accessibility Standards (UFAS)-compliant MHUs if needed.
  - b. Should the Subrecipient require UFAS-compliant MHUs, FEMA will provide them on behalf of the Subrecipient.
3. Any RVs the Subrecipient procures must meet current California Air Resource Board (CARB) standards or are certified compliant with the Toxic Substances Control Act (TSCA) Title VI requirements for formaldehyde emissions from composite wood products found in RVs.
4. The estimated cost per unit is up to \$55,000 unless approved by FEMA. This cost includes procurement, hauling and installing the unit, and any maintenance and deactivation costs.
5. The Subrecipient shall provide, on a weekly basis, the following documentation for RVs procured for use as temporary housing:
  - a. A copy of Purchase Order and Bill of Sale.
6. The Subrecipient shall be responsible for disposing of RVs provided under this IGSA in accordance with Section 408(d)(2) of the Stafford Act. The Subrecipient must provide documentation of the method of disposal for all units. The Subrecipient shall return the proceeds from any sale of the units to GLO.

#### MHU Conditions

1. The Subrecipient may procure, haul, and install MHUs as a form of Direct Temporary Housing Assistance.
2. The number of bedrooms in the MHU must accommodate the applicant's household composition, as recorded during the FEMA inspection.
3. Units must comply with 24 C.F.R. Part 3280 Manufactured Home Construction and Safety Standards ("HUD code").
4. The estimated cost per unit is up to \$92,000 unless approved by FEMA.
  - a. This cost includes procurement, hauling and installing the unit, and any maintenance and deactivation costs.
  - b. FEMA may approve an increase to the cap up to 25% for access and functional needs-related costs.

5. Any UFAS MHU provided for an eligible applicant with a disability or other access and functional needs will be provided by FEMA, and must be installed with a functioning Tank and Pump System prior to occupancy.
6. Any FEMA-sourced MHU provided for an eligible applicant must be installed with a functioning Tank and Pump System prior to occupancy except where to do so would cause a delay in allowing the applicant to take occupancy, in which case the Tank and Pump System shall be installed at the earliest possible date after occupancy. This requirement for the installation of a Tank and Pump System does not apply to any state-sourced MHU provided to an Eligible Applicant.
7. The Subrecipient shall provide GLO, on a weekly basis, the following documentation for MHUs procured for use as temporary housing:
  - c. A copy of Purchase Order and Bill of Sale.
8. The Subrecipient shall be responsible for disposing of MHUs provided under this IGSA in accordance with Section 408(d)(2) of the Stafford Act. The Subrecipient must provide documentation of the method of disposal for all units. The Subrecipient shall return the proceeds from any sale of the units to FEMA.

#### RV and MHU Site Conditions

1. The Subrecipient may provide RVs and MHUs to eligible applicants and place them on private and commercial sites.
  - a. The estimated monthly cost per pad lease is up to \$600 unless approved by FEMA.
2. Placement of RVs and MHUs as post-disaster temporary housing in a SFHA/1-percent annual chance year floodplain must comply with 44 C.F.R. Part 9 and FEMA Directive/Instruction 108-1, Environmental Planning and Historic Preservation Responsibilities and Program Requirements, and the abbreviated decision-making process under 44 C.F.R. §9.13 when considering the placement of RVs and MHUs on private and commercial sites in a floodplain.
  - a. Pursuant to 44 CFR §9.13 (d)(2), no MHUs or other readily-fabricated dwellings can be placed within a floodway, coastal high-hazard area, even under the abbreviated decision-making process. No MHUs or other readily-fabricated dwellings can be placed within a Coastal Barrier Resource Unit.
  - b. In accordance with 44 C.F.R. §9.13(d)(4)(i), MHUs placed on a private or commercial site in a SFHA must be elevated to the fullest extent practicable up to the Base Flood Elevation (BFE) and adequately anchored.
    - i. The Subrecipient shall evaluate RV and MHU placement sites individually, and make a determination regarding a site's suitability for RV or MHU placement based on the best available flood hazard information for that site.

- c. RVs will not be placed in the regulatory Floodway or Coastal High Hazard Areas.
  - d. RVs will only be placed in the SFHA if no other housing options are available. In order to reduce the risk of loss of life of the occupants, RVs may be placed in the SFHA only where base flood depths are sufficiently shallow to allow for timely and safe evacuation from the RV on foot. RVs placed in the SFHA will be adequately anchored.
  - e. Prior to placement, the Subrecipient shall provide for each RV and MHU a completed Request for Site Inspection Report (FEMA form 010-0-9), to include, latitude and longitude of the proposed location.
  - f. Placement of MHUs or other readily fabricated dwellings must be in accordance and compliance with Texas Manufactured Housing Division regulations.
  - g. Repairs to commercial sites shall be limited to reasonable and cost-effective repairs or improvements necessary to make the site functional (such as an electrical service upgrade), including those necessary to meet reasonable accommodations for people with disabilities.
    - i. The estimated cost per pad improvement is up to \$7,500 unless approved by FEMA.
3. Prior to building a MHU Group Site, the Subrecipient must request and receive approval from FEMA's Assistant Administrator for Recovery.
- a. The development of a MHU Group Site(s) is authorized only when the placement of MHUs on private sites are not feasible or if the use of existing commercial sites are not feasible for the eligible applicant.
  - b. The Subrecipient will prioritize sites provided by the State and local government at no cost before leasing a site from a private party.
  - c. When considering the placement of MHU at potential group sites, the Subrecipient must coordinate with the Environmental Planning and Historic Preservation Program.
  - d. FEMA, including Environmental Planning and Historic Preservation, approval must be obtained prior to any site lease and site construction activity.
  - e. The estimated cost per pad is up to \$50,000 unless approved by FEMA.

### **Permanent Housing Construction Repairs: Terms and Conditions**

#### **Eligibility Conditions**

1. Applicants may be eligible for PHC assistance after a FEMA determination that all other forms of temporary housing are not available, feasible, or cost effective.
2. Based on the National Flood Insurance Reform Act, applicants who live in a designated Special Flood Hazard Area (SFHA) and previously received disaster assistance for Home

Repair, Replacement, PHC or Personal Property had a requirement to obtain and maintain flood insurance coverage. Therefore, any of these applicants who failed to obtain and maintain flood insurance will be deemed ineligible for Permanent Housing Construction Repairs. For properties that receive assistance under PHC repair, the Subrecipient shall work with FEMA to ensure compliance with such flood insurance coverage requirements.

3. PHC assistance shall only include repairs (PHC-Repairs) not PHC-Replacement. Reference “Attachment B: Detailed Eligible Permanent Housing Construction-Repairs,” for eligible repair items.
4. At the Subrecipient’s recommendation, FEMA may approve PHC Repair for eligible applicants whose homes are feasible to repair when:
  - a. The repairs are estimated to be completed within 90 days or less from the start of the repair work;
  - b. The damages are less than fifty percent of the market value prior to the disaster; and
  - c. The estimated labor and materials costs are up to \$60,000 unless approved by FEMA. FEMA generally will not approve a total price that exceeds this amount. i. FEMA may approve an increase to the cap up to 25% for access and functional needs-related costs.
5. PHC-Repair is not eligible when the Subrecipient identifies:
  - a. The home requires repairs to structural elements (e.g. foundation, frame) or other items requiring architectural or engineering services;
  - b. The home requiring repairs with estimated costs that exceed fifty percent of the market value of the structure before the damage occurred; or
  - c. The home is determined to be “repetitive loss or severe repetitive loss”, as identified by the National Flood Insurance Program, and the cost to be brought into compliance with the local floodplain exceeds the maximum allowable costs for PHC-Repair.
6. Any home located within a SFHA shall not be considered for PHC repairs unless in accordance with applicable federal, and local laws, regulations, and ordinances, and can be repaired within the PHC cost limits.
7. Applicants determined eligible by FEMA for PHC may choose either to:
  - a. Receive PHC, provide documentation of the use of any previously provided financial housing assistance for Repair, and return all unused, previously provided financial housing assistance for Repair or Replacement to FEMA; OR
  - b. Receive Direct Temporary Housing Assistance, if available, and keep any financial housing assistance for Repair or Replacement that FEMA previously provided.

8. In order to be referred to the Subrecipient for PHC, eligible applicants who choose to receive PHC assistance must sign an acknowledgement of the following terms and conditions:
- a. The applicant agrees to participate in the Subrecipient program, including right of entry;
  - b. The applicant agrees to obtain and maintain flood insurance coverage on the home for at least the value of the repairs provided the home is located in an SFHA. FEMA will not contribute to the cost of flood insurance premiums; and
  - c. An applicant's decision to accept or decline PHC shall be considered final; FEMA will not re-consider an applicant for Direct Temporary Housing Assistance or PHC after they have declined either form of assistance. Applicants who accept PHC will not be considered for any additional FEMA Housing Assistance, including financial Temporary Housing Assistance.
9. The Subrecipient and GLO agree that applicants for PHC-Repair should not include those applicants whose properties may eventually be eligible for elevation or a buy-out. The Subrecipient and GLO will work together to ensure applicants eligible for PHC-Repair are reviewed for potential future mitigation, elevation, or home buy-out programs and, to the maximum extent possible, minimize PHC-Repair approval for those applicants.
10. The Subrecipient and GLO's responsibility to provide Direct Housing Assistance to the applicant ends once the completed PHC-Repairs are accepted by the applicant.

#### PHC Repair Conditions

1. Under PHC, the Subrecipient will not repair or replace items eligible under Other Needs Assistance for Personal Property, such as furnishings and appliances.
2. The Subrecipient will need to ensure that there is no duplication of benefits between emergency work provided under the Sheltering and Temporary Essential Power (STEP) program and PHC-Repair assistance, and report to FEMA on the mechanism for doing so within thirty (30) days of initiating the PHC-Repair program. FEMA will only reimburse for specific line item repairs for a property under PHC or STEP, not under both options.
3. PHC-Repairs are limited to real property components eligible under FEMA Housing Assistance that were damaged by the disaster and functional before the declared event. The Subrecipient shall only perform repairs necessary to restore the pre-disaster residence to a habitable condition. The completed repairs shall ensure the pre-disaster residence is restored to a safe, sanitary, and functional condition.
4. All repairs shall be made in a manner consistent with current local building codes, standards, or minimal acceptable construction industry standards by the area, permitting, inspection requirements, and all applicable environmental planning and historic

preservation (EHP) laws and regulations. Items will be repaired when feasible, but may be replaced when cost-effective to the government or when necessary to ensure the health and safety of the occupant. The Subrecipient will be responsible for obtaining local permits.

5. Prior to repairing a property, the Subrecipient shall provide for each property an initial inspection report to include:
  - a. Location, physical address and latitude and longitude;
  - b. Date of construction, and
  - c. An exterior photo.
6. Repairs shall be made using materials of average quality used in new construction, in accordance with 44 C.F.R. § 206.117(b)(4)(iii), and taking into account the accessibility needs of the occupant.
7. Repairs to accessibility features and accessible routes will be guided by the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and HUD Design Details for Accessible Disaster Relief Housing.
8. The Subrecipient shall provide to GLO the following documentation within 7 business days of completing PHC Repairs for an applicant:
  - a. Completed property inspection report;
  - b. Itemized repair cost estimate;
  - c. Executed repair contract or work order, including itemized list of repairs performed;
  - d. A copy of the occupancy certificate issued by the local government.

**Attachment B:  
Detailed Eligible Repairs for Permanent Housing Construction – Repairs**

Interior Repairs

- Debris removal
- Clean and sanitize damaged materials
- Interior wall cover, to include drywall
- Floor, subfloor and floor covering
- Interior doors
- Cabinet
- Bathroom vanity
- Bathroom exhaust fan

Exterior Repairs

- Windows
- Exterior doors
- Ceiling/wall insulation
- Siding
- Roof covering
- Roof sheathing

Electrical/HVAC

- Furnace
- Exterior electrical work, to include weather, head, cable, and meter
- Wiring
- Electric panel, 200 amp main breaker – 18 circuit
- Outlets or switches
- Central air conditioner
- Duct work
- Smoke Detector
- Light fixtures

### Plumbing

- Water heater
- Water lines
- Well pump
- Pressure tank
- Decontaminate water supply
- Septic tank
- Distribution box
- Drain field
- Sewer lines
- Gas lines
- Sump pump
- Kitchen sink
- Bathroom sink
- Faucets
- Tub
- Fiberglass Shower Replacement
- Tank and toilet

### Accessibility Related Repairs

- Grab bars around toilet, tub, shower stall, and shower seat
- Ramp
- ADA compliant toilets
- Faucet with single-lever faucet controls
- Lever-type door knobs and handles
- Single-push door locks
- Drawers and cabinets with D-loop or other easy to use handle pulls
- Low-pile carpet or smooth anti-slip flooring



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

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

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

#### GENERALLY

The Acts and Regulations specified in this Contract;

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

Homeland Security Act of 2002 (Public Law 107-296)

Sections 306 and 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288) (codified as amended at 42 U.S.C. § 5121, et seq.);

Department of Homeland Security Delegation of Authority No. 9001.1, *Delegation to the Administrator of the Federal Emergency Management Agency* (Dec. 10, 2010);

Title 44 of the U.S. Code of Federal Regulations (C.F.R.), Chapter 1, Part 206;

Texas Disaster Act of 1975, Chapter 418, Tex. Gov't Code;

Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301 et seq.;

Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280;

Recreation Vehicle Industry Association (RVIA) standards established on July 1, 2012;

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

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

The GLO Project Management Plan;

FEMA Individuals and Household Program Unified Guidance (IHPUG), FP 104-009-3, September 30, 2016; and

Guidance documents as may be issued by the GLO from time to time.

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**LABOR STANDARDS**

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

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

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

The Service Contract Act, 41 U.S.C § 351 et seq., Title 29, Part 4, Labor Standards for Federal Service Contracts.

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

Federal Executive Order 11246, as amended;

**EMPLOYMENT OPPORTUNITIES**

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

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

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

Federal Executive Order 11246, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations at 41 CFR Chapter 60.

**GRANT AND AUDIT STANDARDS**

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

Functions of Deputy Director for Management, 31 U.S.C. § 503;

Executive Orders 8248, 11609, and 11717;

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

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

Title 1 Texas Administrative Code § 5.167(c);

#### ENVIRONMENTAL LAW AND AUTHORITIES

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

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

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

#### FLOODPLAIN MANAGEMENT AND WETLAND PROTECTION

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

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

#### HUD ENVIRONMENTAL STANDARDS

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

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

#### FEMA ENVIRONMENTAL AND HISTORICAL PRESERVATION STANDARDS

National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq.;

National Historic Preservation Act (NHPA), Public Law 89-665; 54 U.S.C. 300101 et seq.; and

Executive Order 11988, Floodplain Management, 44 CFR Part 9

U.S. Department of Homeland Security Directive 023-01, Rev. 01 and Instruction Manual 023-01-001-01, Rev. 01, 81 Fed. Reg. 56682 (2016), implementing NEPA with component supplemental instructions in FEMA Directive 108-1 and FEMA Instruction 108-1-1 (2016).

#### SUSPENSION AND DEBARMENT

General Procurement Standards 2 C.F.R. 200.318(h).

#### CONFIDENTIALITY AND NONDISCLOSURE

Privacy Act of 1974, as amended, 5 U.S.C. § 552a.

### GENERAL AFFIRMATIONS

Provider agrees without exception to the following affirmations:

1. Provider certifies that he/she/it has not given, offered to give, nor intends to give at anytime hereafter, any economic opportunity, future employment, gift, loan gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract.
2. Provider certifies that neither Provider nor any firm, corporation, partnership, or institution represented by Provider or anyone acting for such firm, corporation, partnership, or institution has (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or federal antitrust laws; or (2) communicated the contents of the Contract or proposal either directly or indirectly to any competitor or any other person engaged in the same line of business during the procurement process for the Contract or proposal.
3. Provider certifies that if its business address shown on the Contract is a Texas address, that address is the legal business address of Provider and Provider qualifies as a Texas Resident Bidder under Texas Administrative Code, Title 34, Part 1, Chapter 20.
4. Section 2155.004 of the Texas Government Code prohibits the GLO from awarding a contract that includes proposed financial participation by a person who received compensation from the GLO to participate in preparing the specifications or request for proposals on which the Contract is based. Under Section 2155.004, Government Code, the vendor [Provider] certifies that the individual or business entity named in this bid or Contract is not ineligible to receive the specified Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.
5. Under Texas Family Code section 231.006, a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under a contract to provide property, materials, or services. Under Section 231.006, Texas Family Code, the vendor or applicant [Provider] certifies that the individual or business entity named in this Contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
6. In accordance with Texas Government Code Section 669.003 (relating to contracting with executive head of a state agency), by entering into the Contract, Provider either certifies that either: (1) it is not the executive head of the GLO, was not at any time during the past four years the executive head of the GLO, and does not employ a current or former executive head of a state agency; or (2) Provider and the GLO have complied with the requirements of the above referenced statute concerning board approval and notice to the Legislative Budget Board. Provider acknowledges that this Contract may be terminated at any time, and payments withheld, if this certification is false.
7. Provider agrees that any payments due under the Contract will be applied towards any debt, including but not limited to delinquent taxes and child support, Provider owes to the State of Texas.
8. The GLO is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, blocking property and prohibiting transactions with persons who commit, threaten to commit, or support terrorism and any subsequent changes made to it. The GLO will cross-reference Providers/vendors with the federal System for Award Management

(<https://www.sam.gov/>), which includes the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

9. Provider certifies: 1) that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity; 2) that Provider is in compliance with the State of Texas statutes and rules relating to procurement; and 3) that Provider is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov/>.
10. Under Section 2155.006(b) of the Texas Government Code, the GLO may not enter into a contract that includes proposed financial participation by a person who, during the five year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, Provider certifies that the individual or business entity named in the Contract is not ineligible to receive the specified Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.
11. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. Acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Provider shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Provider and the requirement to cooperate is included in any subcontract it awards.
12. Provider understands that the GLO does not tolerate any type of fraud. The GLO's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Providers are expected to report any possible fraudulent or dishonest acts, waste, or abuse affecting any transaction with the GLO to the GLO's Internal Audit Director at 512.463.5338 or to [tracey.hall@glo.texas.gov](mailto:tracey.hall@glo.texas.gov).
13. In accordance with Texas Government Code chapter 2270, by signing the Contract, Provider verifies that it does not boycott Israel and will not boycott Israel during the term of the Contract.

**NOTE:** Information, documentation, and other material in connection with this Contract may be subject to public disclosure pursuant to the "Public Information Act," Chapter 552 of the Texas Government Code.

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**ASSURANCES - NON-CONSTRUCTION PROGRAMS**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

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

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

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

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§16811683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

FORM CD-512  
(REV 12-04)

U.S. DEPARTMENT OF COMMERCE

### CERTIFICATION REGARDING LOBBYING LOWER TIER COVERED TRANSACTIONS

Applicants should review the instructions for certification included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements under 15 CFR Part 28, "New Restrictions on Lobbying."

#### LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 15 CFR Part 28, for persons entering into a grant, cooperative agreement or contract over \$100,000 or a loan or loan guarantee over \$150,000 as defined at 15 CFR Part 28, Sections 28.105 and 28.110, the applicant certifies that to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure occurring on or before October 23, 1996, and of not less than \$11,000 and not more than \$110,000 for each such failure occurring after October 23, 1996.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification.

NAME OF APPLICANT

AWARD NUMBER AND/OR PROJECT NAME

PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE

DATE



**DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB  
0348-0046

(See reverse for public burden disclosure.)

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

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

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

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

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

## ADDITIONAL TERMS AND CONDITIONS FOR FEMA-RELATED CONTRACTS

The Parties agree the terms and conditions of this attachment are incorporated into the Contract for all purposes, to the extent they apply. The definitions in 41 C.F.R. § 60-1.3 and other applicable regulations apply to the terms and conditions contained in this attachment. The term "contractor," as used herein, means "Provider."

### Equal Employment Opportunity

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for non-compliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### **Compliance with the Copeland "Anti-Kickback" Act**

(1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

#### **Compliance with the Contract Work Hours and Safety Standards Act.**

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

#### Clean Air Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the General Land Office and understands and agrees that the General Land Office will, in turn, report each violation as required to assure notification to the GLO's subrecipient, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

### **Federal Water Pollution Control Act**

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the General Land Office and understands and agrees that the General Land Office will, in turn, report each violation as required to assure notification to the GLO's subrecipient, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

### **Suspension and Debarment**

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by the GLO's subrecipient. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the General Land Office, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

### **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)**

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

### **Certification Regarding Lobbying**

Contractor certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the contractor shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

### **Procurement of Recovered Materials**

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

- (i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) Information about this requirement, to ensure maximum use of recovered/recycled materials per to 2 CFR 200.322, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

#### **Access to Records and Construction or Other Work Sites**

The following access to records requirements apply to this contract:

(1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

#### **DHS Seal, Logo, and Flags**

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.

#### **Compliance with Federal Law, Regulations, and Executive Orders**

This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

#### **No Obligation by Federal Government**

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.



**Program Fraud and False or Fraudulent Statements or Related Acts**

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

**INTERLOCAL AGREEMENT  
(NON-RESEARCH & DEVELOPMENT)  
BETWEEN THE TEXAS  
GENERAL LAND OFFICE AND  
THE CITY OF HOUSTON  
AMENDMENT NO. 1**

THE GENERAL LAND OFFICE (the "GLO") and the CITY OF HOUSTON, ("Subrecipient"), each a "Party" and collectively "the Parties" to GLO Contract No. 18-210-007 (the "Agreement"), now desire to amend the Agreement as described in this document ("Amendment No. 1"). Therefore, the Parties agree as follows:

WHEREAS, the Parties desire to amend or replace certain language in the Contract;

NOW, THEREFORE, the Parties hereby agree as follows:

1. **Not Applicable.**
2. **Not Applicable.**
3. **Article XXXII**, Section A of the Agreement, is hereby deleted in its entirety and replaced with the following:
  - "A. The following Attachments are incorporated into this Agreement:
    1. Attachment A: Program Implementation and Conditions;
    2. Attachment B: Detailed Eligible Permanent Housing Construction-Repairs;
    3. Attachment C: Non-Exclusive List of Applicable Laws, Rules, and Regulations;
    4. Attachment D: General Affirmations;
    5. Attachment E: Federal Assurances and Certifications;
    6. Attachment F: Addition Terms and Conditions for FEMA-Related Contracts;  
and
    7. **Not Applicable.**
4. This Amendment No. 1 shall be effective as of the date signed by the last Party.
5. The terms and conditions of the Contract not amended herein shall remain in force and effect.
6. Further material revisions to the Contract shall be by written agreement of the Parties.

**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE FOR GLO CONTRACT NO. 18-210-007  
INTERLOCAL AGREEMENT  
AMENDMENT NO. 1**

**GENERAL LAND OFFICE**

**CITY OF HOUSTON**

\_\_\_\_\_  
Anne L. Idsal, Chief Clerk/  
Deputy Land Commissioner

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

Date of execution:

Date of execution:

OGC

DEPDIR

SDD

DGC

GC

**ATTACHED TO THIS CONTRACT:  
ATTACHMENT G - BUDGET**

**ATTACHMENT FOLLOWS**