

ON-CALL ELECTRICITY RELIABILITY SERVICES CONTRACT

THIS **CONTRACT FOR ON-CALL ELECTRICITY RELIABILITY SERVICES** is made by and between the **CITY OF HOUSTON, TEXAS** (the “City”), a Texas Home Rule City of the State of Texas principally situated in Harris County, and **POWERSECURE, INC.** (the “Contractor”), a Delaware corporation, doing business in Texas.

1. PARTIES

1.1. Address

1.1.1. The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

CITY	POWERSECURE, INC
Director of General Services Department or Designee	Andy Capps, Senior Vice President
P.O. Box 1562	4068 Stirrup Creek Dr
Houston, Texas 77251	Durham, NC 27703

The parties agree as follows:

1.2. [RESERVED]

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1.3. Parts Incorporated

1.3.1. The above-described exhibits are incorporated into this Contract.

1.4. Controlling Parts

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

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1.5. Signatures

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

POWERSECURE, INC

DocuSigned by:

Andy Capps

DS

By:

Name: Andy Capps

Title: Senior Vice President

**TEST/SEAL**

Signed by:

May D. Lemon

City Secretary

DS

APPROVED BY:

DocuSigned by:

C. J. Messiah, Jr

Director, General Services

Signed by:

[Signature]

Chief Procurement Officer

CITY OF HOUSTON, TEXAS

Signed by:

Signed by:

[Signature]

Mayor

DS

COUNTERSIGNED BY:

DocuSigned by:

Steven David

C3855B63AE1F45D...

City Controller

DocuSigned by:

Emad Talir

C7034DC62F544DF...

DATE COUNTERSIGNED:

6/24/2026

APPROVED AS TO FORM

DocuSigned by:

Michael Norris

Assistant City Attorney

L.D. No. _____

2. DEFINITIONS

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

- 2.1. "Applicable Law": All laws, treaties, ordinances, judgments, decrees, injunctions, writs, orders, codes, rules, regulations, permits, and interpretations of any Governmental Authority having jurisdiction over the Parties, the Site Addendum(s), the Work, the Contract, and other documents delivered hereunder or in connection herewith.
- 2.2. "Business Day" means any calendar day except Saturdays, Sundays and full-day holidays for employees of the City (as designated by City Council).
- 2.3. "Capital Project and Maintenance Model": In this model, the Contractor will be responsible for engineering, designing, permitting, procuring, installing, operating, maintaining, controlling, and complying with regulatory requirements of all generation and distribution equipment. The City will own the generation and distribution equipment. In addition, the maintenance and operation costs will be paid back to Contractor from selling electricity back to the grid and potentially sharing the balance of revenue.
- 2.4. "Change in Law" or "Change in Applicable Law": Any amendment, modification, superseding act, deletion, addition or change in or to Applicable Law (excluding changes to Tax laws where Taxes are based upon Contractor's inventory, revenue, income, profits/losses or cost of finance or withholding Tax) that occurs and takes effect after the Effective Date, provided that Contractor did not know that the amendment, modification, superseding act, deletion, addition or change in or to Applicable Law would occur following the Effective Date.
- 2.5. "Chief Procurement Officer" (CPO) is the Chief Procurement Officer for the City of Houston, as set forth in Chapter 15 of the Houston Code of Ordinances.
- 2.6. "City" is defined in the preamble of this Contract and includes its successors and assigns.
- 2.7. "City Contribution Costs" has the meaning set forth in the Site Addendum.
- 2.8. "City Equipment" means equipment listed in a Site Addendum (which utilizes the Capital Project and Maintenance Model) , which will be engineered, designed, procured, and installed by the Contractor at the Site; ownership will be transferred to the City; and that is necessary to provide the services contemplated by this Contract.
- 2.9. "City Load" means the electricity consumed expressed in kVA, kW, and Amps/Phase as a function of time required at the facility connected to the City Equipment or Contractor Equipment (whichever is applicable), which shall not exceed the City Load Limit.
- 2.10. "City Load Limit" has the meaning set forth in the applicable Site Addendum.
- 2.11. "City Property" means the fee simple property interest in the Site, and any City equipment, pipelines and all other City facilities, whether owned or leased by the City, located on the Site other than the Contractor Equipment, if any.
- 2.12. "Commencement Test" means, as to a Site, a test of the System undertaken by Contractor which lowers the City's ESI_ID Meter reading to zero while grid connected for a sustained period of at least 120 minutes without disruption of City operations and carries City Load for an additional sustained period of 30 minutes while disconnected from the grid.
- 2.13. "Contract" means this contract between the Parties, including all exhibits, any written amendments authorized by City Council and Contractor, and Site Addendums authorized by Director and Contractor.

- 2.14. "Contract Time" the number of days agreed to by the Director and Contractor in the Site Addendums to substantially complete the Work, including days authorized by any Change Order(s.)
- 2.15. "Contractor" is defined in the preamble of this Contract and includes its successors and assigns.
- 2.16. "Contractor Equipment" means the equipment listed in a Site Addendum (which utilizes the Reliability as a Service Model), which shall be owned, delivered and installed by Contractor at the Site and that is necessary to provide the services contemplated by this Contract including the System, and any other equipment of Contractor brought onto the Site in connection with the Site Addendum.
- 2.17. "Contractor's Real-time Operations Desk" means the Contractor's network operation center, which is staffed 24 hours a day, 7 days a week.
- 2.18. "Day" or "day" means a calendar day, provided that if a deadline or date for performance falls on a weekend or City of Houston holiday, it shall be extended to the next day not a weekend day or City of Houston holiday.
- 2.19. "Director" means the Director of the General Services Department or the person he or she designates.
- 2.20. "Documents" mean notes, manuals, notebooks, plans, computations, computer databases and diskettes, software, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Contract.
- 2.21. "Effective Date" means the date this Contract is countersigned by the City Controller.
- 2.22. "ERCOT" means the Electrical Reliability Council of Texas, Inc.
- 2.23. "ERCOT Protocols" means the current ERCOT Nodal Protocols and rules, requirements, and guidelines including, without limitation, the other Binding Documents as set forth on the www.ercot.com website issued by ERCOT as of the date hereof (and as may be amended, modified or replaced from time to time).
- 2.24. "Extended Power Outage" shall have the meaning in Section 13.1395(3) of the Texas Water Code being a power outage lasting for more than 24 hours.
- 2.25. "Force Majeure": catastrophic storms or floods, tornadoes, hurricanes, earthquakes, unusually severe weather, and other acts of God, wars, civil disturbances, acts of government in its sovereign capacity that were not requested, promoted, or caused by the affected Party, terrorist attacks, revolts, riots, insurrections, hostilities, strikes (excluding strikes of a Party's employees), sabotage, commercial embargoes, epidemics or pandemics, quarantine restrictions, fires, explosions, changes in Applicable Law, discovery of Pollutants or Pollutant Facilities at the site; provided that the act or event:
- delays or renders impossible the affected Party's performance of its obligations under this Contract;
 - is beyond the reasonable control of the affected Party, not due to its fault or negligence, and was not reasonably foreseeable; and
 - could not have been prevented or avoided by the affected Party through the exercise of due diligence.

For avoidance of doubt, Force Majeure will not include any of the following:

- economic hardship;
- changes in market conditions;

- late delivery or failure of equipment, unless the delay or failure is caused by Force Majeure;
 - labor availability, strikes of a Party's employees, or other similar labor actions; or
 - nonperformance or delay by Contractor or its Subcontractors, unless the nonperformance or delay is otherwise caused by Force Majeure.
- 2.26. "Good Industry Practice": The generally accepted practices, methods, skill, care, techniques, and standards employed by experienced and skilled contractors with respect to the construction of work or facilities, or portions of work or facilities, substantially similar to the work described in the Contract, and good and workmanlike performance.
- 2.27. "Governmental Authority": Any federal, foreign, state, local or municipal governmental body; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal. Notwithstanding the foregoing, Governmental Authority shall not include the Director or his designees, or the City Engineer.
- 2.28. "Hurricane Season" means the period each year from June 1st to November 30th or as defined by the National Weather Service.
- 2.29. "Include" and "including," and words of similar import, shall be deemed to be followed by the words "without limitation."
- 2.30. "Integrated Reliability On Call Services" has the meaning set forth in Section 6.1 of Exhibit A.
- 2.31. "kW" means kilowatt.
- 2.32. "kWh" means kilowatt hour.
- 2.33. "kVA" means kilovolt amps.
- 2.34. "Landfall" means the intersection of the surface center of a tropical storm or hurricane with a coastline, as defined by the National Weather Service.
- 2.35. "MW" means megawatt.
- 2.36. "National Weather Service" means the United States National Oceanic and Atmospheric Administration's National Weather Service or its successor agency.
- 2.37. "Outage" means the occurrence of conditions on the TDSP's side of the City's ESI_ID meters resulting in a transfer of the City Load at the Site to the City or Contractor Equipment, such as any planned, unplanned, or anticipated loss of electric energy from the electrical grid or TDSP, and includes an Extended Power Outage.
- 2.38. "Parties" mean all of the entities set out in the Preamble who are bound by this Contract.
- 2.39. "PUCT" means the Public Utility Commission of Texas or any successor agency thereto.
- 2.40. "Reliability as a Service Model": In this model, the Contractor will be responsible for financing, engineering, designing, permitting, procuring, installing, operating, maintaining, controlling, and complying with regulatory requirements of all generation and distribution equipment. In addition, the amortization costs and the maintenance and operation costs will be paid back to Contractor from selling electricity back to the grid and potentially sharing the balance of revenue.

- 2.41. "Retail Electricity Provider" or "REP" means a seller of electricity that is permitted under the Public Utility Regulatory Act of Texas (PURA) to sell electricity to customers located in the State of Texas.
- 2.42. "Site" is an area designated in a Site Addendum in which the Contractor operates generation equipment.
- 2.43. "Site Addendum" means a written addendum, substantially in the form set forth in Exhibit A-2, mutually agreed to and executed by the Director and the Contractor, that serves as a project-specific work order for Contractor to perform Work at a Site.
- 2.44. "Standby Power" or "Emergency Power" means the required sustained/continuous load, including identified life safety loads that Contractor's System must be capable of providing during all maintenance and utility-derived grid/power outage periods, regardless of their duration.
- 2.45. "Storm Event Period" means the period that begins 72 hours prior to the National Weather Service's predicted time of Landfall of a tropical storm level or higher level storm (i.e., hurricane) on the Texas gulf coast, specifically between (and including) Jefferson County, Texas and San Patricio County, Texas and continues until the storm warnings by the National Weather Service have been officially lifted.
- 2.46. "Surety": Corporate entity that is bound by one or more Bonds, and is responsible for completion of the Work, including the correction period, and for payment of debts incurred in fulfilling the Contract. Surety shall include co-surety or reinsurer, as applicable.
- 2.47. "System" has the meaning set forth in Section 4.5 of this Contract.
- 2.48. "System Capacity" is defined in the Site Addendum.
- 2.49. "TCEQ" means the Texas Commission on Environmental Quality or its successor agency.
- 2.50. "TDSP" means the transmission service provider ("TSP") and/or distribution service provider ("DSP") that owns or operates equipment or facilities that are used for the transmission of electricity and/or for distribution of electricity to retail customers, as TSP and DSP are more fully defined in the Texas Administrative Code, Title 16, Section 25.5, or successor regulation.
- 2.51. "TLF" means the transmission loss factor as defined by the ERCOT Protocols.
- 2.52. "Transient Power" means the short-term high-power output to manage transient City facility conditions such as changes in configuration, starting large motor loads, etc. Transient Power has a value set forth in the Site Addendum.
- 2.53. "Utility Grade Backup Power" or "UGBP" means voltage and frequency, at no less than the quality standards as governed by Texas Administrative Code, Title 16, Section 25.51(a) and 25.51(b) ("Power Quality").
- 2.54. "Work": As defined in a Site Addendum and including entire design and construction phase required by the Contract, including all labor, equipment, and services required or reasonably inferable to complete the work in accordance with the Contract and Site Addendum.

3. DUTIES OF CONTRACTOR

3.1. Scope of Work

- 3.1.1. In consideration of the payments specified in this Contract and the Site Addendums, Contractor shall provide all labor, material, and supervision reasonably necessary to perform the services described in Exhibit A and the Site Addendum(s).
- 3.1.2. *Site Addendums*

3.1.2.1. Subject to and in accordance with the terms and conditions of this Contract, the Director may execute and issue under this Contract one or more Site Addendums setting forth Services that Contractor shall provide or perform relating to the matters set forth in this Contract. Contractor shall complete the Services set forth in and in accordance with each Site Addendum, and/or any authorized amendment thereto, approved and signed by the Director and Contractor. No additional term or condition added in any Site Addendum, or any authorized amendment thereto, shall conflict with or diminish any term or condition of this Contract and any such term or condition shall be void and unenforceable unless explicitly agreed to as an authorized amendment to this Contract in accordance with Section 6.5. For City-specific requirements, the parties will mutually agree to additional details in the Site Addendum.

3.1.2.1.1. The City agrees that the prices as set out in Exhibit A-1 are only indicative of pricing which will ultimately be agreed to by the Director and Contractor in a Site Addendum or an amendment to a Site Addendum.

3.2. Coordinate Performance

3.2.1. Contractor shall coordinate its performance with the Director and other persons that the Director designates in writing. Contractor shall promptly inform the Director and other person(s) designated by the Director of all significant events relating to the performance of this Contract.

3.3. Reports

3.3.1. Contractor shall submit all reports and progress updates required by the Director as agreed in the Site Addendum.

3.4. Prompt Payment Of Subcontractors

3.4.1. In accordance with the Texas Prompt Payment Act, Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Contract. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS REGARDLESS OF WHETHER THE FAILURE TO PAY IS CAUSED BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, THE NEGLIGENCE (WHETHER SOLE, JOINT, OR CONCURRENT), OR OTHER CONDUCT OR LIABILITY OF THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES.**

3.5. Personnel of Contractor

3.5.1. Contractor shall replace any of its personnel or subcontractors whose work product is deemed unsatisfactory by the Director.

3.6. Release

3.6.1. **CONTRACTOR 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 CONTRACT, 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. CONTRACTOR HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED**

TO ITS RELEASE UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS CONTRACT.

3.7. Indemnification

3.7.1. CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “CITY”) HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS CONTRACT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

3.7.1.1. CONTRACTOR’S AND/OR ITS AGENTS’, EMPLOYEES’, OFFICERS’, DIRECTORS’, CONTRACTORS’, OR SUBCONTRACTORS’ (COLLECTIVELY IN THIS AND THE FOLLOWING SUBSECTIONS, “CONTRACTOR”) ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

3.7.1.2. THE CITY’S AND CONTRACTOR’S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND

3.7.1.3. THE CITY’S AND CONTRACTOR’S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

3.7.2. CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS CONTRACT AND FOR FOUR YEARS AFTER THE CONTRACT TERMINATES. CONTRACTOR’S INDEMNIFICATION IS LIMITED TO \$1,000,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY’S SOLE NEGLIGENCE.

3.7.3. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE LIABILITY OF CONTRACTOR FOR THE CITY’S CONCURRENT NEGLIGENCE SHALL NOT EXCEED \$1,000,000.

3.8. Indemnification – Subcontractor’s Indemnity

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

3.9. Indemnification Procedures

3.9.1. *Notice of Claims.* If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 30 days, or sooner if required in order to give the other party reasonable opportunity to answer the claim. The notice must include the following:

3.9.1.1. a description of the indemnification event in reasonable detail

3.9.1.2. the basis on which indemnification may be due, and

3.9.1.3. the anticipated amount of the indemnified loss.

The City shall reasonably cooperate with the Contractor in the defense of any indemnified claim, including making its employees available and providing any requested information and documents necessary for the defense.

3.9.2. *Defense of Claims.*

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

3.9.2.2. If the City assumes and controls the defense, Contractor shall not be liable for any settlement reached without its written consent, which consent shall not be unreasonably withheld, if such settlement exceeds the maximum amount of Contractor's liability limit under Section 3.7.

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

3.9.2.4. The City shall submit to the Contractor any invoices for defense expenses that the City seeks to recover from Contractor as an indemnified loss within 90 days of incurring such expense.

3.10. Insurance

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

COVERAGE	LIMIT OF LIABILITY
Workers' Compensation	Texas Statutory for Workers' Compensation
Employer's Liability	Bodily Injury by Accident \$500,000 (each accident)
	Bodily Injury by Disease \$500,000 (policy limit)
	Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	\$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
Excess Coverage	\$1,000,000 each occurrence/ aggregate in excess of limits specified for Commercial General Liability, and Automobile Liability
Professional Liability Coverage	\$1,000,000 per occurrence; \$2,000,000 aggregate
Aggregate Limits are per 12-month policy period unless otherwise indicated herein or in the applicable Site Addendum.	

- 3.10.2. *Insurance Coverage.* At all times during the term of this Contract and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the Contract requirements. Prior to beginning performance under the Contract, at any time upon the Director's request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance evidencing adequate coverage that meets or exceeds the Contract requirements. Contractor shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Contractor waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Contractor shall also require all subcontractors or consultants to provide proof of insurance coverage meeting all requirements stated above.
- 3.10.3. *Form of Insurance.* The form of 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 Contract. The policy issuer shall (1) be admitted and authorized 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 Contract, and all policies, except Professional Liability and Workers' Compensation, shall extend coverage to the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other Contract provisions. Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor's insurance policies, except professional liability, must provide a Waiver of Subrogation in favor of the City. Each policy, except Workers' Compensation and Professional Liability, must also apply as primary to any other insurance available to the Additional Insured with respect to claims arising under this Contract. If professional liability coverage is written on a "claims made" basis, Contractor shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Contract with a duration of two years after substantial completion.
- 3.10.5. *Notice.* **CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED. Within the 30-day period, Contractor shall provide other suitable policies in order to maintain the required coverage. If Contractor does not comply with this requirement, the Director, at**

his or her sole discretion, may immediately suspend Contractor from any further performance under this Contract and begin procedures to terminate for default.

3.10.6. City Insurance. The City of Houston represents that it is self-insured.

3.11. Limitation of Liability

3.11.1. Except as otherwise expressly provided in this Contract, each party will only be liable for direct damages and neither Party shall be liable to the other for any consequential, incidental, indirect, exemplary, or special damages (including loss of profit, revenue, business opportunity, or goodwill), arising out of or related to this Contract or any Site Addendum, whether based on breach of contract, tort (including negligence), or otherwise, except to the extent such damages arise from (i) a Party's indemnification obligations; (ii) a Party's breach of its confidentiality or intellectual property obligations; (iii) a Party's gross negligence or willful misconduct.

3.12. Confidentiality

3.12.1. Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, data, and documents (collectively, the "Information") that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this Section.

3.13. Use of Work Products

3.13.1. Contractor conveys and assigns to the City its entire interest and full ownership worldwide in and to any Documents, and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively "Proprietary Rights") that Contractor, its agents, employees, contractors, and subcontractors (collectively "Authors") develop, write, or produce specifically for any Site Addendum deliverables or unique City specifications under this Contract and that do not constitute Contractor Background IP (collectively "Works"). Notwithstanding the foregoing assignment, Contractor and its suppliers retain all ownership of any intellectual property, proprietary information, and technical data developed, owned, or acquired by Contractor and its suppliers prior to or independently of this Contract ("Contractor Background IP").

3.13.2. The Authors shall not claim or exercise any Proprietary Rights related to the Works. The City hereby grants to the Contractor a perpetual, non-exclusive, fully paid-up, royalty-free, worldwide license to use, reproduce, and modify the Works, including any derivative works thereof, for its internal business purposes and for the performance of the services under this Contract and any Site Addendum. If requested by the Director, Contractor shall place a conspicuous notation on any Works which indicates that the City owns the Proprietary Rights.

3.13.3. Contractor shall execute all documents required by the Director to further evidence this assignment and ownership. Contractor shall cooperate with the City in registering, creating, and enforcing Proprietary Rights arising under this Contract. If Contractor's assistance is requested and rendered under this Section, the City will reimburse Contractor for all out-of-pocket expenses it incurs in rendering assistance, subject to the availability of funds. On termination of this Contract, or if requested by the Director, Contractor shall deliver all Works to the City. Contractor shall obtain written agreements from the Authors which bind them to the terms of this Section.

3.13.4. All Works developed, written, or produced under this Contract for use as a contribution to a collective work, a part of a motion picture or other audiovisual work, a translation, a

supplementary work, a compilation, an instructional text, a test, answer material for a test, or an atlas, are “works made for hire.”

- 3.13.5. Contractor may retain copies of the Works for its archives. Except as provided in this Section, Contractor shall not otherwise use, sell, license, or market the Works.^[OOB]

3.14. Licenses and Permits

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

3.15. Compliance with Laws

- 3.15.1. Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances, including those set forth in **Exhibit B** hereto.

3.16. Compliance with Equal Opportunity Ordinance

- 3.16.1. If applicable, Contractor shall comply with the City’s Equal Employment Opportunity Ordinance as set out in Section 15-17 of the Code of Ordinances.

3.17. Drug Abuse and Detection And Deterrence

- 3.17.1. Contractor shall maintain a drug-free workplace and ensure that its employees, agents, and subcontractors engaged in the performance of work on this Contract are free from the unlawful use, possession, distribution, or manufacture of controlled substances and alcohol while on duty or on City premises. The requirements and terms of City of Houston Executive Order 1-31, as revised from time to time, relating to drug-abuse deterrence for City contractors, are incorporated into this Contract for all purposes. Contractor agrees it has reviewed Executive Order No. 1-31, as revised, and will comply with it.

3.18. Environmental Laws

- 3.18.1. Contractor shall comply with all applicable rules, regulations, statutes, or orders of the Environmental Protection Agency (“EPA”), the Texas Commission on Environmental Quality (“TCEQ”), and any other governmental agency with the authority to promulgate environmental rules and regulations (“Environmental Laws”). Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor’s failure to comply.
- 3.18.2. Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Laws. “Hazardous Materials” mean any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants, or any ignitable or hazardous liquids, materials, or substances in the City’s storm sewer system or sanitary sewer system or elsewhere on City Property in violation of the Environmental Laws.

3.19. Pay or Play

- 3.19.1. The requirement 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 Contract for all purposes. Contractor has reviewed Executive Order No. 1-7, as revised, and shall comply with its terms and conditions.

3.20. Compliance with Certain State Law Requirements

- 3.20.1. *Anti-Boycott of Israel.* Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Contract not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.
- 3.20.2. *Anti-Boycott of Energy Companies.* Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Contract not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.
- 3.20.3. *Anti-Boycott of Firearms Entities or Firearm Trade Associations.* Contractor certifies that Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Contract, as defined by Section 2274.001 of the Texas Government Code.
- 3.20.4. *Certification of No Business with Foreign Terrorist Organizations.* For purposes of Section 2252.152 of the Texas Government Code, Contractor certifies that, at the time of this Contract neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code as a company known to have contracts with or provide supplies to a foreign terrorist organization.

3.21. Zero Tolerance for Human Trafficking and Related Activities

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

3.22. Preservation of Contracting Information

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

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

4. DUTIES OF CITY

4.1. Payment Terms

- 4.1.1. Subject to all terms and conditions of this Contract and in accordance with the payment terms set out in Exhibit A , the City agrees to pay for the services described in Exhibit A and each Site Addendum based upon monthly invoices showing related services provided at the rates set forth in Exhibit A and each Site Addendum. Contractor must submit all invoices through the City's supplier management portal, SAP Business Network, as directed by the Director or CPO, unless the Parties agree to another method in writing signed by Contractor, the Director and the CPO. The fees must only be paid from Allocated Funds as provided below. The City shall pay on the basis of monthly invoices submitted by Contractor and approved by the Director, showing the services performed and the attendant fee. The City shall pay Contractor within 30 days of the receipt and approval of the invoices.

4.2. Early Payment

- 4.2.1. The City of Houston's standard payment term is to pay 30 days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Tex. Gov't Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from vendor as follows:
- Payment Time - 10 Days: 2% Discount
 - Payment Time - 20 Days: 1% Discount
- 4.2.2. 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.

4.3. Disputed Payments

- 4.3.1. If, for any reason, the City disputes all or part of any Contractor invoice, the Director shall not authorize payment of the disputed part of the invoice, and may, in the sole discretion of the Director, elect to pay any undisputed portion of the invoice. The Director shall (1) promptly notify Contractor that the City disputes all or part of the Contractor's invoice, and (2) request that the Contractor correct the invoice or otherwise respond to the City's concerns. The Director and/or the City Attorney are authorized to settle disputes and pay disputed invoices without approval by City Council if the amount paid by the City to the Contractor to resolve the dispute does not cause the total of all payments by the City to Contractor under this Contract to exceed the maximum agreement amount approved by City Council for this Contract

4.4. Taxes

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

4.5. Limit of Appropriation

- 4.5.1. The City's duty to pay money to Contractor under this Contract is limited in its entirety by the provisions of this Section.
- 4.5.2. In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$0.00 to pay money due under this Contract during the City's current fiscal year (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Contract, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:
- 4.5.3. The City has not allocated supplemental funds or made a Supplemental Allocation for this Contract unless the City has issued to the Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Contract 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.

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

4.6. Contract Changes

- 4.6.1. At any time during the Contract Term, the Director may issue a Change Order or other instrument ("Change Order") to increase or decrease the scope of services set out in this Contract or a Site Addendum, as he or she may find necessary to accomplish the general purposes of this Contract, subject to Contractor's agreement to perform the changed scope at mutually-agreed upon pricing and schedule. Upon such mutual agreement, Contractor shall furnish the services or products in the Change Order in accordance with the requirements of this Contract plus any special provisions, specifications, or special instructions. Change Orders are subject to the Allocated Funds provisions of this Contract.
- 4.6.2. Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel reasonably necessary to provide the services or products described in the Change Order. Contractor shall perform within the time prescribed. If the Change Order impacts the time for completion of the work under a Site Addendum, the Contract Time shall be adjusted by the number of days mutually agreed upon by the Contractor and Director. If no time for performance is prescribed, Contractor shall perform within a reasonable time.

- 4.6.3. A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as in this Contract. The effective date of the Change Order is the date on which Contractor receives written notification of the addition(s). Each item added is subject to this Contract as if it had originally been a part, but the charge for each item starts to accrue only on the effective date of the Change Order. If a product or service that is subject to this Contract is deleted, lost, stolen, destroyed, damaged, sold, replaced, or otherwise disposed of, the Director may exclude it from the operation of this Contract by notifying Contractor in writing. The notice takes effect immediately on its receipt by Contractor. More than one notice may be given. When a notice is received, Contractor shall delete the charge for the excluded product or service from the sum(s) otherwise due under this Contract. The total charges for additions and deletions to this Contract must never exceed 25% of the original Contract amount unless:
- 4.6.4. the additions and deletions are calculated on a per-Site Addendum basis, with a limit of 25% of the total price of the specific Site Addendum being changed; or additions are exempt from the competitive bidding or proposal requirements, set forth in Tex. Local Gov't. Code Chapter 252, or the City acquires the additions from Contractor through a competitive bid or competitive proposal.
- 4.6.5. The Director will issue the Change Order in substantially the following form:

CHANGE ORDER

TO: [Name of Contractor]

FROM: City of Houston, Texas (the "City")

DATE: [Date of Notice]

SUBJECT: Change Order under the Contract between the City and [Name of Contractor] countersigned by the City Controller on [Date of Countersignature of the Contract]

Subject to all terms and conditions of the Contract, the City requests that Contractor provide the following:

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed: [Signature of Director]

Signed [Signature of Contractor]

5. TERM AND TERMINATION

5.1. Contract Term, Renewals, and Time Extensions

- 5.1.1. This Contract is effective on the Effective Date and remains in effect for eight years, unless sooner terminated under this Contract ("Initial Term").
- 5.1.2. Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Contract will be automatically renewed for three successive one-year terms on the same terms and conditions. The Contractor shall have the option to decline any renewal term by providing written notice to the City at least 60 days before the expiration of the then-current term. If the Director or the City chooses not to renew this Contract, the Director shall notify Contractor and the CPO of non-renewal at least 30 days before the expiration of the then-current term.

- 5.1.3. If the Director requests an extension of time to complete Contractor's performance or to issue a Site Addendum, then the Chief Procurement Officer may, upon consultation with the Director involved, extend the time so long as the extension does not exceed 120 calendar days. The extension must be in writing but does not require amendment of this Contract. Contractor is not entitled to damages for delay regardless of the cause of the delay. If the Contractor determines that a delay is unavoidable or requires additional costs for the preservation of the Work, the Contractor shall notify the Director, and the Parties shall mutually agree to any such extensions and compensation.
- 5.1.4. The Director may issue a Site Addendum at any time during the Initial Term of this Contract and subsequent renewals or extensions to it. After expiration or termination of this Contract, no additional Site Addendums may be issued, however, for any Site Addendum issued prior to the expiration or termination of this Contract, Contractor shall complete the work or services under the Site Addendum and this Contract shall likewise remain in effect only for those purposes necessary and appropriate for the Site Addendum to continue until its own expiration or termination, unless Contractor is otherwise notified in writing by the Director. A Site Addendum may not extend the Contract Term beyond 30 years of the Effective Date. Notwithstanding the Initial Term and any renewals, this Contract shall remain in full force and effect until the expiration or termination of the final Site Addendum issued hereunder not to exceed 30 years from the Effective Date.

5.2. Termination for Convenience by City

- 5.2.1. The Director may terminate This Contract or a Site Addendum at any time by giving 30 days written notice to Contractor, with a copy of the notice to the CPO. The City's right to terminate This Contract or a Site Addendum for convenience is cumulative of all rights and remedies which exist now or in the future.
- 5.2.2. On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Contract or a Site Addendum and cancel all existing orders and subcontracts that are chargeable to This Contract or a Site Addendum. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under This Contract or a Site Addendum up to the termination date and equipment/materials provided, equipment/materials procured but not returnable after reasonable efforts to negotiate their return or to take advantage of any restocking fee, and costs directly arising from termination (e.g., restocking fees, reasonable demobilization and Site restoration costs if applicable) under this Contract up to the termination date.
 - 5.2.2.1. The City shall then pay the fees to Contractor for services actually performed and other items provided above, but not already paid for, in the same manner as prescribed in Section 4.1 unless the fees exceed the allocated funds remaining under This Contract or a Site Addendum.
- 5.2.3. **EXCEPT AS SET OUT IN SECTION 5.2.4 RECEIPT OF PAYMENT FOR SERVICES RENDERED AND OTHER ITEMS DESCRIBED IN SECTION 5.2.2 IS CONTRACTOR'S ONLY REMEDY FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS CONTRACT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION.**
- 5.2.4. The City will pay a termination payment if either of the two following scenarios exist:
 - 5.2.4.1. If the City terminates the Contract and there are currently Site Addendums that are using the Reliability as a Service Model, that are currently in the operations phase and that the Site Addendum(s) provide for termination payments, then the City will

pay the termination payments in accordance with the applicable Site Addendum(s), subject to the Allocated funds.

- 5.2.4.2. If the City terminates a Site Addendum and the Site Addendum is using the Reliability as a Service Model and the Site Addendum provides for termination payments in an amount agreed upon in writing by the Parties that provides Contractor reasonable compensation for any actual cost(s) incurred by Contractor, then the City will pay the termination payments in accordance with the applicable Site Addendum, subject to the Allocated funds.

5.3. Termination for Cause

- 5.3.1. If Contractor defaults under This Contract or a Site Addendum and such default is not cured within the cure period, the Director may either terminate This Contract or a Site Addendum. The City's right to terminate This Contract or a Site Addendum for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:
 - 5.3.1.1. Contractor fails to perform any of its duties under This Contract or a Site Addendum and such default is not cured within 30 days from notice;
 - 5.3.1.2. Contractor becomes insolvent
 - 5.3.1.3. all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
 - 5.3.1.4. a receiver or trustee is appointed for Contractor.
- 5.3.2. If a default occurs, the Director will deliver a written notice to Contractor describing the default and the termination date. In the event of a default pursuant to Section 5.3.1.1, Contractor will have 30 days from the date of notice to cure. If a default occurs pursuant to Sections 5.3.1.2, 5.3.1.3 or 5.3.1.4, Contractor shall promptly notify the City in writing. The City may, at its sole discretion, allow Contractor 15 business days to provide adequate assurance of continued performance and financial capability. If Contractor fails to provide such assurance within the time required, or if the City determines that Contractor cannot continue to perform its obligations, the City may terminate this Contract immediately upon written notice without further obligation or liability to Contractor. The Director, at his or her sole option, may extend the termination date to a later date. If the Director provides the Contractor with a notice of default to cure the default and Contractor does so to the Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate This Contract or a Site Addendum on the termination date, and the City shall have the right to withhold from a final payment the actual amounts necessary to remedy the costs incurred as a result of such breach.
- 5.3.3. To effect final termination, the Director must notify Contractor in writing with a copy of the notice to the CPO. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under This Contract or a Site Addendum, and promptly cancel all orders or subcontracts chargeable to This Contract or a Site Addendum.
- 5.3.4. Contractor may terminate its performance under This Contract or a Site Addendum only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under This Contract or a Site Addendum. If a default occurs and Contractor wishes to terminate the Contract, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date. The date must be at least 30 days after the Director receives the notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the

City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Contract or a Site Addendum on the termination date, and shall be entitled to recover all amounts due for Work satisfactorily performed subject to Section 4.5.

6. MISCELLANEOUS

6.1. Independent Contractor

- 6.1.1. Contractor shall perform its obligations under this Contract 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 Contract. However, neither party is liable for reasonable delays in performing its obligations under this Contract to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Contract.
- 6.2.2. This relief is not applicable unless the affected party does the following:
 - 6.2.2.1. uses all commercially reasonable efforts to remove the effects of the Force Majeure and to resume performance of the Contract; 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 Contractor has occurred and render a written decision within 14 days. The decision of the Director is final; provided, however, that the Director's decision shall be limited to determining the existence and duration of the Force Majeure event; and provided, further, that neither the determination nor the finality thereof shall relieve the City of its payment obligations for work performed by Contractor up to the date performance was affected.
- 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 Contract by the City.
- 6.2.5. If the Force Majeure continues for more than 30 days from the date performance is affected, the Director may terminate this Contract by giving 7 days' written notice to Contractor. This termination is not a default or breach of this Contract. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE CONTRACT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.
- 6.2.6. Contractor is not relieved from performing its obligations under this Contract due to a strike or work slowdown of its employees. Contractor shall employ only fully trained and qualified personnel during a strike.

6.3. Severability

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

6.4. Entire Contract

- 6.4.1. This Contract 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 Contract.

6.5. Written Amendment

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

6.6. Governing Law and Venue

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

6.7. Notices

- 6.7.1. All notices to either party to the Contract must be in writing and must be delivered by hand; e-mail; United States registered or certified mail, return receipt requested; United States Express Mail; Federal Express; UPS; or any other national overnight express delivery service. If the Contractor provides notice by e-mail, it must also use one of the other methods listed. 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 Contract 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. Notice is only effective upon receipt.

6.8. Captions

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

6.9. Non-Waiver

- 6.9.1. If either party fails to require the other to perform a term of this Contract, 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 Contract.
- 6.9.2. An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Contract or establish a standard of performance other than that required by this Contract and by law. The Director is not authorized to vary the terms of this Contract.

6.10. Inspections and Audits

- 6.10.1. City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Contract. Contractor shall keep its books and records available for this purpose for at least three years after this Contract terminates. 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.

6.11. Enforcement

- 6.11.1. The City Attorney or his or her designee may enforce all legal rights and obligations under this Contract without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Contract, 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 Contract 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. Contractor shall remain obligated to the City under all clauses of this Contract that expressly or by their nature extend beyond the expiration or termination of this Contract, including but not limited to, the indemnity provisions.

6.14. Publicity

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

6.15. Parties in Interest

- 6.15.1. This Contract does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

6.16. Successors and Assigns

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

6.17. Business Structure and Assignments

- 6.17.1. Contractor shall not assign this Contract 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 and Commerce Code. In the case of such an assignment, Contractor 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.
- 6.17.2. Contractor shall not delegate its primary management and supervisory performance under this Contract without the Director's prior written consent. This shall not prevent Contractor from subcontracting portions of the Work (excluding primary project management and the real-time operation of the System) without prior consent.

6.18. Hazardous and Toxic Materials

- 6.18.1. Contractor warrants that each chemical substance constituting or contained in the products sold or otherwise transferred to the City under this Contract is in compliance with the Toxic

Substances Control Act. Contractor shall furnish Material Safety Data Sheets as required by the Director and shall promptly furnish revisions or supplements as they become available.

6.19. Remedies Cumulative

- 6.19.1. Unless otherwise specified elsewhere in this Contract, the rights and remedies contained in this Contract 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 Contract except in accordance with its provisions.

6.20. Contractor Debt

- 6.20.1. IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS CONTRACT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, HE OR SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS CONTRACT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP USING THE FORM DESIGNATED BY CITY BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS CONTRACT.

EXHIBIT A: SCOPE OF WORK

1. Overview

- 1.1. During the Term of This Contract, the City may issue a Site Addendum. Contractor shall perform the services set out in a Site Addendum. The Site Addendum shall set out which service model, i.e. Reliability as a Service Model or Capital Project and Maintenance Model, will be used for a particular location. One or more Site Addendums may be agreed to by the Contractor and the Director under this Contract, but there is no guaranteed minimum Site Addendums to be issued.
- 1.2. When the Contractor and the Director agree to a Site Addendum, The Contractor will be responsible for the engineering, design, permitting, procurement, installation, operation, maintenance, control, and regulatory compliance of all generation and distribution equipment. This includes all necessary infrastructure, utilities, and ancillary components required to generate, distribute, and manage full-site backup power for the Site set out in the Site Addendum.

2. Request for Proposal (RFP)

- 2.1. The Director may request a proposal(s) for Site Addendums. The City's request will set out the basic parameters of the desired terms e.g. service model term etc. The City and Contractor will conduct a walk through at the location, with the scheduling taking place within three Business Days of the request by the Director and the walk-through taking place at a mutually agreeable time and date within a reasonable time thereafter. The City will provide budget and scheduling requirements for the Site Addendum. The Contractor shall submit a proposal within 10 Business Days of the walk through, or longer upon mutual agreement. The City is not responsible for any costs associated with submitting a proposal.

3. Site Addendums.

- 3.1. Subject to and in accordance with the terms and conditions of this Contract, the Director and Contractor may agree to under this Contract one or more Site Addendums setting forth Services that Contractor shall provide or perform relating to the matters set forth in this Contract. Contractor shall complete the Services set forth in and in accordance with each Site Addendum, and/or any authorized amendment thereto, approved and signed by the Director and Contractor. No additional term or condition added in any Site Addendum, or any authorized amendment thereto, shall conflict with or diminish any term or condition of this Contract and any such term or condition shall be void and unenforceable. For City-specific requirements, the parties will mutually agree to additional details in the Site Addendum.
- 3.2. Each Site Addendum shall be in a form substantially similar to Exhibit A-2 and shall set forth the following:
 - 3.2.1. Contract number, Site Addendum number and facility location(s);
 - 3.2.2. Scope of services specifically identifying the service model, the facility capacity limit, the services to be performed and Equipment to be installed by Contractor;
 - 3.2.3. A breakout to include identification, by line item, of the fees and quantities consistent with the prices set forth in Exhibit A-1, provided that the City acknowledges and agrees that the prices as set out in Exhibit A-1 are only indicative of pricing which will ultimately be agreed by and between the City and Contractor once an Addendum is issued and Contractor is able to provide updated pricing for the scope of services;
 - 3.2.4. City Contribution Costs; and milestone payments, as applicable
 - 3.2.5. Revenue Sharing, if applicable;

- 3.2.6. Schedule of performance for design permitting, construction, installation and testing of Equipment;
 - 3.2.7. Submittal schedule,
 - 3.2.8. Term of the Site Addendum including Site Addendum expiration date and renewal periods;
 - 3.2.9. Termination Payments, if any;
 - 3.2.10. Identity of the Contractor's key personnel assigned to each Site Addendum
 - 3.2.11. for each phase of the project;
 - 3.2.12. Identity of the Contractor's subcontractors assigned to each Site Addendum for each phase of the project;
 - 3.2.13. Key City personnel, for each phase of the project; including the responsible Director
 - 3.2.14. Balance of funds remaining in the Contract;
 - 3.2.15. Payment and Performance Bonds, if required,
 - 3.2.16. Signatures of the Director and the Contractor, and date of execution; and
 - 3.2.17. Any other information necessary to identify and perform the services or as otherwise may be required by the Director.
- 3.3. Each Site Addendum continues in effect for the term of the Site Addendum, unless sooner terminated.
- 3.4. In the event of a conflict between this Contract and a Site Addendum, this Contract shall control.

4. Design and Construction Phase

4.1. *30% Design Phase*

- 4.1.1. Site addendum shall include a 30% design Phase as phase 1
- 4.1.2. During the 30% design phase, the Contractor shall collaborate with the City to advance the design to approximately 30 percent completion. The Contractor shall provide advisory services, including but not limited to:
 - 4.1.2.1. constructability, cost implications, and scheduling considerations;
 - 4.1.2.2. Participating in an initial planning and scoping session with the City and design team to identify and formally document all assumptions, clarifications, constraints, and exclusions underlying the Contractor's initial pricing;
 - 4.1.2.3. Maintaining a comprehensive assumptions log that records all factors that may materially affect cost, schedule, or scope.
 - 4.1.2.4. Final Bid Submission and Variance Reconciliation
- 4.1.3. Upon completion of the 30% design phase, the Contractor shall submit a refined final

bid for the construction phase. The final bid shall:

- 4.1.3.1. Incorporate updated drawings, specifications, and scope deliverables;
- 4.1.3.2. Identify and reconcile all variances between the initial estimate and the refined bid, including but not limited to changes in equipment, quantities, material pricing, and labor assumptions;
- 4.1.3.3. Provide written justification and supporting documentation for any cost adjustments or deviations from initial assumptions.

4.2. Submittals.

- 4.2.1. The Contractor shall prepare and submit the following documents unless otherwise agreed to in a Site Addendum:

Document	To be submitted with Offer	Submittal Schedule	Delivery Date
Drawings			
Design packages include but not limited to: Equipment Dimensional drawings including Cabinets supporting details (Panel Layout, Drawing, Cable Schedule, Electrical Schematics, Wiring diagram, Equipment interconnections, including Power Supply and Earthing connections details). Civil, Mechanical, and utility drawings, etc.		A (30% design package), C (60% design package)	D (100% Design package)
Documents			
Project Schedule	X	A	
Progress report		F	
Software licenses (if applicable)			G
System Description (Applicable to Microgrids)		A (30% design package), C (60% design package)	D (100% Design package)

Functional Design Specifications (FDS) (Applicable to Microgrids)	X	A (30% design package), C (60% design package)	D (100% Design package)
Signal List (point-list) (Applicable to Microgrids)		E(30% design package), E(60% design package)	D (100% Design package)
Bill of Materials		A (30% design package), C (60% design package)	D (100% Design package)
Analysis/Calculations		C	D
Shipping & Delivery Schedule		D	
Equipment Certificates			E
Operating Procedures		E	
Installation Manuals		C	
Operation and Maintenance Manuals		G	
Sequence of Operation (SOO) (above 500kW)		C	
Description of Operations (DOO) (above 500kW)		C	
Factory Acceptance Test reports		E	
Site Acceptance Testing, Commissioning Procedures		D	
Lists			
Document List	X	B	
Exceptions List	X		
Sub-contractors and sub-suppliers list		D	
Packing List		E	
Spare List	X	E	D

4.2.2. The Contractor shall provide the deliverables consistent with the following table unless otherwise agreed to in a Site Addendum:

Letter	Description
X	Documentation to be delivered within the offer
A	Two (2) weeks After Contract Award (AAA)
B	Four (4) weeks AAA
C	Eight (8) weeks AAA
D	Two (2) weeks after the approval
E	Before the shipment
F	Monthly (for monitoring)
G	Eight (8) weeks before the training courses

4.3. *Project Execution And Quality Control Requirements*

4.3.1. Construction and Testing. Prior to commencing construction, Contractor shall develop and submit detailed plans for:

- 4.3.1.1. Construction quality assurance and quality control
- 4.3.1.2. Testing procedures and protocols
- 4.3.1.3. Commissioning processes and checkpoints

4.3.2. Project Management and Communication. Contractor shall:

- 4.3.2.1. Maintain and regularly update a project schedule in Primavera P6 or equivalent format
- 4.3.2.2. Participate in weekly status meetings during active construction
- 4.3.2.3. Submit detailed weekly progress reports, including activities completed, activities upcoming, overall schedule, and costs.
- 4.3.2.4. Tracking procurement and reporting lead times for major equipment.
- 4.3.2.5. Construction reports on quantity installed and percentage progress.
- 4.3.2.6. Immediately communicate any schedule variances that may impact project timelines.

4.3.3. Safety and Compliance. Contractor shall ensure that all project personnel:

- 4.3.3.1. Hold current NFPA 70E certification
- 4.3.3.2. Submit Job Hazard Analysis (JHA) and Lock Out/Tag Out (LOTO) plans

prior to commencing work.

4.3.3.3. Adhere to all site-specific safety protocols.

4.3.4. Performance of Installation Work

4.3.4.1. Perform pursuant to schedule and other conditions all labor, materials and equipment and perform all work required for the completion of the Site Addendum.

4.3.4.2. Maintain all required site safety policies and procedures.

4.3.4.3. Ensure all labor provided shall be competent to perform the tasks required and all materials and equipment provided shall be new and of appropriate quality and the completed work shall comply in all material respects with the requirements of this Contract.

4.3.4.4. Maintain project site in a reasonably clean condition during installation period.

4.3.4.5. Take reasonable precautions to protect City property at project site from damage or loss.

4.4. *Substantial Completion.*

4.4.1. The following shall have occurred in order for the Contractor to achieve Substantial Completion for the Work as defined in a Site Addendum:

4.4.1.1. the Work has been completed in accordance with the requirements of the Contract and a Site Addendum, except for Work on the Punchlist to be finally completed;

4.4.1.2. Director has verified upon inspection that the Punchlist contains all items needed for completion or correction;

4.4.1.3. a successful commencement test has been completed and verified by the Director,

4.4.1.4. the Work is available for full operation and use and is capable of being safely and reliably operated in accordance with the requirements of the Contract, Site Addendum and in accordance with Applicable Law;

4.4.1.5. Installed System Capacity greater than or equal to Customer Load Limit at project location;

4.4.1.6. Entire generation capacity installed at the project location can be started and paralleled to the City's electrical system at the project location within 30 minutes of notice by the Director or City Operator to Contractor's Real-time Operations Desk;(If applicable)

4.4.1.7. Generation units can be paralleled with the ERCOT grid and accept City Loads without disruption of facility operations; (If applicable)

4.4.1.8. Contractor Real-time Operations Desk communication procedures established with the control rooms at the facility;(If applicable)

- 4.4.1.9. All original equipment manufacturer (OEM) safety devices installed and fully operational;
- 4.4.1.10. Fire suppression equipment, devices and detectors fully functional, if required by local codes and ordinances;
- 4.4.1.11. All equipment is installed and operated in accordance with the original equipment manufacturer (OEM) standards, requirements and guidelines;
- 4.4.1.12. Contractor has obtained all City-required certificates of compliances for such Work; and
- 4.4.1.13. Contractor has assigned and provided to City all Warranties in accordance with the Contract and Site Addendum.
- 4.4.2. When Contractor considers the Work to be substantially complete, Contractor shall schedule a commencement test and prepare and submit to Director a comprehensive punch list of items to be completed or corrected. Failure to include an item on the punch list does not alter the responsibility of Contractor to comply with the Contract and Site Addendum. Costs associated with the Commencement Test will be paid by Contractor, so that no Grid Outage Fees will be charged for the Commencement Test(s).
 - 4.4.2.1. By submitting the punch list to Director, Contractor represents that work on the punch list will be completed within 30 days.
- 4.4.3. Revenues. City shall be the generator and seller of all power generated during any start-up or commissioning activity or any testing and shall be entitled to all revenues generated by the site during start up and commissioning, or the performance of any Commencement Test or any other testing of the site.
- 4.4.4. The director shall determine when the Work has achieved Substantial Completion, and their decision shall be final and binding.
- 4.4.5. Upon receipt of Contractor's punch list, Director will inspect the Work to verify that the punch list contains all items needing completion or correction. If Director's inspection discloses items not on Contractor's punch list, the items must be added to the punch list of items to be completed or corrected.
- 4.4.6. Prior to Director issuing a Certificate of Substantial Completion, Contractor shall also provide:
 - 4.4.6.1. Certificate of Compliance;
 - 4.4.6.2. all Warranties in accordance with the Contract and Site Addendum.
- 4.5. *Final Completion.*
 - 4.5.1. Contractor shall review the Contract and inspect the Work prior to Contractor notification to Director that the Work is complete and ready for final inspection.
 - 4.5.2. Director will make final inspection within 15 days after receipt of Contractor's written notice that the Work is ready for final inspection and acceptance. If Director finds the Work has been completed in accordance with the Contract and Site Addendum, Contractor shall submit items set out in 4.5.4.

4.5.3. Should work be found not in compliance with requirements of the Contract and Site Addendum, Director will notify Contractor in writing of items of noncompliance. Upon inspection and acceptance of the corrections by Director, compliance with all procedures of Section 4.5.2, and Contractor's submission of the items set out in Section 4.5.4, the Director will issue Certificate of Final Completion to Contractor as provided in Section 4.5.2.

4.5.4. Contractor shall submit the following items to Director before Director will issue a Certificate of Final Completion:

4.5.4.1. affidavit that payrolls, invoices for materials and equipment, and other indebtedness of Contractor connected with the Work, less amounts withheld by the City, have been paid or otherwise satisfied. If required by Director, Contractor shall submit further proof including waiver or release of lien or claims from laborers or Suppliers of Products;

4.5.4.2. consent of Surety to final payment, if applicable;

4.5.4.3. Complete as-built drawing set

4.5.4.4. Final equipment test reports and certifications

4.5.4.5. Detailed asset inventory list

4.5.4.6. Equipment operations and maintenance manuals

4.5.4.7. Training materials and documentation

4.5.4.8. Populated asset management database containing:

4.5.4.8.1. Detailed equipment data

4.5.4.8.2. Maintenance schedules and requirements

4.5.4.8.3. Asset tagging information

4.5.4.8.4. Database integration confirmation

4.5.5. All closeout documentation must be submitted in both electronic and hard copy formats as specified by the Director.

4.6. *Liquidated Damages.*

4.6.1. Contractor and the City agree that failure to complete the Work for a Site Addendum within Contract Time will cause damages to the City and that actual damages from harm are difficult to estimate accurately. Therefore, Contractor, and the City agree that Contractor is liable for and shall pay to the City for each day of delay of the Work for a Site Addendum beyond Contract Time \$1,200.00, as liquidated damages, and that this amount of damages fixed in this Section is a reasonable forecast of just compensation for harm to the City resulting from Contractor's failure to complete the Work for a Site Addendum within Contract Time. The amount stipulated will be paid for each day of delay beyond Contract Time until Date of Substantial Completion. Liquidated Damages only apply to the construction phase, not operational phase.

4.6.2. Notwithstanding the foregoing, the City shall not assess Liquidated Damages for any delay to the extent caused by:

- 4.6.2.1. Any act or omission of the City, the Director, or other City personnel;
- 4.6.2.2. Any change ordered by the City (including a Change Order) which impacts the Contract Time;
- 4.6.2.3. A Force Majeure event; or
- 4.6.2.4. A delay in obtaining required permits or approvals that is not attributable to the fault or negligence of the Contractor.

4.7. *Prevailing Wage*

- 4.7.1. Contractor shall pay the general prevailing rate of per diem wages for all construction done under this Contract or related subcontracts, according to the provisions of Chapter 2258 of the Tex. Gov't Code. The "general prevailing rate of per diem wages" means the rate(s) set forth in "Exhibit A- 3.

4.8. *Performance and Payment Bonds*

For all projects under a Site Addendum that utilizes the Capital Project and Maintenance Model and in which the City will own the equipment upon substantial completion:

- 4.8.1. Contractor shall provide Bonds on the City's standard forms, attached as Exhibit A-4, covering faithful performance of the construction services set out in a Site Addendum and payment of obligations arising thereunder as required in the Site Addendum. Pursuant to Chapter 2253 of the Government Code. The Bonds must be for 100 percent of Original Site Addendum Price for construction services and in accordance with conditions stated on standard City Performance and Payment Bond and Statutory Payment Bond forms. Bonds may be obtained from Contractor's usual source and cost for the Bonds are included in Site Addendum Price.
- 4.8.2. Bonds must be provided to the City before execution of the Site Addendum. Contractor may not commence the construction work prior to the effective date of insurance required by the Contract and Bonds required by this Section.
- 4.8.3. A Bond that is given or tendered to the City pursuant to a Site Addendum must be executed by a surety company that is authorized and admitted to write surety Bonds in the State of Texas.
- 4.8.4. If a Bond is given or tendered to the City pursuant to a Site Addendum in an amount greater than 10 percent of Surety's capital and surplus, Surety shall provide certification that Surety has reinsured that portion of the risk that exceeds 10 percent of Surety's capital and surplus. The reinsurance must be with one or more reinsurers who are duly authorized, accredited, or trusted to do business in the State of Texas. The amount reinsured by reinsurer may not exceed 10 percent of reinsurer's capital and surplus. The amount of allowed capital and surplus must be based on information received from State Board of Insurance.
- 4.8.5. If the amount of a Bond is greater than \$100,000, Surety shall also hold certificate of authority from the United States Secretary of Treasury to qualify as surety on obligations permitted or required under federal law; or,
 - 4.8.5.1. Surety may obtain reinsurance for any liability in excess of \$100,000 from reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States Secretary of the Treasury to

- 4.8.5.2. qualify as surety or reinsurer on obligations permitted or required under federal law.
- 4.8.6. Determination of whether Surety on the Bond or the reinsurer holds a certificate of authority from the United States Secretary of the Treasury is based on information published in Federal Register covering the date on which Bond was executed.
- 4.8.7. Each Bond given or tendered to the City pursuant to a Site Addendum must be on City forms with no changes made by Contractor or Surety, and must be dated, executed, and accompanied by power of attorney stating that the attorney in fact executing such the bond has requisite authority to execute such Bond. The Bonds must be dated and must be no more than 30 days old.
- 4.8.8. Surety shall designate in its Bond, power of attorney, or written notice to the City, an agent resident in Harris County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.
- 4.8.9. Contractor shall furnish information to a payment bond beneficiary as
- 4.8.10. required by TEX. GOV'T CODE ANN. CH. 2253.
- 4.9. *Warranty of Title and Risk of Loss.*
 - 4.9.1. For Site Addendums that utilize the Capital Project and Maintenance Model
 - 4.9.1.1. Contractor warrants that title to all work covered by Contractor's request for payment passes to the City upon incorporation into the Work or upon Contractor's receipt of payment, whichever occurs first. Transfer of title to Work will be without prejudice to City's right to reject Defective Work, or any other right in the Contract. The Contractor further warrants that the title is free of all liens, claims, security interests or other interests ("Encumbrances"). If not, upon written demand from the City, Contractor shall immediately take legal action necessary to remove Encumbrances.
 - 4.9.1.2. Notwithstanding passage of title as provided in Section 4.9.1, Contractor will bear the risk of loss and damage to the Work until the Date of Substantial Completion of the Work.
 - 4.9.2. For Site Addendums that utilize the Reliability as a Service Model
 - 4.9.2.1. The Contractor shall retain ownership of the Contractor's Equipment and will bear risk of loss of the Contractor's Equipment.

5. **Contractor Equipment**

For Site Addendums that utilize the Reliability as a Service Model

- 5.1. Contractor Equipment. The Contractor Equipment is the personal property of Contractor, except as otherwise expressly provided in this Contract, Contractor shall retain control and ownership rights to the Contractor Equipment.
 - 5.1.1. Prohibition of Liens. The City agrees that at no time will the Contractor Equipment become, in any manner, affixed or attached to real property or any building, and shall not be considered or deemed an improvement to or fixture of the real property or any building. The City shall prevent any liens, levies, attachments or encumbrances based upon a claim or right asserted against the City from being filed or asserted against the

Contractor Equipment, or any portion thereof.

- 5.1.2. Contractor shall prevent any liens, levies, attachments or encumbrances based upon a claim or right asserted against Contractor from being filed or asserted against City Property, and shall reimburse the City for any costs incurred in defending, removing and protecting City Property from the same. In the event that a third party files a lien or takes any action against City Property based upon a claim or right asserted against Contractor, Contractor agrees to do all things necessary and bear all expenses to have such lien removed or defend such action as soon as possible.
- 5.1.3. Upon the request of Contractor, the City shall provide to Contractor a mutually agreeable written statement to any third party with an interest in the Site stating that (a) the Contractor Equipment is the property of Contractor and such third party does not have any claims, rights or other interest in or to the Contractor Equipment, (b) Contractor has the rights with respect to the Contractor Equipment as set forth in this Contract, including the right to remove and/or replace the Contractor Equipment in accordance with the terms hereof, and (c) such other items relating to the Contractor Equipment as may be reasonably requested by Contractor, the form of which is agreed to by the City.
- 5.1.4. Site and City Property. The City Property and the Site are the property of the City and, except as otherwise provided herein (i) the City shall retain control and ownership rights to the City Property and (ii) Contractor shall not have any rights in or to the City Property.
- 5.1.5. Removal or Replacement of Contractor Equipment. Contractor shall have the right to remove or replace any of the Contractor Equipment with equipment with equal or greater capacity that Contractor, in its discretion but in accordance with good industry practices, determines will perform in accordance with the specifications set forth in this Contract, and to do so in a manner that does not reduce the System Capacity below that of Customer Load Limit. In addition, Contractor shall not remove or replace any of the Contractor Equipment for preventive maintenance or preventative repair purposes during Hurricane Season in a manner in which remaining System Capacity for the Services would be reduced for more than a 24-hour period below the Customer Load Limit. If Contractor adds or removes any of the Contractor Equipment during the Term in accordance with the preceding sentence, it shall promptly provide to the City a revised Site Addendum to reflect the added or removed equipment. Contractor shall use reasonable industry and commercial practices required for the installation, replacement, and removal of the Contractor Equipment.

6. Operation Phase

- 6.1. From and after the Date of Substantial Completion, in accordance with the terms of this Section, Contractor shall operate the System at the Site for the purpose of providing City with Utility Grade Backup Power at the Site during any Outage within 30 minutes of the start of such Outage and for the duration thereof ("Integrated Reliability On Call Services"). Contractor will also maintain and test the Contractor Equipment according to manufacturer's recommendations and as set out below. Contractor may otherwise operate the System and the Contractor Equipment at the Site as provided in the Site Addendum."
- 6.2. Contractor shall provide Integrated Reliability On Call Services by having the equipment carry the Site's City Load (not to exceed City Load Limit as provided in the Site Addendum). Prior to the Acceptance Date, the Director and Contractor shall mutually develop a load sequencing plan incorporating the Response Times defined in the Site Addendum.
- 6.3. Contractor shall provide a local monitoring system to City for monitoring of the System. If during

an Outage the communications monitoring system is unavailable, Contractor shall dispatch maintenance personnel within one hour to repair the cause for such interruption and if applicable Contractor shall provide notice of such dispatch.

- 6.4. To the extent the System fails to start and run City Load as contemplated by this Contract either during an Outage or in connection with an Annual System Test, ("System Failure"), Contractor shall cure such failure within 72 hours from discovery of such System Failure (the "Cure Window") by either repairing the affected Contractor Equipment or providing for temporary backup generation of capacity to support City Load; provided that, if such System Failure occurs during (i) an Extended Power Outage, the Cure Window shall be shortened to (A) 48 hours of when such failure occurs, in the event of a catastrophic failure of Contractor Equipment requiring replacement or (B) 36 hours of when such failure occurs, in the case of all other repairs or replacements, or (ii) a Storm Event Period, the Cure Window shall be shortened to
 - 6.4.1. (A) 24 hours of when such failure occurs, in the event of a catastrophic failure of Contractor Equipment requiring replacement or (B) 12 hours of when such failure occurs, in the case of all other repairs or replacements.
 - 6.4.2. If Contractor does not complete such repair or replacement within 30 days following the applicable Cure Window, then City may upon at least 5 business days' written notice to Contractor deem Contractor's failure an Event of Default pursuant to Article 5 of the Contract; provided that, so long as Contractor is diligently pursuing such repair or replacement, and provides timely notice to the City, Contractor shall have an additional 30
 - 6.4.3. days to complete such repair or replacement before City may deem such failure an Event of Default or issue any related notice.
 - 6.4.4. To the extent Contractor does not complete such repair or replacement within the applicable Cure Window, then, promptly upon receipt of supporting documentation thereof, Contractor shall reimburse City for its out of pocket costs paid to third parties to procure temporary backup generation for such System Failure while awaiting such repair or replacement.

7. Maintenance and Testing

7.1. *General Requirements*

- 7.1.1. Contractor shall provide all labor, supervision, management, materials, supplies, parts, equipment, tools, and transportation necessary to perform all preventive maintenance, inspections, testing, and repairs.
- 7.1.2. All work shall be performed in accordance with:
 - 7.1.2.1. NFPA 70B (2023 edition) – Standard for Electrical Equipment Maintenance.
 - 7.1.2.2. NFPA 110 (2022 edition) – Standard for Emergency and Standby Power Systems.
 - 7.1.2.3. Manufacturer's recommendations, where more stringent.
 - 7.1.2.4. Applicable federal, state, and local regulations.
- 7.1.3. Contractor shall maintain a maintenance program that defines schedules, procedures, and test intervals consistent with criticality of service.

7.2. *Preventive Maintenance and Inspections - Contractor shall provide, at minimum:*

- 7.2.1. Monthly inspections and exercising under load per NFPA 110.
- 7.2.2. Quarterly inspections of major components.
- 7.2.3. Annual Preventive maintenance and inspection of all systems, including oil, coolant, filters, batteries, transfer switches, and fuel quality testing.
- 7.2.4. Annual load test.
- 7.2.5. Five-year comprehensive maintenance cycle, including infrared thermography of generator connections, insulation resistance testing of alternators, and full transfer switch servicing. And in compliance with NFPA70B and NETA standards. Starting batteries shall be tested quarterly and replaced every 3 years, regardless of test results.

7.3. *Documentation - Contractor shall provide a digital service report within 15 business days of each inspection/test, including:*

- 7.3.1. Date, time, technician name.
- 7.3.2. Scope of service performed.
- 7.3.3. Readings, deficiencies, corrective actions taken.
- 7.3.4. Photos of critical inspection points.
- 7.3.5. Contractor shall maintain records for minimum of 5 years and provide access upon request.
- 7.3.6. Contractor shall maintain a log of all monthly runs and inspections in compliance with NFPA 110.
- 7.3.7. Owner shall be immediately notified of any impending failures or emergent issues identified during routine maintenance.

7.4. *Scheduling & Coordination*

- 7.4.1. Contractor shall submit a maintenance schedule for each site within 30 days of Substantial Completion.
- 7.4.2. All scheduled testing shall be coordinated with the City's Facility Manager
- 7.4.3. to minimize disruption of operations.
- 7.4.4. For ERCOT-participating units (>500 kW), Contractor shall coordinate testing to avoid market unavailability penalties.
- 7.4.5. The Contractor shall upon completion of each inspection submit a "service ticket", the original to be left or forwarded to the designated City Facility Manager for each City department using Contractor's services . The "Service Ticket" shall describe the service performed, as well as all information that pertains to the unit and location.

7.5. *Scheduling of Maintenance Services:*

- 7.5.1. Within 15 days of Date of Substantial Completion, the Contractor shall provide a "Maintenance Service" schedule for a Site Addendum for the services required in this Section 7.6.
- 7.5.2. Prior to the start of any load testing, Inspections/Tri-annual, Annual, Monthly Maintenance, Bi-Annual or repairs, all Contractor employees shall be required to sign-in on the Facility Logbook, indicating the time of arrival and time of departure.
- 7.5.3. The GSD Director may require that the Contractor schedule maintenance through work order system.

7.6. *Certification Requirements:*

- 7.6.1. National Fire Protection Association ("NFPA") 101(00), Sec. 7.9.2.3 requires that emergency generators shall be installed, tested and maintained in accordance with NFPA 110, Standard for Emergency and Standby Power Systems. Chapter 2 of NFPA 101 latest edition (2021 edition), and in compliance with City of Houston, State, and Federal regulations.

7.7. *State Licensure Requirements*

- 7.7.1. MSFC(07), Sec. 604.3 requires that emergency generators shall be maintained in accordance with the 2021 edition of NFPA 110.

7.8. *Service Level Agreement (SLA) – Repairs*

- 7.8.1. Contractor shall provide 24/7/365 emergency response for generator failures.
- 7.8.2. Response and restoration requirements:
- 7.8.3. Outside a Storm Event Period, Non-Emergency repairs for non-operational generators have a response time of 24 hours on site with permanent repair or temporary generators deployed within 5 business days.
- 7.8.4. During a Storm Event Period, Emergency repairs for non-operational generators have a response time of within 4 hours of a call placed with a description of the identified solution provided within 24 hours. Only the building superintendent or Director shall determine emergencies and notify the Contractor accordingly.
- 7.8.5. If permanent repair for a non-operational generator cannot be completed within the SLA window, Contractor shall deploy and connect a temporary generator of sufficient capacity to sustain facility operations until the permanent generator is restored.

8. Revenue Sharing.

- 8.1. If a Site Addendum includes revenue sharing, Contractor shall make Settlement Payments in accordance with the terms and conditions thereof.

9. Access to Site.

- 9.1. Access. The City grants Contractor and Contractor's personnel, subcontractors and/or agents, reasonable access to and over and across the Site and the reasonable right to install, operate, maintain, monitor, remove and replace the equipment on or from the Site during the term of a Site Addendum and thereafter for the purpose of removing the Contractor Equipment, if any; provided that no Contractor subcontractors or agents may enter the Site without Contractor personnel present, unless such agents or subcontractors have been previously approved by the City.

Contractor's personnel, subcontractors, and/or agents must receive security clearance from the City and abide by all City safety and security rules, regulations, procedures, and personnel as such

- 9.2. may be amended from time-to-time. The right of access shall entitle Contractor and its subcontractors and/or agents to occupy the Site at all times reasonably necessary for the purposes of installing the System, operating and maintaining the System, and removing the System in accordance with the terms hereof.
- 9.3. Emergency Access. In emergency situations only that affect the operations of the City's facility, such as a fire, the City shall have the right to access the Site to take remedial action to protect the City's facility utilizing Good Industry Practice; accordingly, Contractor will provide City with keys, combinations, or access codes necessary to allow City personnel and or subcontractors direct access to all of the equipment, at all times during the performance period of the Site Addendum. Notwithstanding this Section, the City Operator or his or her designee shall have access to an emergency shut-off switch for equipment and the System, and be authorized to gain access to the equipment and the System during times of emergency. As soon as practicable, the City shall notify Contractor of the City's entry onto the Site and what actions were taken, if any.
- 9.4. Coordination of Access. Contractor shall give the City Operator reasonable notice of no less than 3 days, unless an emergency exists, of its intent to remove or replace the Contractor Equipment, and shall coordinate with the City Operator so as to minimize any impact on the Site's operations and ensure its security. The City Operator will direct Contractor as to the best route for heavy equipment, cranes, trucks, etc. and, based on the notice provided by Contractor, direct Contractor so as to prevent damage to underground equipment, pipes, and facilities.

10. Restrictions on the City.

- 10.1. Except in the event of an emergency, the City shall notify the Contractor before coming onto the Site. The City agrees that it shall not have access to the Site, the equipment or the System without prior notification, and the City shall not permit any of its personnel, subcontractors or agents to (i) access the Site, the equipment or the System, (ii) move, modify, adjust or otherwise take any action which affects the System or the equipment or (iii) perform any alterations, additions, improvements, maintenance or repair to the equipment, at any time or under any circumstances, including painting, enclosing or surrounding the Site with landscaping materials or plants that could adversely affect the performance of the equipment.
- 10.2. Prior to the City's adding any equipment to the Site that could result in the City exceeding the Customer Load Limits in the Site Addendum or any other equipment brought onto the Site creating an additional temporary load (e.g., welding equipment, construction equipment, etc.), the City shall notify Contractor in writing with sufficient time for Contractor to coordinate such activity to allow Contractor to disable the System to avoid any damage to the equipment.

11. Restrictions on Contractor.

- 11.1. Contractor shall not have any access to the Site or City Property other than that explicitly granted in this Contract or a Site Addendum.

12. Option to Purchase Contractor Equipment

Upon the expiration or termination of a Site Addendum under the Reliability as a Service Model, the City shall have the option, in its sole discretion, to purchase all or part of the Contractor Equipment installed at the Site ("Sold Equipment").

- 12.1. *Exercise of Option:* The City may exercise this option by providing written notice to Contractor within 30 days following the effective date of expiration or termination of the applicable Site

Addendum.

12.2. *Purchase Price:*

12.2.1. *Expiration:* If the City exercises its option upon expiration of the Site Addendum, the purchase price shall be \$1.00.

12.2.2. *Termination:* If the City exercises its option upon early termination of the Site Addendum, the purchase price shall be the Termination Payment as defined in the applicable Site Addendum.

12.3. *Transfer of Title:* Upon payment of the applicable purchase price, and provided the City is fully paid in all amounts due under the Contract, Contractor shall transfer good and marketable title to the City, free and clear of all liens, claims, and encumbrances, and shall execute all documents necessary to effectuate the transfer.

12.4. *Assignment of Rights:* Contractor shall assign or cause to be assigned to the City all then-present warranties, service contracts, and other rights associated with the Sold Equipment, to the extent such rights are freely assignable and at no additional cost to Contractor, and City shall assume ownership responsibilities thereunder.

12.5. With respect to the Sold Equipment, EXCEPT AS SET FORTH ABOVE, CITY UNDERSTANDS AND AGREES THAT (I) CONTRACTOR IS SELLING THE SOLD EQUIPMENT "AS IS" WITHOUT ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOLD EQUIPMENT, INCLUDING BUT NOT LIMITED TO TAX CONSEQUENCES, PHYSICAL CONDITION OR THE MANNER, QUALITY OR STATE OF REPAIR OF THE SOLD EQUIPMENT AND (II) CONTRACTOR EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND INTELLECTUAL PROPERTY INFRINGEMENT.

12.6. From and after the date of transfer of title, City assumes full responsibility for the Sold Equipment and shall release, indemnify, defend and hold harmless Contractor, its successors, assigns, affiliates, partners, representatives, employees, officers and directors from and against any and all claims, expenses, loss or damage or causes of action arising from any cause whatsoever out of the acquisition, use, operation, maintenance, repair, defects or subsequent removal of the Sold Equipment. Moreover, City shall be responsible for all environmental permitting associated with operation of the Sold Equipment.

13. **Contractor Equipment Removal**

If the City does not exercise its option to purchase the Contractor Equipment:

13.1. *Removal Deadline:* Contractor shall, at its sole cost and expense, remove all Contractor Equipment from the Site within 90 days following the expiration or termination of the applicable Site Addendum.

13.2. *Restoration Obligations:* Contractor shall restore the Site to its original condition, reasonable wear and tear excepted, and shall repair any damage to City Property caused by the removal of Contractor Equipment.

13.3. *Failure to Remove:* If Contractor fails to remove its equipment within the time specified above or in such other period as mutually agreed in writing, the City may, upon 10 days' written notice, either:

13.3.1. Deem the equipment abandoned and take title to it without further compensation, or

13.3.2. Remove and store the equipment at Contractor's expense, and recover such costs from any amounts due to Contractor.

13.4. *Survival.* This Section shall survive the expiration or termination of the applicable Site Addendum and the Contract.

14. Warranties

14.1. Contractor warrants that it shall install, maintain and operate the System in accordance with the terms of this Contract and Site Addendum(s), according to Good Industry Practice and manufacturer's standards, and meeting the standards of quality prevailing in Harris County, Texas, for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Contract.

14.2. With respect to any parts and goods it furnishes, Contractor covenants to ensure that to the extent permissible, the warranties of the manufacturer or supplier thereof are provided and assigned to the City, and further agrees, to the best of its knowledge, subject to the exclusions in this Section 12.2:

14.2.1. That all items are free of defects in title, design, material, and workmanship for a period of one year following Substantial Completion;

14.2.2. That each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed;

14.2.3. That each replacement item is new, in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), subject to availability and replacement with a functionally equivalent component if the original is obsolete. and

14.2.4. That no item or its use infringes any patent, copyright, or proprietary right.

15. Security Requirements:

15.1. *Security Requirements for General Services Department:*

15.1.1. The General Services Department requires that all contractor personnel pass the background check for badging. Upon the completion of the background check, all contractors' employees and sub-contractors shall be required to obtain a City of Houston Contractors Badge from the General Services Department' Security Badging Office located at 611 Walker Street (Garden Level, Room B146), Houston, TX. Time and scheduled hours shall be provided.

15.2. *Security Requirements for Houston Public Works:*

15.2.1. The Contractor agrees to strictly abide by all security and safety regulations issued by the City as stated below.

15.2.2. All Contractor personnel and subcontractors must be a U.S. Citizen or have a legal work permit. Each person must also present a valid unexpired U.S. state driver's license or photo identification card. A U.S. issued resident alien card, with photo, passport, or other U.S. state or U.S. federal photo documentation is acceptable to present for identification purposes. It is the responsibility of the Contractor to promptly inform the City of any personnel changes.

15.2.3. The COH/HPW Houston Water Security Group shall also conduct a criminal

background check (at no cost to the Contractor) on all Contractor and Subcontractor personnel assigned to work at any Houston Water site.

- 15.2.4. The Contractor shall contact the security manager at the HPW Houston Water Security Group during normal business hours (8:00 am to 5:00 pm, M-F) to coordinate completion of criminal background checks.
- 15.2.5. The Contractor shall agree to completion of the City's Disclosure and Consent for Release of Information and any other documentation necessary to complete criminal background checks.
- 15.2.6. All Contractor personnel without current identification cards shall be stopped by COH personnel and/or security personnel and shall not be given access to any COH/HPW Houston Water facility. All construction personnel must show a valid identification card at the entrance gate and upon request while working on site.

15.3. Security Requirements for Houston Police Department Locations:

- 15.3.1. All personnel assigned to Houston Police Department (HPD) locations must comply with background check requirement in accordance to Section 7.4.
- 15.3.2. A security background check shall be required for each Contractor employee assigned to work at these facilities. The results of background checks shall be submitted to the General Services Department's designated representative for approval prior to employee reporting to a Police Department location. Any and all costs associated with the background check shall be the responsibility of the Contractor. HPD also has the option to perform its own background check.

15.4. Criminal Justice Information Systems (CJIS) Compliance (Applicable to Houston Police Department (Hpd) Occupied Facilities):

- 15.4.1. The Houston Police Department recognizes that by allowing physical or logical (electronic) access to HPD facilities or network resources, people may gain access to information or systems they are statutorily prohibited from accessing. To comply with state and federal regulations, the Houston Police Department is required to document and investigate access requests to be sure access is necessary and permitted. Bidders/Respondents, therefore, agree to review the Criminal Justice Information Systems (CJIS) process and related documents located at <http://www.houstontx.gov/police/cjis/hpdvendorcertification.htm>

15.5. Security Requirements for Non-Houston Police Department Facilities:

- 15.5.1. All personnel shall be subject to a security background check and a condition of assignment to any City of Houston facility. The results of the background check shall be submitted to the facility Supervisor in charge.
- 15.5.2. All cost associated with the background check shall be the responsibility of the Contractor.
- 15.5.3. The Facility Supervisor in charge shall have the authority to instruct the Contractor to remove undesirable personnel for just cause.
- 15.5.4. The decision by the Director and or the designee shall be the final in all cases involving removal of contract personnel from performing work herein specified.
- 15.5.5. The Contractor shall comply with all building security measures as they pertain to each

facility.

- 15.5.6. The Contractor shall be responsible for training of staff and sub-contractors in the security measures pertaining to these facilities.

16. Payment Terms

- 16.1. For each Site Addendum, the Contractor shall submit a detailed Schedule of Values (SOV) as part of its final approved bid. The SOV shall allocate the total contract price among major work categories, milestones, and deliverables.
- 16.2. All progress payments, retainage, and final payment amounts shall be made strictly in accordance with the approved SOV. Once approved by the City, the SOV shall become a binding document and shall govern payment eligibility for the Contractor.
- 16.3. Five percent retainage shall be held on all payments for design and construction. The retainage shall be released upon final Completion.

EXHIBIT A-1: FEES

The parties agree that the Fees as set out in this Exhibit A-1 are only indicative pricing and that final pricing will be as agreed by the parties in a Site Addendum, as amended from time to time.

EXHIBIT A-2: SITE ADDENDUM FORM

SITE ADDENDUM NO. _____ TO ON-CALL ELECTRICITY RELIABILITY SERVICES CONTRACT CONTRACT NO. _____ ("Contract")

This Site Addendum (this "Site Addendum") is related to the INSERT SITE NAME AND ADDRESS ("Site") Subject to the terms and conditions of, the Contract. The City and Contractor agree as follows:

1. SCOPE OF SERVICES

1.1. Project Description:

- 1.1.1. (Description of scope of the project including system description and system capacity)
- 1.1.2. Technical Proposal Attachments (Include information demonstrating the level of due diligence conducted.)
- 1.1.3. Site Walk Report (See Section _____ of Exhibit A)
- 1.1.4. Engineering Basis of Estimate (See Section _____ of Exhibit A)

1.2. Service Model: (Reliability as a Service or Capital Project)

1.3. Site Load Limits

1.4. Assumptions and/or Excluded Improvements:

1.5. COST BREAKDOWN

The cost breakdown for this Site is the following:

2. CITY'S CONTRIBUTION AND MILESTONE PAYMENTS

Upon completion and approval of the milestones set out below, the City will pay the Contractor as set out below:

3. REVENUE SHARING

3.1. Projected Revenue

3.2. Projected Costs

3.3. Revenue Split

4. PROJECT SCHEDULE

The Contractor shall diligently perform its services to meet the following milestone schedule:

5. SUBMITTAL LIST

The Contractor shall provide the following documents within the time periods set out below: 7.

The delivery dates for the documentation are as follows:

6. Project Close Out documents:

Upon project completion, the vendor shall submit a comprehensive closeout package including: Complete as-built drawing set

- 6.1. Final equipment test reports and certifications if applicable detailed asset inventory list
- 6.2. Equipment operations and maintenance manuals Training materials and documentation
- 6.3. Populated asset management database containing:
- 6.4. Maintenance schedules and requirements Asset tagging information
- 6.5. Database integration confirmation

All closeout documentation must be submitted in both electronic and hard copy formats as specified in the master contract documents.

7. POST ENERGIZATION REQUIREMENTS:

Reactive and preventive maintenance plans to be approved by the city. Response times as provided in Exhibit A: SOW Section 7.8 unless otherwise agreed herein.

8. TERM AND TERMINATION OF THIS SITE ADDENDUM

8.1. Site Addendum Term

- 8.1.1. This Site Addendum is effective on the later of the date signed by the Director or Contractor and remains in effect until years from Acceptance unless sooner terminated under this Site Addendum or the Contract.

8.2. Termination for Convenience

- 8.2.1. If this Site Addendum utilizes the Reliability as a Service Model and this Site Addendum is terminated for Convenience in accordance with Section of the Contract, the City shall pay a termination fee in accordance with the following, subject to the availability of Allocated Funds as set out in Section of the Contract.
- 8.2.2. If this Site Addendum utilizes the Capital Project and Maintenance Model and this Site Addendum is terminated for Convenience in accordance with Section of the Contract, the City shall pay a termination fee in accordance with the following, subject to the availability of Allocated Funds as set out in Section of the Contract.

9. KEY PERSONNEL

City's Key personnel:

Contractor's Key Personnel:

10. ATTACHMENTS

Attachment 1:

11. SIGNATURE

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

CONTRACTOR

Name:

Title:

Federal Tax ID No.:

CITY: OF HOUSTON, TEXAS

Director, Department

EXHIBIT A-3: WAGE RATES

EXHIBIT A-4: PERFORMANCE AND PAYMENT BONDS

EXHIBIT B: FEDERAL PROVISIONS

Version 10/31/2025

GENERAL FEDERAL REQUIREMENTS APPLICABLE TO AGREEMENTS, ADDENDA, AND PURCHASE ORDERS INVOLVING FEDERAL FUNDS ("GENERAL FEDERAL REQUIREMENTS")

1. General

- 1.1. Contractor must comply with the following federal provisions, as applicable, as a condition of this City of Houston ("City") Agreement. For purposes of this Exhibit, the following terms have the meanings set forth in this Exhibit.
 - "Agreement" means the Contract, Addendum, or Purchase Order to which this **Exhibit** is attached.
 - "Contractor" means Contractor, subrecipient, or Vendor as defined in the Agreement to which this **Exhibit** is attached.
 - "Federal Agency" means any relevant federal agency overseeing or administering the funding set forth in the Agreement to which this **Exhibit** is attached as a source of funding.
- 1.2. Contractor also acknowledges that the City is using federal funds attached to a federal program ("Program") for all or a portion of this Agreement. Contractor therefore shall, in addition to those set forth in this Exhibit, comply with any specific terms and conditions as set forth in Federal Agency guidance documents, FAQs, websites, or similar documents as required by the Director or CPO, and any specific terms and conditions set forth in the grant as specified by the Director or CPO ("Funding Law, Regulations and Guidelines").
- 1.3. Contractor also shall provide for compliance with the Grant Agreement, federal laws, rules, regulations, interpretive guidance and other materials set forth in this Exhibit in any agreements it enters into with other parties relating to the federal funds.
- 1.4. Contractor acknowledges that federal financial assistance will be used to fund all or a portion of this Agreement. Contractor shall comply with all applicable federal law, regulations, executive orders, federal policies, procedures and directives as well as any guidance issued by Federal Agency relating to the Program and Funding Law, Regulations and Guidelines. Federal regulations applicable to this funding include but are not limited to the following:
 - 1.4.1. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
 - 1.4.2. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference
 - 1.4.3. Generally applicable federal environmental laws and regulations
- 1.5. Contractor acknowledges that the Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from this Agreement.
- 1.6. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to this Agreement. False statements

or claims may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

2. Use of Funds. Contractor understands and agrees that the funds disbursed under this funding may only be used for the Program and in compliance with the Program and the Funding Law, Regulations and Guidelines.
3. Award Amount. The amount of funding dedicated to this Agreement is limited to the amount set out in the attached Agreement, unless otherwise agreed to by the Parties, in writing.
4. Period of Performance. The Period of Performance of this Agreement will begin on the countersignature date of the City Controller on the Agreement, or in the case of Purchase Orders on the date of issuance of the Purchase Order by the City, which must be after the Contractor signs this Exhibit, and conclude on or before the ending date of the grant, unless the grant is extended and the Parties mutually agree to an extension under the Agreement. In no event shall such Period of Performance under this Agreement be more than six (6) years after any related agreement is executed between City and the US Department of Housing and Urban Development ("HUD") unless an extension that exceeds such time is approved in writing by HUD.
5. Performance Standards and Liquidated Damages. Contractor shall meet the Performance Standards set forth in **Exhibit __**, including interim milestones. Delay or failure to meet performance will result in liquidated damages of \$____ per day, which is an amount the Parties agree is a reasonable assessment and not a penalty. Subcontracts shall include equivalent performance obligations and, where applicable, liquidated damages.
6. Contractor shall not use the HUD, Department of Homeland Security (DHS) or any Federal Government or Federal Agency seal(s), logos, crests, or reproductions of flags or likenesses of DHS or any Federal Government or Federal Agency officials without specific DHS or any Federal Government or Federal Agency pre-approval.
7. Access to Records. The following access to records requirements apply to this Agreement:
 - 7.1. Contractor agrees to provide the City, any Federal Agency Administrator, the Texas Department of Emergency Management, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor shall keep its books, documents, papers, and records available for this purpose for at least seven years after this Agreement terminates or expires. This provision does not limit the applicable statute of limitations.
 - 7.2. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - 7.3. Contractor agrees to provide the Federal Agency or its authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement.
 - 7.4. In compliance with the Disaster Recovery Act of 2018, the City and Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the Federal Agency or its authorized representatives or the Comptroller General of the United States.
 - 7.5. Within ten days of written request by the City, Contractor agrees to provide the City all relevant documentation pertaining to the Program and this Agreement to confirm compliance with Federal requirements, ensure the Program is achieving its purpose, and to respond to audits, as necessary.

8. Environmental Compliance

- 8.1. Contractor shall comply with all applicable standards, ordered, 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.).
- 8.2. Contractor shall report all violations to the City's Purchasing Agent/Chief Procurement Office or designee (CPO), and understands and agrees that the City, through its designated representative, will, in turn, report each violation as required to assure notification to the Federal Agency, and the appropriate Environmental Protection Agency Regional Office.
- 8.3. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

8.4. Environmental Conditions Precedent. Payment under this Agreement is subject to completion of environmental review and any conditions under 24 C.F.R. part 58, including approved Request for Release of Funds ("RROF"), or permitted adoption of another Federal agency's review with RROF. Contractor shall not undertake choice-limiting actions prior to environmental clearance as directed by the City.

8.5. FFRMS Compliance. For covered residential and nonresidential construction, reconstruction, or substantial improvement in the Federal Flood Risk Management Standard ("FFRMS") floodplain, Contractor shall meet HUD 24 C.F.R. Part 55/FFRMS elevation or floodproofing standards and applicable Such requirement shall flow down to all subcontracts and subgrantees.

8.6. Any infrastructure designed and constructed under this Agreement shall be made to withstand extreme weather events and the impacts of a changing climate. To satisfy this requirement, Contractor must meet resilience performance measures identified and implemented by the City in accordance with federal law.

9. Procurement Compliance. Contractor's subcontracting shall comply with 2 C.F.R. §200.214 and 2 C.F.R. §§200.318 – 200.327, including full and open competition, cost/price analysis, suspension/debarment checks, and the use of contract provisions identified in 2 C.F.R. part 200, Appendix II. Such requirement shall flow down to all subsequent subcontracts.

10. Contract Work Hours and Safety Standards Act – Applicable only to Agreements over \$100,000.

10.1. *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.

10.2. *Violation; liability for unpaid wages; liquidated damages*. In the event of any violation of the clause set forth in subparagraph 8.1 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 8.1 of this section, in the sum of \$27 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 8.1 of this section.

10.3. *Withholding for unpaid wages and liquidated damages.* The federal agency 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 8.2 of this section.

10.4. *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph 8.1 through 8.4 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 8.1 through 8.4 of this section.

11. Non-Discrimination. During the performance of this Contract, Contractor agrees as follows:

11.1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, protected veteran status, or national origin. Such action shall include, but not be limited to the following:

11.1.1. 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. 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.

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

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

11.4. To the extent applicable, in the event of Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

11.5. To the extent applicable, Contractor will include the portion of the sentence immediately preceding paragraph 9.1 and the provisions of paragraphs 9.1 through 9.8 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor so that such provisions will be binding upon each subcontractor or vendor.

11.6. To the extent applicable, the City further agrees that it will refrain from entering into any contract or contract modification with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts. In addition, the City

agrees that if it fails or refuses to comply with these undertakings, the Federal 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.

12. Procurement of Recovered Materials – See 2 C.F.R. § 200.323.

12.1. In the performance of this Agreement, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

12.1.1. Competitively within a timeframe providing for compliance with the Agreement performance schedule;

12.1.2. Meeting Agreement performance requirements; or

12.1.3. At a reasonable price.

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

12.3. Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

13. Domestic Preference Requirements

13.1. *Domestic Preference Requirement – 2 C.F.R. §200.322*

13.1.1. As appropriate and to the extent consistent with law, Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this paragraph must be included in all subcontracts and purchase orders for work or products under this Agreement. For purposes of this paragraph:

13.1.1.1. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

13.1.1.2. 2 “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

13.2. *Domestic Content Procurement Preference Requirement for Infrastructure Projects*

13.2.1. For all infrastructure projects funded by Federal financial assistance, except for certain projects funded by a federal agency that constitute pre- and post-disaster or emergency expenditures as defined in OMB Guidance M-22-11 or otherwise falls under a waiver approved by the Federal Agency, Contractor shall comply with the domestic content procurement preference requirement and purchase, acquire, or use products meeting the domestic content procurement preference requirement. For purposes of this paragraph:

13.2.1.1. “Domestic Content Procurement Preference” means that (A) all iron and steel used in the project are produced in the United States; (B) the manufactured products used in the project are produced in the United States; or (C) the construction materials used in the project are produced in the United States. The requirements of this paragraph must be included in all subcontracts and purchase orders for work or products under this Agreement.

13.2.1.2. “Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States— (A) roads, highways, and bridges; (B) public transportation; (C) dams, ports, harbors, and other maritime facilities; (D) intercity passenger and freight railroads; (E) freight and intermodal facilities; (F) airports; (G) water systems, including drinking water and wastewater systems; (H) electrical transmission facilities and systems; (I) utilities; (J) broadband infrastructure; and (K) buildings and real property.

13.2.1.3. “Produced in the United States” means—

- in the case of iron or steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- in the case of manufactured products, that— (i) the manufactured product was manufactured in the United States; and (ii) the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- in the case of construction materials, that all manufacturing processes for the construction material occurred in the United States.

13.2.1.4. “Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States. Projects consisting solely of the purchase, construction, or improvement of a private home for personal use would not constitute an infrastructure project under OMB Guidance M-22-11. Projects that will serve a public function, are publicly owned and operated, privately operated on behalf of the public, or are a place of public accommodation are indicia of infrastructure.

14. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

14.1. As used in this paragraph, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services.

14.2. Prohibitions

14.2.1. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after August 13, 2020, from obligating or expending grant,

cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

14.2.2. Unless an exception in this paragraph applies, Contractor and its Subcontractors shall not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Agency to:

14.2.2.1. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

14.2.2.2. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

14.2.2.3. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

14.2.2.4. Provide, as part of its performance of this Agreement, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

14.3. Exceptions

14.3.1. This paragraph does not prohibit contractors, such as Contractor, from providing—

14.3.1.1. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

14.3.1.2. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

14.3.2. By necessary implication and regulation, the prohibitions also do not apply to:

14.3.2.1. Covered telecommunications equipment or services that:

- Are not used as a substantial or essential component of any system; and
- Are not used as critical technology of any system.

14.3.2.2. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

14.3.2.3. That which 2 C.F.R. Section 200.216 does not apply.

14.4. Reporting requirement

14.4.1. In the event Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during performance of the Services set forth in this Agreement, or Contractor is notified of such by a Subcontractor at any tier or by any other source,

Contractor shall report the information in the manner stated below to the recipient or subrecipient, unless elsewhere in this Agreement are established procedures for reporting the information.

14.4.2. Contractor shall report the following information pursuant to paragraph 12.5:

14.4.2.1. Within one business day from the date of such identification or notification: The Contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

14.4.2.2. Within 10 business days of submitting the information above: Any further available information about mitigation actions undertaken or recommended. In addition, Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

14.5. Subcontracts. Contractor shall insert the substance of this clause, including this paragraph 12.5, in all subcontracts and other contractual instruments.

15. Remedies. If any work performed and/or goods delivered by Contractor fails to meet the requirements of the Agreement, any other applicable standards, codes or laws, or otherwise breaches the terms of the Agreement, the CPO may in his or her sole discretion:

15.1. elect to have Contractor re-perform or cause to be re-performed, at Contractor's sole expense, any of the work which failed to meet the requirements of the contract;

15.2. in the case of goods, reject the goods and require Contractor to provide replacement goods that meet the needs of the City and the terms of the Agreement;

15.3. hire another contractor to perform the work and deduct any additional costs incurred by the City as a result of substituting contractors from any amounts due to Contractor; or

15.4. pursue and obtain any and all other available legal or equitable remedies.

This Section shall in no way be interpreted to limit the City's right to pursue and obtain any and all other available legal or equitable remedies against Contractor.

16. Suspension and Debarment.

16.1. Federal regulations restrict the City from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. Contractor can verify its status and the status of its principals, affiliates, and subcontractors at www.SAM.gov.

16.2. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000 and, if applicable, 45 C.F.R. § 75.213. As such, Contractor is required to verify that none 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).

- 16.3. Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. § 75.213, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- 16.4. This certification, found in Attachment 1 of this Exhibit, is a material representation of fact relied upon by the State of Texas and the City. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. § 75.213, in addition to remedies available to the State of Texas and the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- 16.5. Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. § 75.213, while this offer is valid and throughout the period of this purchase order. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

17. Byrd Anti-Lobbying Amendment.

- 17.1. A contractor who applies or bids for an award or receives a Contract/Purchase Order of \$100,000 or more shall submit to the City's Chief Procurement Officer or designee the required certification as set out in Attachment 2 of this Exhibit. 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 who in turn will forward the certification(s) to the awarding agency.

18. Contracting with Small and Local Businesses and Labor Surplus Area Firms.

- 18.1. If Contractor intends to subcontract any portion of the work covered by this Agreement, Contractor will take steps, to the extent allowed by applicable law, to assure inclusion of small and local businesses and labor surplus area firms are solicited and used when possible, which may include:
 - 18.1.1. Placing qualified small and local businesses on solicitation lists;
 - 18.1.2. Assuring that small and local businesses are solicited whenever they are potential sources;
 - 18.1.3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and local businesses;
 - 18.1.4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and local businesses; and
 - 18.1.5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration.

19. Davis-Bacon Act – Applicable to Contracts/Purchase Orders for construction work in excess of \$2,000.00 and not funded by FEMA-PA Program.

- 19.1. All transactions regarding this Contract/Purchase Order shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

- 19.2. Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- 19.3. Additionally, Contractor is required to pay wages not less than once a week.
- 19.4. This Section 18 shall flow down to all subcontracts and subgrants.
20. Copeland "Anti-Kickback" Act – Applicable to Contracts/Purchase Orders for construction work in excess of \$2,000.0 and when the Davis-Bacon Act also applies.
 - 20.1. *Contractor.* Contractor shall comply with 18 U.S.C. §874, 40 U.S.C. §3145 and the requirements of 29 C.F.R. part 3 as may be applicable, which are incorporated by reference to this Agreement.
 - 20.2. *Subcontracts.* Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the City or the Federal Agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
 - 20.3. *Breach.* A breach of the contract clauses above may be grounds for termination of this Agreement, and for debarment as a contractor and subcontractor as provided in 29 U.S.C. § 5.12.
21. Changes. The Director may modify the scope of services or quantity and type of goods by giving written notification to Contractor, subject to the funds allocated by the City to this Agreement. The notice takes effect immediately upon receipt by Contractor.
22. Protections for Whistleblowers.
 - 22.1. In accordance with 41 U.S.C. § 4712, Contractor may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
 - 22.2. The list of persons and entities referenced in the paragraph above includes the following:
 - 22.2.1. A member of Congress or a representative of a committee of Congress;
 - 22.2.2. An Inspector General;
 - 22.2.3. The Government Accountability Office;
 - 22.2.4. A Treasury employee responsible for contract or grant oversight or management;
 - 22.2.5. An authorized official of the Department of Justice or other law enforcement agency;
 - 22.2.6. A court or grand jury; or
 - 22.2.7. A management official or other employee of recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
 - 22.3. Contractor shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

23. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is encouraged to adopt and enforce on-the-job seat belt policies and programs for its employees when operating Contractor-owned, rented, or personally-owned vehicles.
24. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Contractor is encouraged to adopt and enforce policies that ban text messaging while driving.
25. Additional CDBG-DR Universal Notice and AAN requirements.
 - 25.1 Contractor shall comply with all applicable requirements of the Community Development Block Grant—Disaster Recovery (“CDBG-DR”) program, including additional or alternative requirements as set forth in HUD’s CDBG-DR Universal Notice, as incorporated and modified by the applicable Allocation Announcement Notice(s) (“AAN(s)”) for such Program. City may issue written directives or change orders to implement AAN requirements. This Section shall be explicitly incorporated and made a part of all subcontracts or subgrantee agreements made between Contractor and any third party(ies). In the event of a conflict between any other provision in this Agreement, including this Exhibit, and this Section 22, this Section shall prevail.
 - 25.2 Contractor and any subcontractor(s) shall comply with all CDBG-DR cross-cutting requirements, including but not limited to: the Davis-Bacon Act in accordance with Section 18 hereof and related labor standards; applicable Civil Rights laws; the Lead Safe Housing Rule; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (“URA”), and 49 C.F.R. part 24 and their implementing regulations; and environmental review conditions. Such requirement shall flow down to all subsequent subcontracts.
 - 25.3 Civil Rights, AFFH, and Accessibility. Contractor shall comply with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act; provide meaningful access for persons with limited English proficiency and effective communication for individuals with disabilities in project-related communications and services; and carry out services consistent with the City’s obligation to affirmatively further fair housing. Such requirement shall flow down to all subsequent subcontracts.
 - 25.4 Section 3. To the extent this Contract is a Section 3 project under 24 CFR 75.3(a)(2), Contractor and all Subcontractors shall comply with 12 U.S.C. 1701u and 24 CFR part 75, including worker hiring, reporting, and recordkeeping, and provide data necessary for the City’s Disaster Recovery Grant Reporting (“DRGR”) system. Such requirement shall flow down to all subsequent subcontracts.
 - 25.5 Contractor shall comply with section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 306108), as applicable.
 - 25.6 Data and Reporting. Contractor shall collect and provide performance, beneficiary, and Section 3 data necessary for the City’s DRGR quarterly performance reports within timelines specified by the City. Such requirement shall flow down to all subsequent subcontracts and subgrants.
 - 25.7 Fraud, Waste, and Abuse; Mandatory Reporting. Contractor shall implement controls to prevent, detect, and report fraud, waste, and abuse; cooperate with City and HUD Office of Inspector General (“OIG”) investigations; and promptly report credible evidence of violations of Federal criminal law (fraud, bribery, gratuities) or the civil False Claims Act to the HUD OIG Hotline and the City. Such requirement shall flow down to all subsequent subcontracts.

25.8 Private Utility Assistance Safeguards. Contractor shall support documentation showing benefit to low- and moderate-income persons, actual identified needs, and recommended financing mix consistent with City policy to demonstrate no over-subsidization.

25.9 Contractor hereby certifies that with respect to activities expected to be assisted with CDBG–DR funds, Contractor shall comport with the City’s action plan so as to give the maximum feasible priority to activities that will benefit low- and moderate income families.

26. Publications. Any publications produced with funds from this award must display the following language noting the funds for the project came from federal funds.

Any publications produced with funds from this award or pertaining to projects or programs administered with funds from this award must be approved by the City prior to publication.

27. Debts Owed to the City.

27.1. Any funds paid to Contractor (1) in excess of the amount to which Contractor is finally determined to be authorized to retain under the terms of its award from Treasury; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by the Contractor shall constitute a debt to the City and to the Federal government.

27.2. Any debts determined to be owed the City must be paid promptly by Contractor for repayment to the federal government.

27.3. A debt is delinquent if it has not been paid by the date specified in the City’s initial written demand for payment, unless other satisfactory arrangements have been made or if the Contractor knowingly or improperly retains funds that are a debt as defined in this paragraph. The City will take any actions available to it to collect such a debt.

28. Disclaimer. The United States expressly disclaims any and all responsibility or liability to Recipient and Contractor or third persons for the actions of Recipient, Contractor, or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award. The acceptance of this award by Recipient and Contractor does not in any way establish an agency relationship between the United States and Recipient or Contractor.

29. Contractor understands that the City’s obligation for payment under this Agreement is limited in its entirety by the provisions of this Agreement for the performance of services under this Agreement; unless additional funds are approved by City Council through supplemental allocations to pay for the services, the City shall have no obligation to pay Contractor. Contractor must look to these designated funds only and to no other funds for the City’s payment under this Agreement, and that the City is permanently excused from making payments due under this Agreement if, for whatever reason, there is a lack of funds.

ADDITIONAL REQUIREMENTS IF A SITE ADDENDUM IS FUNDED BY U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FUNDS:

In addition to the General Federal Requirements listed above, if this Contract is funded using funds from the U.S. Department of Housing and Urban Development (“HUD”), Contractor shall comply with all procurement requirements, laws, regulations, and interpretative guidance relating to the respective HUD program, including but not limited to program requirements found in 24 C.F.R. Part 570 (CDBG), 24 C.F.R. 92 (HOME), 24 C.F.R. Part 574 (HOPWA), 24 C.F.R. Part 576 (Emergency Solutions Grant) and the requirements listed below, and these requirements will flow down to any Contracts Contractor enters into with other parties relating to these funds.

1. Civil Rights Compliance. Contractor shall not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 C.F.R. part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 C.F.R. part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 C.F.R. part 23. Contractor shall submit to the City's Chief Procurement Officer or designee the required assurances as set out in Attachment 3 of this Exhibit. Contractor is deemed to have read and understands the requirements of each of the following, if applicable to the project under this Contract:

- 1.1. Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d et seq.); 24 C.F.R. Part I, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";
- 1.2. Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e, et seq.);
- 1.3. Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. § 3601, et seq.), as amended;
- 1.4. Executive Order 11063, as amended by Executive Order 12259, and 24 C.F.R. Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063"; The failure or refusal of Contractor to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;
- 1.5. The Age Discrimination Act of 1975 (42 U.S.C. § 6101, et seq.); and
- 1.6. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794.) and
- 1.7. "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development", 24 C.F.R. Part 8.
- 1.8. The Americans with Disabilities Act (42 U.S.C. §12131; 47 U.S.C. §§155, 201, 218, and 225);
- 1.9. By signing this Contract, Contractor understands and agrees that the activities funded shall be performed in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, et seq.), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system.

2. National Flood Insurance Program.

- 2.1. If applicable, this Contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234) for areas identified by HUD as having special flood hazards. The use of any funds provided for acquisition or construction in identified areas shall be subject to the Mandatory Purchase of Flood Insurance requirements of section 102(a) of said act.
- 2.2. Any contract or Contract for the sale, lease, or other transfer of land acquired, cleared, or improved with assistance provided under this Contract shall contain, if the land is located in an area identified by HUD as having a special flood hazard, provisions which obligate the transferee and its successors or assigns to obtain and maintain, during the life of the project, flood insurance as required under section 102(a) of the Flood Disaster Protection Act of 1973, as amended. These

provisions shall be required notwithstanding the fact that the construction on the land is not itself funded with funds provided under this Contract.

3. Displacement, Relocation, Acquisition and Replacement of Housing

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

4. Section 3 of the Housing and Urban Development Act of 1968

- 4.1. Compliance with the provisions of Section 3 of the Housing and Urban Development Act of 1968, Pub. L. 90-448, 82 Stat. 476 (codified as amended at 12 U.S.C. 1701u) and as implemented by the regulations set forth in 24 CFR Part 75, and all applicable rules and orders issued hereunder prior to the execution of this Contract, shall be a condition of the Federal financial assistance provided under this Contract and binding upon any Contractors, subrecipient, and subcontractors. Failure to fulfill these requirements shall subject any Contractors, subrecipient, and subcontractors, their successors and assigns, to those sanctions specified by this Contract through which Federal assistance is provided.

- 4.2. Contractors agree to include the following language in all subcontracts executed under this Contract:

"The work to be performed under this Contract is subject to the requirements of Section 3 of the Department of Housing and Urban Development (HUD). Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. §1701u, "Section 3") and implementing regulations at 24 C.F.R. Part 75 apply to the Contract. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted developments covered by Section 3 shall, to the greatest extent feasible, be directed to low and very low-income persons, including persons who are recipients of HUD assistance for housing, with a preference for both targeted workers living in the service area or neighborhood of the Development and YouthBuild participants, as defined at 24 CFR Part 75 ("Section 3 Regulations")."

- 4.3. The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 USC §1701u) ("Section 3"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted developments covered by Section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, including persons who are recipients of HUD assistance for housing, with a preference for both targeted workers living in the service area or neighborhood of the Development and YouthBuild participants, as defined at 24 CFR Part 75 ("Section 3 Regulations").

- 4.4. Contractor agrees to comply with HUD's regulations in Section 3 Regulations, which implement Section 3. As evidenced by their execution of this Contract, the Contractor certifies that they are under no contractual or other impediments that would prevent them from complying with the Section 3 Regulations.

- 4.5. Contractor shall send to each labor organization or representative of workers with which it has a collective bargaining Contract or other contract or understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause and shall post copies of the notice in conspicuous places at the worksite where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference and shall set forth the following: (i) minimum number and

job titles subject to hire, (ii) availability of apprenticeship and training positions, (iii) qualifications for each, (iv) name and location of the person(s) taking applications for each of the positions, and (v) the anticipated date the work shall begin.

- 4.6. Contractor will include or have included a Section 3 clause in every subcontract subject to compliance with regulations in Section 3 Regulations and agrees to take appropriate action, as provided in an applicable provision of the subcontract in this Section 3 clause, upon a finding that the subcontractor violates the regulations in Section 3 Regulations. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in Section 3 Regulations.
 - 4.7. The Contractor will certify that any vacant employment positions, including training positions, that are filled (i) after a contractor is selected but before the Contracts executed, and (ii) with persons other than those to whom the regulations of Section 3 Regulations require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under Section 3 Regulations.
 - 4.8. Noncompliance with HUD's regulations in Section 3 Regulations may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.
5. Uniform Administrative Requirements, Cost Principles and Audit Requirements. Subrecipient shall comply with "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards" as set forth under 2 C.F.R. Part 200, except as provided by 24 C.F.R. § 570.502(a)(1)-(8).
6. Lead-Based Paint Poisoning Prevention Act. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§ 4851-4856), and the implementing regulations at 24 C.F.R. Part 35, Subparts A, B, J, K and R may apply to activities under the Contract.
7. Conflict of Interest
- 7.1. In the procurement of supplies, equipment, construction, and services by the City or a subrecipient, the conflict of interest provisions in 2 C.F.R. Part 200, Subpart B - General Provisions, shall apply.
 - 7.2. In all cases not governed by 2 C.F.R. Part 200, Subpart B, the provisions of this section shall apply. Such cases include, but may not be limited to, the acquisition and disposition of real property and the provision of assistance by the recipient, by its subrecipients, or to individuals, businesses or other private entities under eligible activities which authorize such assistance (e.g. rehabilitation, preservation, and other improvements of private properties or facilities).
 - 7.2.1. No persons described in paragraph 7.2.2 (below) who exercise or have exercised any functions or responsibilities with respect to CDBG-DR24 activities or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-DR24 assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-DR24 assisted activity, or with respect to the proceeds of the

CDBG-DR24 assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

- 7.2.2. The requirements of paragraph 7.2.1 apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, of any designated public agency, or of subrecipients that are receiving Grant Funds.

8. Eligibility of Aliens Not Lawfully Present in U.S. Contractor understands that aliens not lawfully present in the U.S., as described in 49 C.F.R. §24.208, are not eligible to apply for benefits under certain federal activities.
9. Architectural Barriers Act. The Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that ensure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 C.F.R. §40.2 or the definition of "building" as defined in 41 C.F.R. §101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 C.F.R. Part 40 for residential structures, and Appendix A to 41 C.F.R. Part 101-19, Subpart 10119.6, for general type buildings).
10. Records for Audit Purposes. Without limitation to any other provision of the foregoing Contract/Contract, Contractor shall maintain all records concerning the program or project financed under this Contract which the City reasonably requires from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient pursuant to 2 C.F.R. §200.333. Contractor shall maintain records required by 24 C.F.R. §135.92 for the period required under 2 C.F.R. §200.333. Contractor will give the City, HUD, the Comptroller General of United States, the General Accounting Office, or any of their authorized representatives access to and the right to examine, copy, or reproduce all records pertaining to the acquisition and construction of the project and the operation of the program or project. The right to access shall continue as long as the records are required to be maintained under 2 C.F.R. §200.336.
11. Audit Requirements.
 - 11.1. Limited Scope Audit - Contractor understands that Non-Federal entities that expend less than \$750,000 a year in Federal awards are exempt from Federal audit requirements for that year, but records must be available for review and audit as described hereinabove at Section 10 (Records for Audit Purposes). Contractor further understands that limited scope audits can and may be required by the City for non-Federal entities that expend less than \$750,000. If the City requires such limited scope audits, same shall be performed in accordance with 2 C.F.R. Part 200, Subpart F - Audit Requirements.
 - 11.2. Single Audit - Single Audit - Contractor further understands that non-Federal entities that expend \$750,000 or more a year in Federal awards shall have a single audit conducted pursuant to 2 C.F.R. Part 200, Subpart F - Audit Requirements, except when an election is made to have a program specific audit pursuant to and described in 2 C.F.R. Part 200, Subpart F - Audit Requirements. Once the Contract is executed, Contractor understands that it is barred from considering such audit and must have a single audit conducted as described hereinabove.
12. Rights to Inventions made under a Contract or Contract. If the Federal award meets the definition of "funding Contract" under 37 C.F.R. §401.2 (a) and the recipient or contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding Contract," the recipient or contractor must comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants,

Contracts and Cooperative Contracts,” and any implementing regulations issued by the awarding agency.

13. Energy Policy and Conservation Act. Contractor must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6201).
14. Additional Grant Agreement Requirements. To the extent applicable, Contractor shall comply with the following requirements established in the Grant Agreement, subject to modification, amendment, guidance, interpretation, or instruction by HUD and/or judicial decision:
 - 14.1. **Gender Ideology Restriction:** No Contractor may use Grant Funds to promote “gender ideology,” as defined in Executive Order 14168.
 - 14.2. **Anti-Discrimination Compliance:** Compliance with all applicable federal anti-discrimination laws (including Title VI of the Civil Rights Act of 1964) is material to payment decisions under 31 U.S.C. § 3729(b)(4).
 - 14.3. **Hyde Amendment Compliance:** Grant Funds may not be used to fund or promote elective abortions, per Executive Order 14182.
 - 14.4. **Revoked Executive Orders:** Contractor acknowledges that this Grant is not governed by Executive Orders revoked by E.O. 14154, including E.O. 14008 (“Tackling the Climate Crisis at Home and Abroad”).
 - 14.5. **Immigration Restrictions:** Contractor shall administer the Grant Funds in accordance with all immigration eligibility and verification requirements under the **Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)**, 8 U.S.C. §1601–1646, and Executive Order 14218.
 - 14.6. **No Facilitation of Illegal Immigration:** Grant Funds may not be used in any manner that facilitates the subsidization or promotion of illegal immigration or shields illegal aliens from deportation.
 - 14.7. **SAVE Verification:** Contractor must use the **Systematic Alien Verification for Entitlements (SAVE)** system or an equivalent federally approved system to prevent provision of benefits to ineligible aliens.

ADDITIONAL REQUIREMENTS IF A SITE ADDENDUM IS FUNDED BY U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY (“CDBG-DR”) FUNDS:

If a Site Addendum is funded in whole or in part, by Community Development Block Grant Disaster Recovery (“CDBG-DR”) funds under certain Grant Contracts (collectively “Grant Contract”) executed between the City and the Department of Housing and Urban Development (“HUD”), which allocated funding in response to the 2021 Winter Storm disaster through the Disaster Relief Supplemental Appropriations Act, 2022 (Pub. L. 117-43) (the “Act”) and the Allocations for CDBG-DR and Implementation of the CDBG-DR Consolidated Waivers and Alternative Requirements Notice, which was published at 87 Fed. Reg. 6364 on February 3, 2022 (“AAN”), then Contractor shall comply with the governing regulations set forth in the Act, the AAN, the Grant Contract, and the governing provisions set forth in 24 CFR Part 570.

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**ATTACHMENT 1: DEBARMENT CERTIFICATION
(CERTIFICATION REGARDING DEBARMENT SUSPENSION AND OTHER RESPONSIBILITY MATTERS -
PRIMARY COVERED TRANSACTIONS)**

This 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) and, if applicable, 45 C.F.R. § 75.213. As such, Contractor is required to confirm 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).

INSTRUCTIONS FOR CERTIFICATION

- 1) By signing this Agreement, Contractor, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a contractor 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. T
- 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 Agreement that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 C.F.R. 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 Agreement 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 C.F.R. 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.

Company Name

Name and Title

Signature

Date

**ATTACHMENT 2: BYRD ANTI-LOBBYING CERTIFICATION
(CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS)**

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

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

The undersigned 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. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

RFP, ITB, EPO or PO No., or Project Name: _____
Name of Contractor: _____
Signature: _____
Printed Name: _____
Title: _____
Date: _____