

C78994  
2021-0796INTERLOCAL AGREEMENT

THE STATE OF TEXAS   §  
                                     §  
COUNTY OF HARRIS   §

THIS AGREEMENT ("Agreement"), effective on the date last signed by the parties ("Effective Date"), is made and entered into pursuant to the Interlocal Cooperation Act (Tex. Gov't. Code Ann. §§791.001, et seq., by and between the **CITY OF HOUSTON**, a home rule city of the State of Texas ("City"), and the **HARRIS COUNTY FLOOD CONTROL DISTRICT**, a body corporate and politic under the laws of the State of Texas ("District") or ("HCFCD"), (herein referred to individually as the "Party" and collectively as the "Parties").

**RECITALS:**

WHEREAS, Hurricane Harvey and its associated events produced high winds and heavy rains within Harris County, including the City, causing silt to accumulate in portions of several channels that drain directly to Lake Houston as shown in attached **Exhibit A** ("Properties"); and

WHEREAS, it is in the interest of the health, safety and welfare of City and County residents to remove the silt in these channels as they enter into Lake Houston, to enable water to flow into Lake Houston ("Project"); and

WHEREAS, the City's Chief Resilience Officer, who serves as the City's liaison between local, state, and federal agencies, and City departments to collaborate and design strategies for resiliency and mitigation of flood risk for the City, has recommended that the City and the District coordinate efforts to de-silt these channels at the entrance to Lake Houston; and

WHEREAS, as a result of Hurricane Harvey, desilting waterways has become a critical component of the disaster recovery process for the City and the District; and

WHEREAS, said de-silt contract is attached hereto as **Exhibit B** and incorporated by reference herein; and

WHEREAS, the City is willing to manage the de-silt contract under the terms and conditions set forth in this Interlocal Agreement; and

WHEREAS, the District is willing to contribute up to a maximum of \$10 million to the City for the Project.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and benefits to the Parties, and consistent with the responsibilities and duties of each to protect the public health and safety of City and County residents, the Parties agree as follows:

**TERMS****I. MANAGEMENT**

- 1.1. Overall management and direction of this Agreement is assigned to the City's Director of Solid Waste Management or his or her designee (the "Director"). The Director is

authorized to approve and direct the provision of services under this Agreement, except where, by City Charter or state law, the City Council is required to act on behalf of the City.

- 1.2. Upon written authorization by the District, the City shall give notice to de-silt vendors and the consultant to undertake and complete the services provided under their respective contracts in the channels included in Exhibit A to Lake Houston as required to protect the public health and safety of City and County residents. The City shall provide monthly progress reports of its activities pursuant to this Agreement, including amount of silt removed and locations, to the District by sending emails as set out herein. With the monthly progress reports, the City also will provide the District all invoices from its contractors on the Project and amounts paid to each contractor.
- 1.3. The District herein gives the City, its agents and contractors a temporary right of entry for the term of this Agreement to the District's portion of the Properties to do the Project. The City agrees to return the Property and any other property owned by the District it disturbed during the Project to the condition it was prior to starting the work, to the satisfaction of the District.
- 1.4. The parties agree that de-silt means the removal of accumulated silt and sediment from the designated waterway.
- 1.5. The Parties understand that the District during the course of this Agreement may need to access the District's portion of the Properties and, when notified, the City shall relocate its activities under this Agreement so that its work does not conflict with that of the District.

## II. PAYMENT

- 2.1 The City agrees to directly pay its contractors after completion and acceptance of the work specified in each work order for de-silt services and after receipt of a proper invoice thereof including an amount based upon the unit pricing detailed in the respective contracts, subject to the appropriation of funds by the City's governing body.
- 2.2 The City may pursue reimbursement for de-silt services as provided under this Agreement and associated with the disaster recovery process located in the Properties within the City of Houston from any source, including the federal government. In such case, the District agrees to cooperate fully with the City on these efforts and to comply with all requests for documentation and to provide such support to the City as may be reasonably required to facilitate an application for any available other source funding.
- 2.3 The District will pay the City up to \$10 million ("District's Contribution") within 30 days of receiving an invoice from the City to use toward the Project. The City has been advised by the District and clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the District shall have available the total maximum sum of Ten Million and No/100 Dollars (\$10,000,000.00) specifically allocated to fully discharge its financial obligations toward the Project, and that the total maximum compensation the City may become entitled to pursuant to this section and the total maximum sum the District shall become liable to pay to the City pursuant to this section for the fulfillment of such obligation shall not under any conditions, circumstances, or interpretations hereof exceed the said total maximum sum provided for in this section and certified as available therefor by the County Auditor.

- 2.4 The District has not approved the City's scope of work for the Project. The City accepts that the District Property is available for temporary use for the Project by the City pursuant to the terms of this Agreement.

### **III. TERM AND TERMINATION**

- 3.1 This Agreement shall commence upon the date executed by both Parties and expire upon the date that de-silt operations are deemed completed by the Director.
- 3.2 Either Party may terminate this Agreement at any time by giving the other Party thirty (30) days' written notice. If the City terminates this Agreement without completing the de-silt operations, it will return to the District any money it did not use for the Project.
- 3.3 The obligations, including financial obligations, of each Party arising prior to any termination, or that expressly or by their nature extend beyond the expiration or termination of this Agreement, shall survive termination.

### **IV. NO PERSONAL LIABILITY; NO WAIVER OF IMMUNITY**

- 4.1 Nothing in this Agreement shall be construed as creating any personal liability on the part of any officer, director, employee, or agent of any public body that may be a Party to the Agreement, and the Parties expressly agree that the execution of the Agreement does not create any personal liability on the part of any officer, director, employee, or agent of the Parties.
- 4.2 The Parties agree that no provision of this Agreement extends any Party's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.
- 4.3 Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver by any Party of any right, defense, or immunity on behalf of any Party, its employees or agents, under the Texas Constitution or the laws of the State of Texas. It is understood that the District and the City are independent governmental entities and do not have the authority to bind the other or to act as agent for the other. The Parties are undertaking governmental functions or services under this Agreement and the purpose hereof is solely to further the public good, rather than any pecuniary purpose.

### **V. INDEPENDENT PARTIES**

- 5.1 It is expressly understood and agreed by the Parties that nothing contained in this Agreement shall be construed to constitute or create a joint venture, partnership, association or other affiliation or like relationship between the Parties, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement. It is further expressly understood and agreed by the Parties that the District and the District's personnel shall not be considered employees, agents, partners, joint venturers, or servants of the City. The Party undertaking work under this Agreement shall have a superior right to control the direction and management of such work and the responsibility for day-to-day management and control of such work except as may otherwise expressly be provided herein.

## VI. NOTICES

- 6.1 All notices required to be given under this Agreement shall be duly served upon personal delivery to the addresses below, or by when mailed by certified mail, return receipt requested, addressed to the City or the District at the following addresses:

City: City of Houston  
Solid Waste Management Department  
611 Walker, 12<sup>th</sup> Floor  
Houston, Texas 77002  
Attn: Director Solid Waste Management

HCFCD: Harris County Flood Control District  
9900 Northwest Freeway  
Houston, Texas 77092  
Attn: Executive Director

- 6.2 Any Notice given hereunder is deemed given upon hand delivery or three (3) days after the date of deposit in the United States Mail.
- 6.3 Either Party shall have the right to change its respective address by giving at least fifteen (15) days' written notice of such change to the other Parties.
- 6.4 Other communications, except for Notices required under this Agreement, may be sent by electronic means or in the same manner as Notices described herein.

## VII. COVENANT NOT TO SUE, INDEMNIFICATION AND RELEASE

- 7.1 TO THE EXTENT ALLOWED BY LAW, THE CITY COVENANTS NOT TO SUE AND AGREES TO RELEASE THE DISTRICT AND ITS AGENTS, OFFICERS, CONTRACTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, LICENSEES, AND INVITEES FROM AND AGAINST ANY AND ALL LOSSES, LIABILITY, CLAIMS, DEMANDS, FINES, COSTS AND CAUSES OF ACTION OF EVERY CHARACTER AND KIND RESULTING FROM PERSONAL INJURY, ILLNESS, OR DEATH OF PERSON(S), OR DAMAGE TO OR LOSS OF PROPERTY OCCURRING, GROWING OUT OF, INCIDENT TO, OR RESULTING DIRECTLY OR INDIRECTLY FROM THE ACTIONS OF THE CITY, ITS EMPLOYEES, AGENTS, SERVANTS, REPRESENTATIVES, LICENSEES, OR INVITEES IN SECURING, EXERCISING, OR IN ANY MANNER PERFORMING THE TERMS AND CONDITIONS OF THIS AGREEMENT. IT IS NOT THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE COVENANT NOT TO SUE AND TO RELEASE PROVIDED FOR IN THIS ARTICLE IS EXTENDED BY THE CITY TO ALSO RELEASE THE DISTRICT FROM THE CONSEQUENCES OF THE DISTRICT'S OWN NEGLIGENCE. THIS COVENANT NOT TO SUE AND TO RELEASE SHALL APPLY EVEN THOUGH ANY INJURY, SICKNESS, OR DEATH OR DAMAGE TO OR LOSS OF PROPERTY IS CAUSED IN WHOLE OR IN PART BY ANY DEFECT IN OR CONDITION OF ANY PROPERTY, AREA, FACILITIES, EQUIPMENT, TOOLS, OR OTHER ITEMS WHICH MAY BE PROVIDED BY THE DISTRICT, WHETHER OR NOT SUCH DEFECT OR CONDITION WAS KNOWN OR SHOULD HAVE BEEN KNOWN BY THE DISTRICT. THE COVENANT NOT TO SUE AND TO RELEASE PROVIDED HEREIN SHALL NOT BE CONSTRUED IN ANY WAY TO LIMIT INSURANCE COVERAGES PROVIDED BY THE CITY FOR THE DISTRICT

PURSUANT TO THE TERMS OF THIS AGREEMENT, WHICH INSURANCE REQUIREMENT IS INDEPENDENT FROM AND IN ADDITION TO SUCH COVENANT NOT TO SUE AND TO RELEASE. THIS COVENANT NOT TO SUE AND AGREEMENT TO RELEASE CONTAINED HEREIN ARE EQUALLY BINDING UPON THE CITY AND ITS PERMITTED SUCCESSORS AND ASSIGNS.

- 7.2 TO THE EXTENT ALLOWED BY LAW, THE DISTRICT AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY. THE DISTRICT HEREBY COVENANTS AND AGREE NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS SECTION.
- 7.3 The City will cause to be inserted in the de-silt contracts that the contractor will indemnify, protect, covenant not to sue, release, and save and hold harmless the City and the District and all their representatives from all suits, actions, or claims of any character brought on account of any injuries or damages sustained by any person or property in consequence of any neglect in safeguarding the work or through the use of unacceptable materials in the scope of work under this Agreement, or on account of any act of omission by the contractor.

#### **VIII. NO WARRANTIES OR REPRESENTATIONS**

- 8.1 The City takes the right of entry granted herein and accepts the Property in its current "as is" condition, with all faults, and assumes the risk of any matter or condition which is latent or patent or that could have been revealed by its investigations. The District has not made, and the District hereby expressly disclaim and grant the right of entry without, any representations or warranties, express or implied, whatsoever as to the value, condition, nature, character, suitability, habitability or fitness of the Property subject to this Agreement.

#### **IX. INSURANCE**

- 9.1 The City shall furthermore require that its de-silt contractors, at all times during the term of this Agreement, maintain insurance coverage with not less than the type and requirements set forth in this paragraph. Such insurance is to be provided at the sole cost of the de-silt contractors. These requirements do not establish limits of the contractor's liability.
- 9.2 All policies of insurance shall waive all rights of subrogation against the District, its officers, employees and agents. The District shall be named as "additional insured" on the de-silt contractors' insurance policies. Such insurance shall include not less than the minimum coverages as stated in the current "Harris County General Conditions for Roads, Bridges and Related Work."

## X. MISCELLANEOUS

- 10.1 This Agreement shall be governed by the laws of the State of Texas and the forum for any action under or related to the Agreement is exclusively in a state or federal court of competent jurisdiction in Texas. Venue for any litigation relating to this Agreement is Houston, Harris County, Texas.
- 10.2 The recitals set forth in this Agreement are, by reference, incorporated into and deemed a part of this Agreement.
- 10.3 If any provision of this Agreement is construed to be illegal or invalid, this will not affect the legality or validity of any of the provisions hereof. The illegal or invalid provisions will be deemed stricken from this Agreement and deleted to the same extent and effect as if never incorporated herein.
- 10.4 This Agreement contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. This Agreement supersedes and replaces any prior agreement between the Parties pertaining to the rights granted and the obligations assumed herein. This Agreement shall be subject to change or modification only by a subsequent written modification approved and signed by the governing bodies of each Party. In addition, each Party warrants that the undersigned is a duly authorized representative with the power to execute the Agreement.
- 10.5 No Party hereto shall make, in whole or in part, any assignment of this Agreement or any obligation hereunder without the prior written consent of the other Parties.
- 10.6 If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.
- 10.7 This Agreement shall not be considered as specifying the exclusive remedy for any Agreement default, but all remedies at law and in equity may be availed of by any Party to this Agreement and shall be cumulative.
- 10.8 The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that either Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

## APPROVED AS TO FORM:

CHRISTIAN D. MENEFEE  
County Attorney

DocuSigned by:  
*Laura Fiorentino Cahill*  
By: D9FE318CE18A4BE...  
Laura Fiorentino Cahill  
Senior Assistant County Attorney

HARRIS COUNTY FLOOD CONTROL  
DISTRICT

By: \_\_\_\_\_  
Lina Hidalgo  
County Judge

## CITY OF HOUSTON

By: *Sylvester Turner*  
Sylvester Turner  
Mayor *9-15-2021*

## APPROVED:

DocuSigned by:  
*Carolyn Wright*  
By: 613AD5586E4C421  
Director, Solid Waste Management  
Department

## ATTEST/SEAL:

By: *Atty. General*  
City Secretary

## COUNTERSIGNED BY:

By: *C. B. Brown*  
City Controller *James Lee*

## APPROVED AS TO FORM:

By: *Stephen Gumble*  
Assistant City Attorney

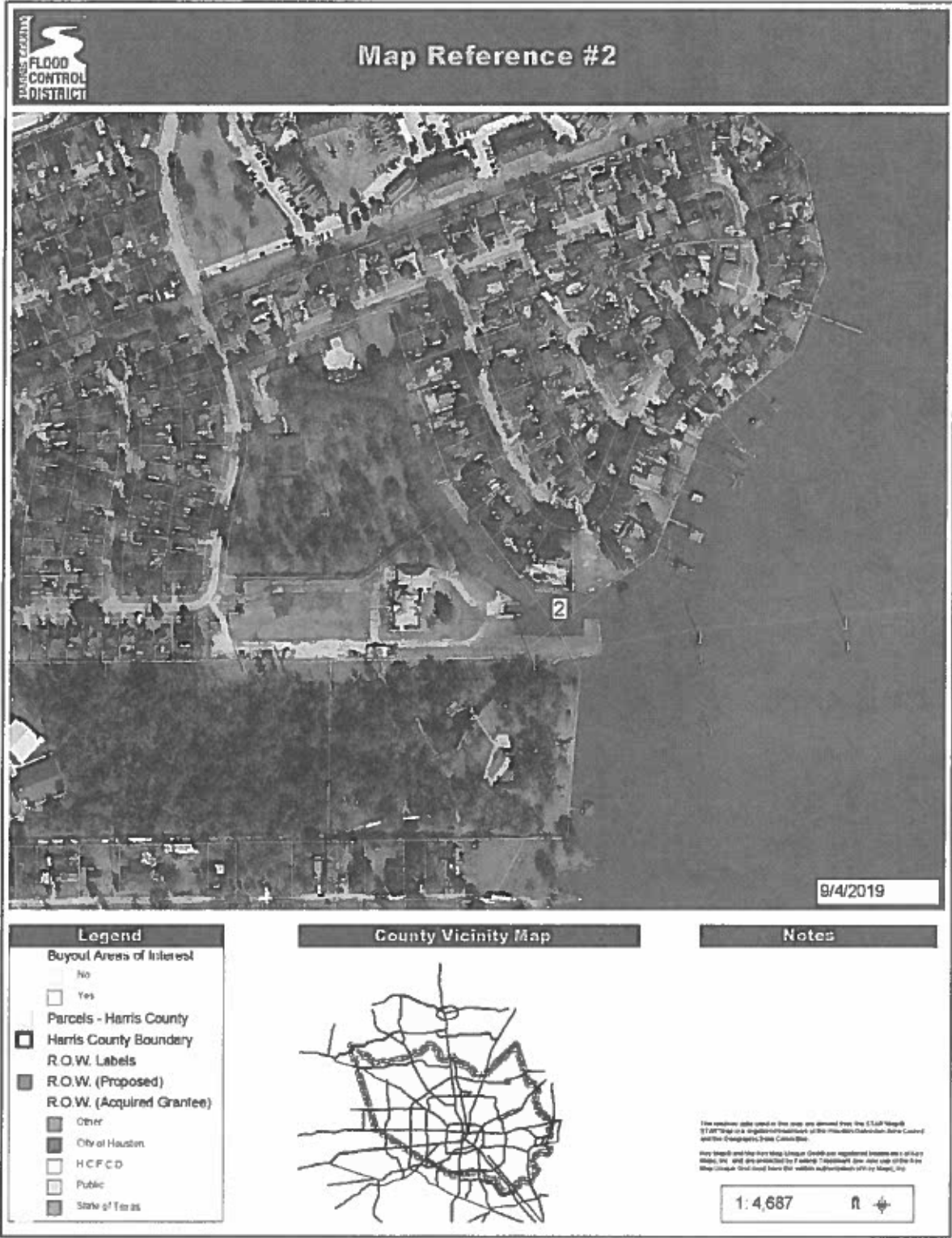
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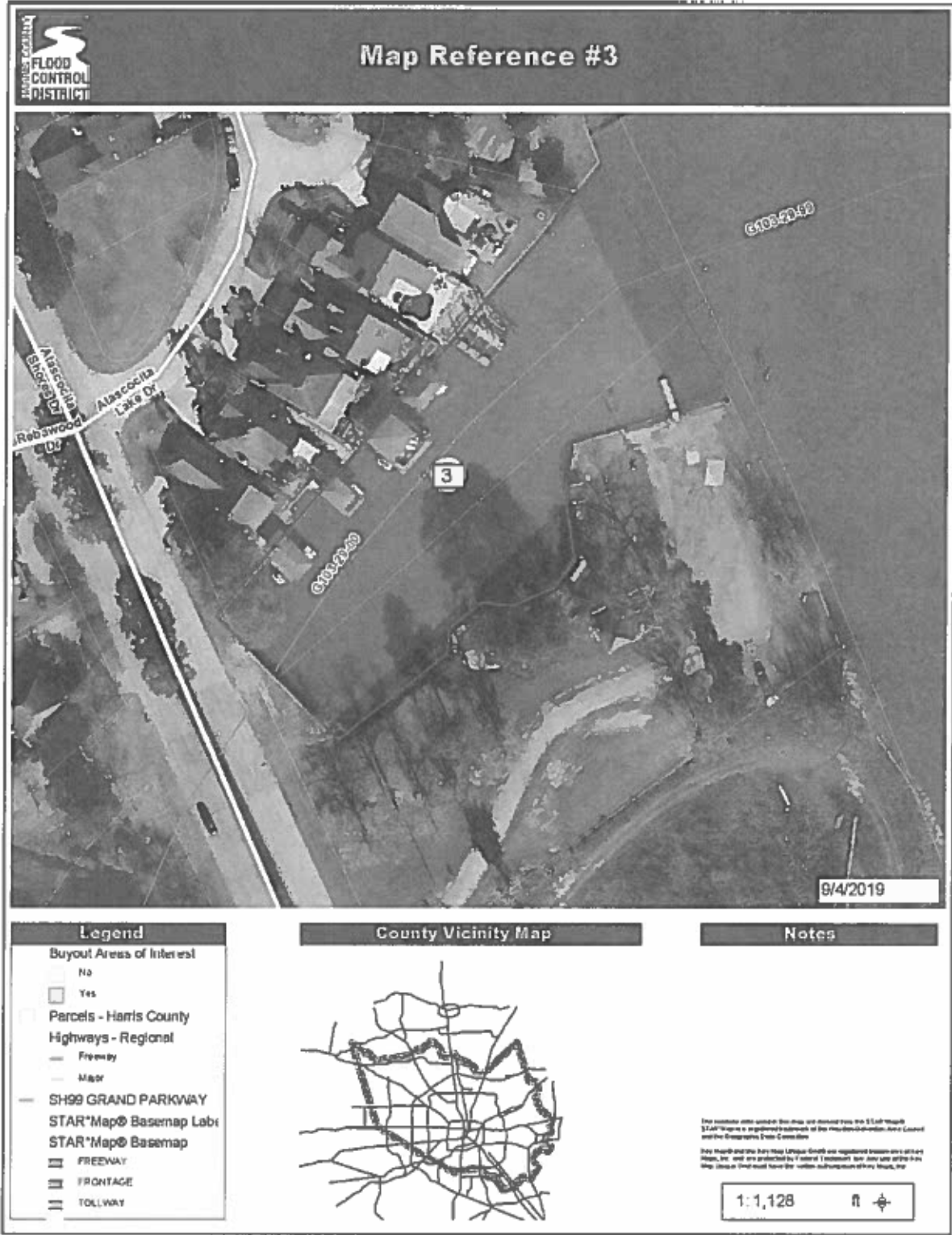
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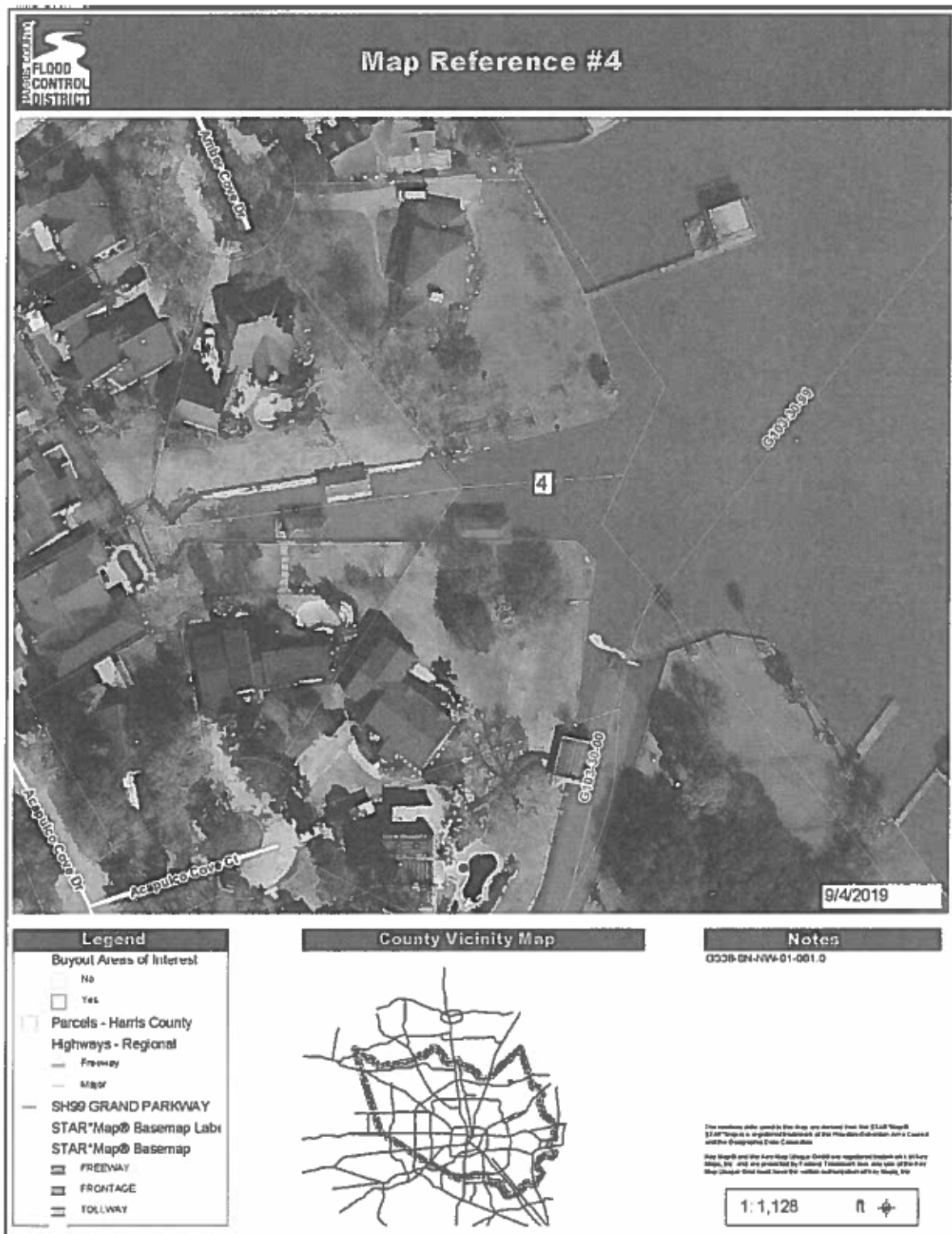
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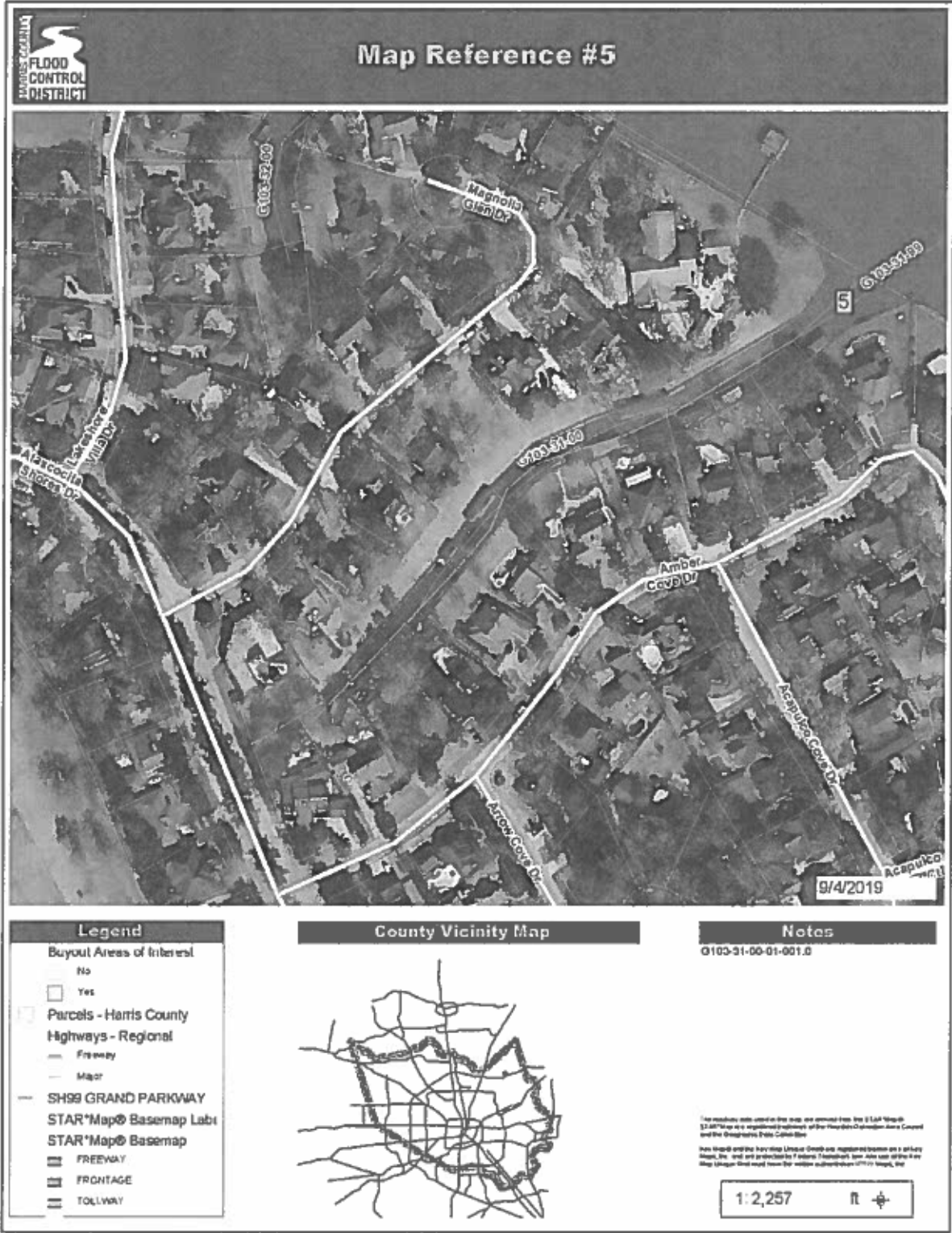




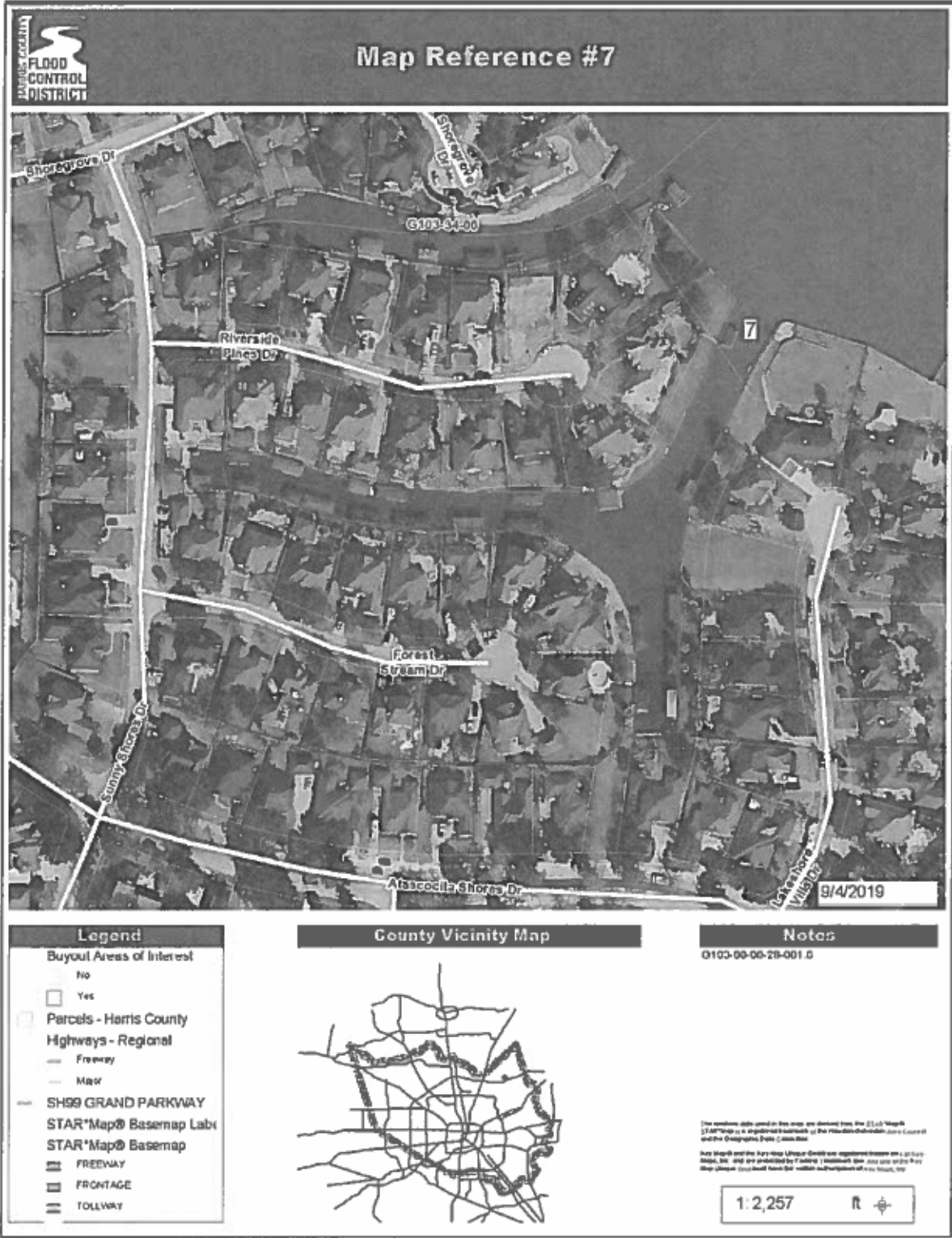


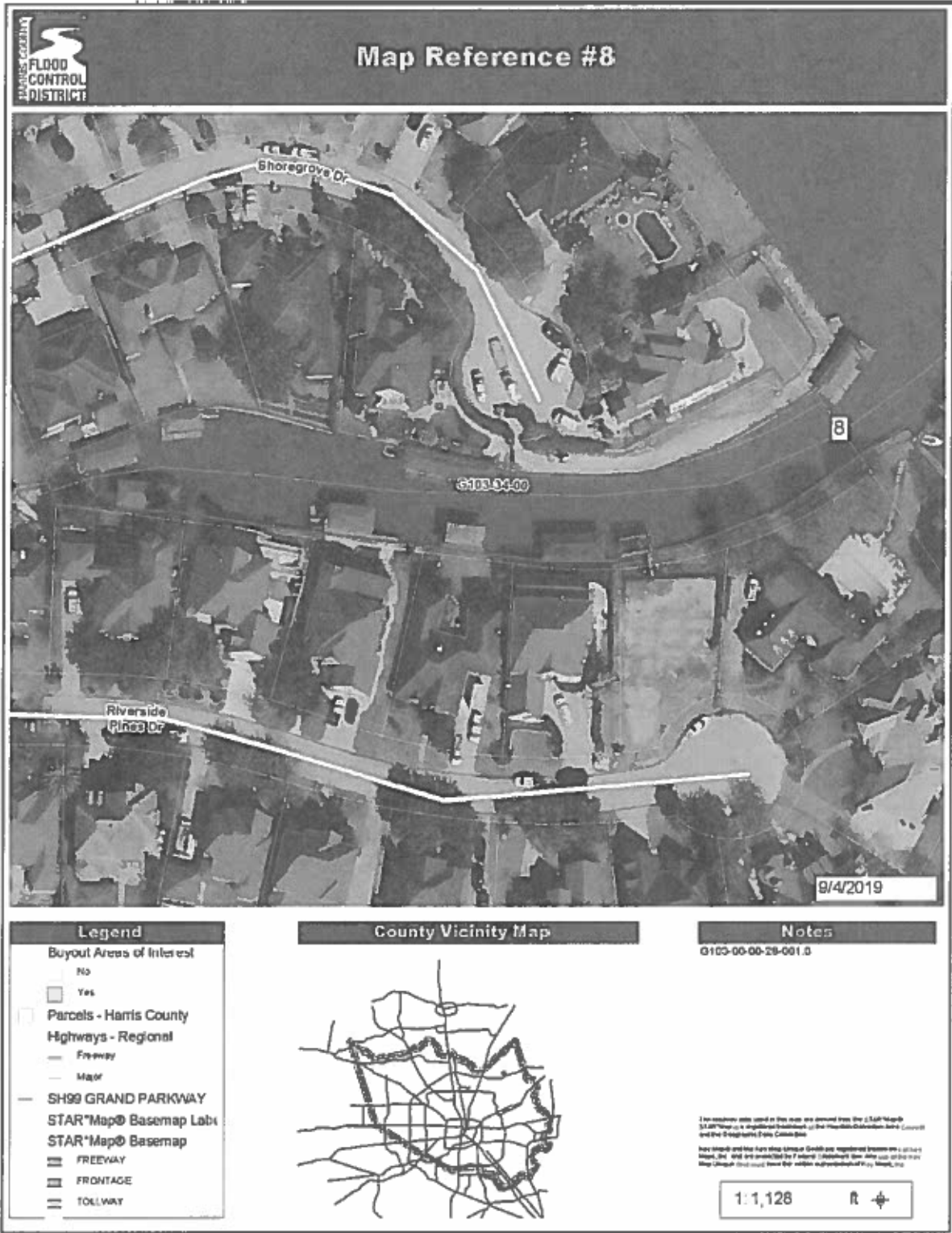


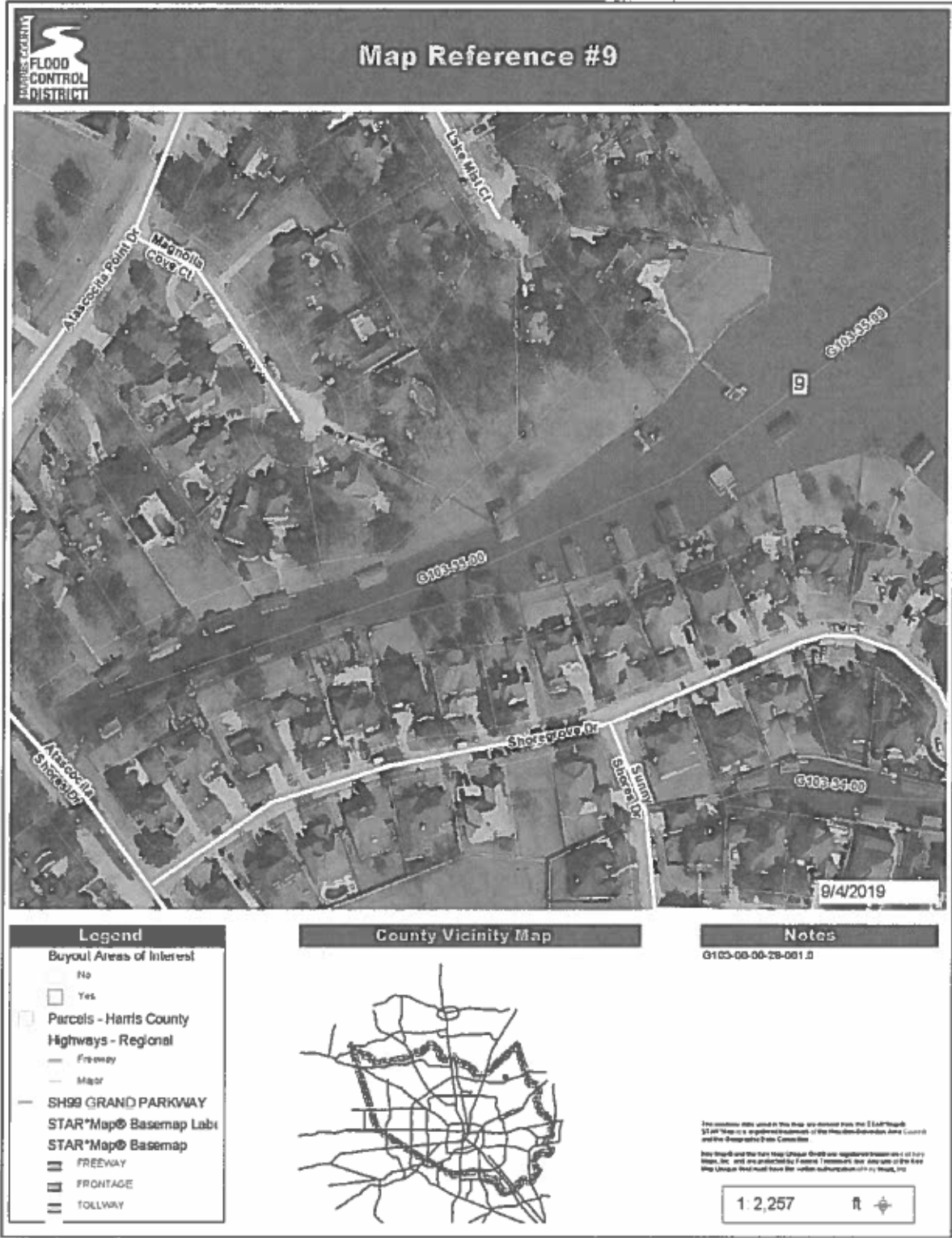


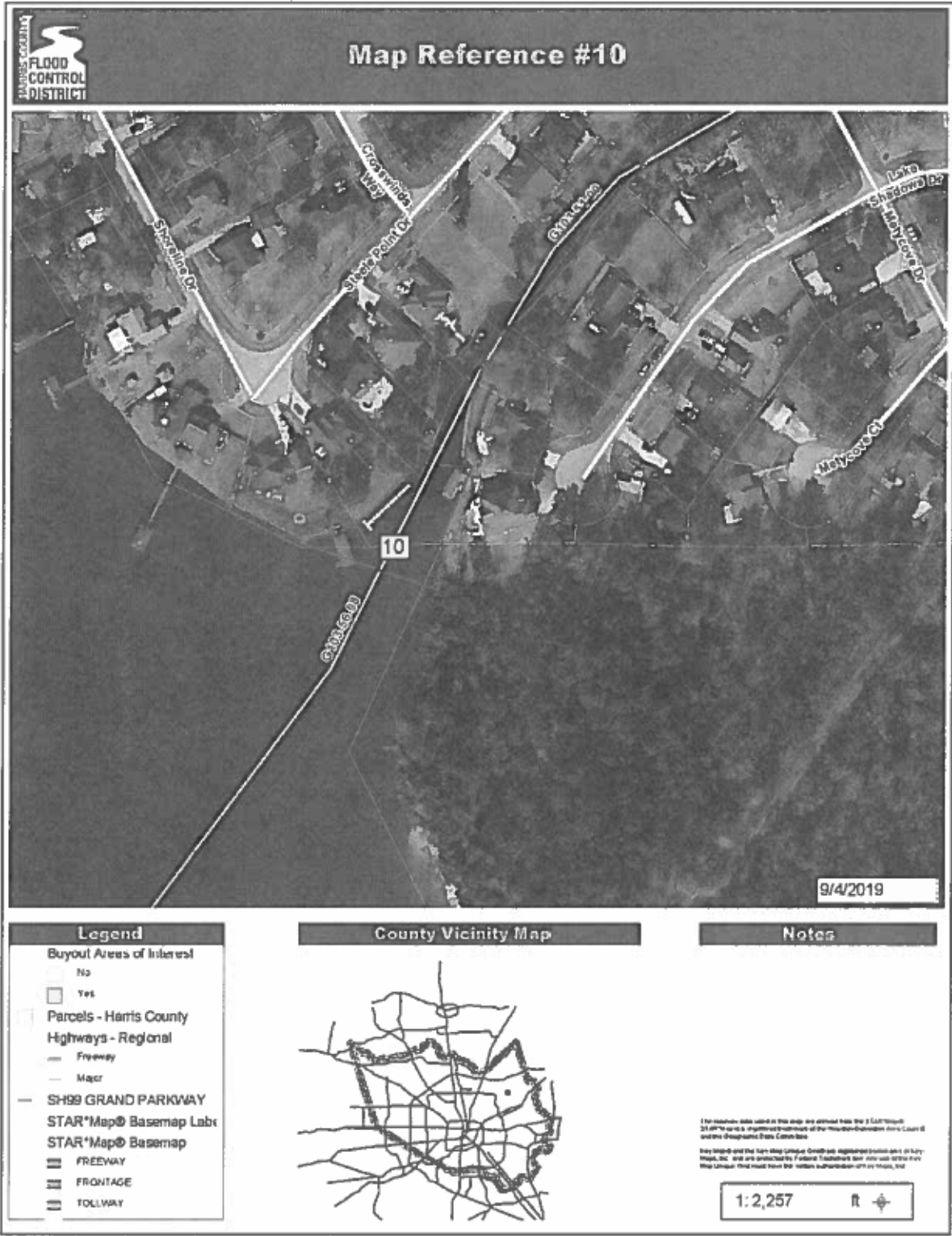


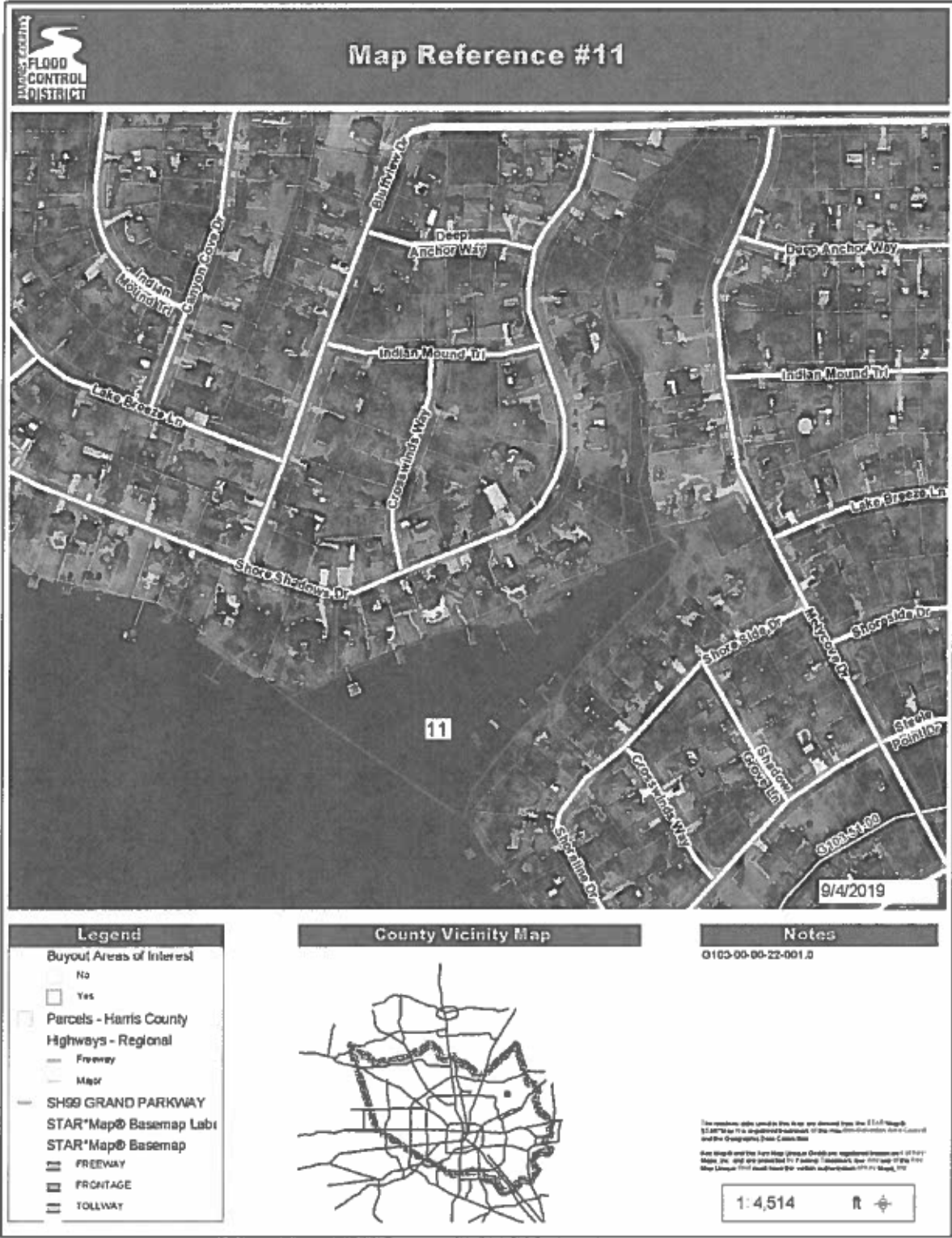


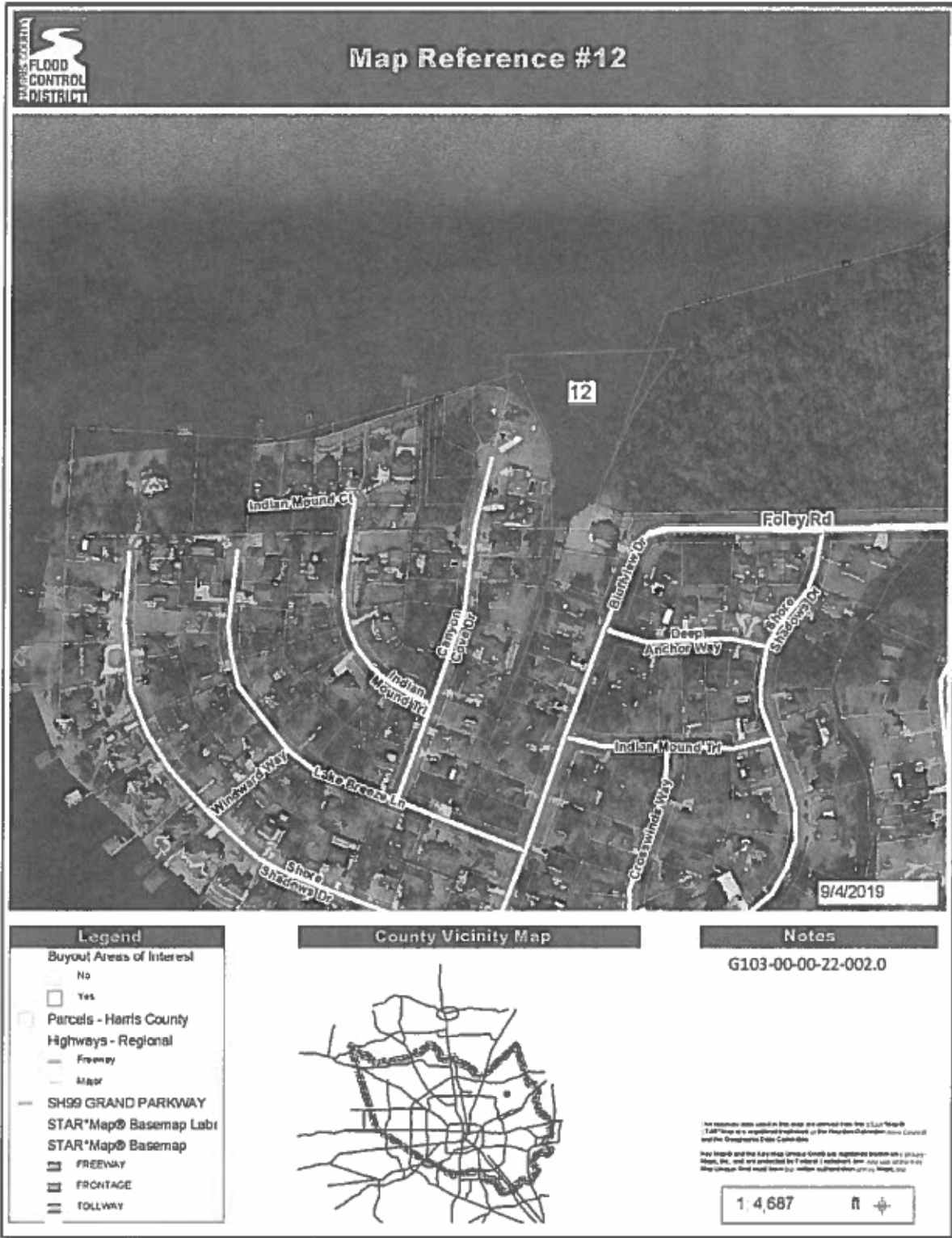


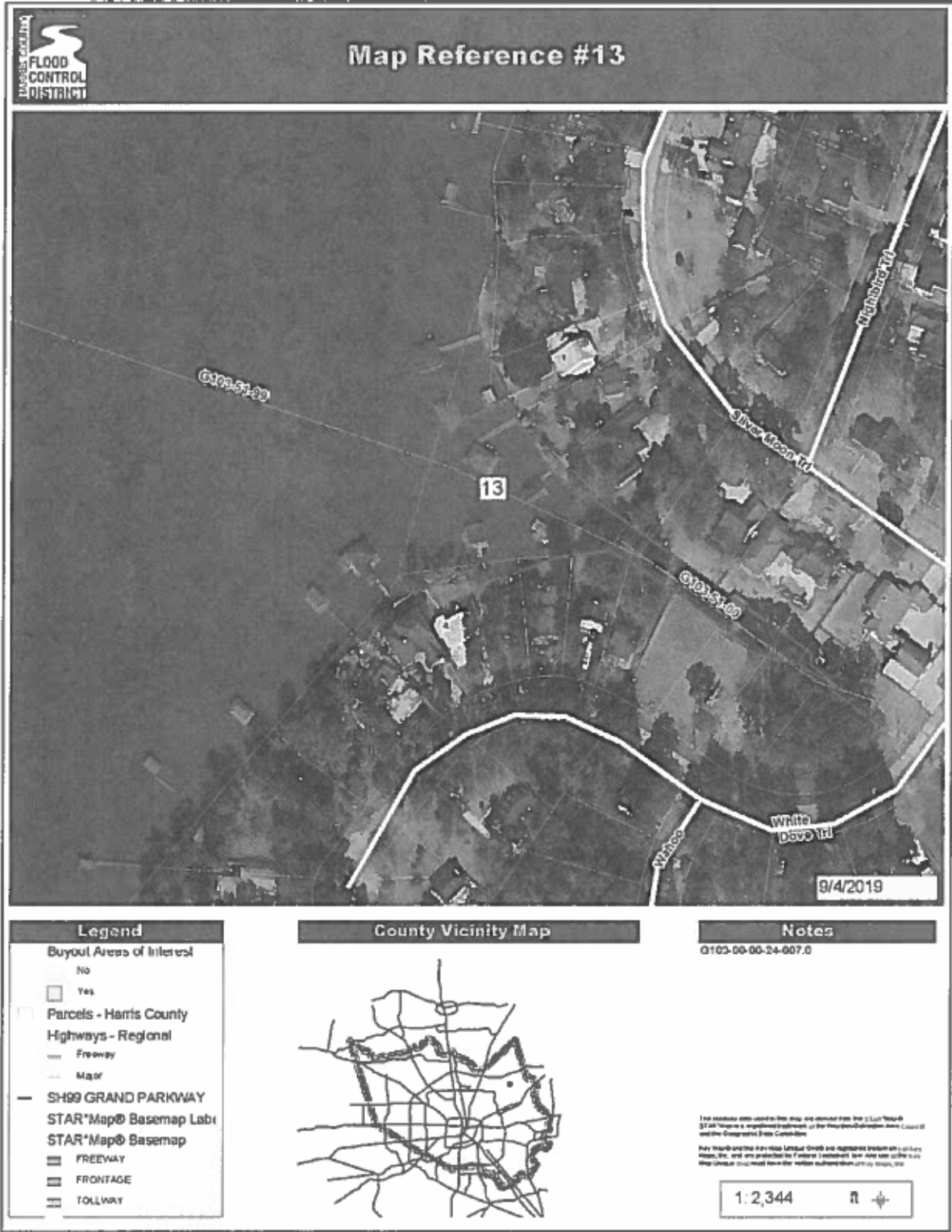


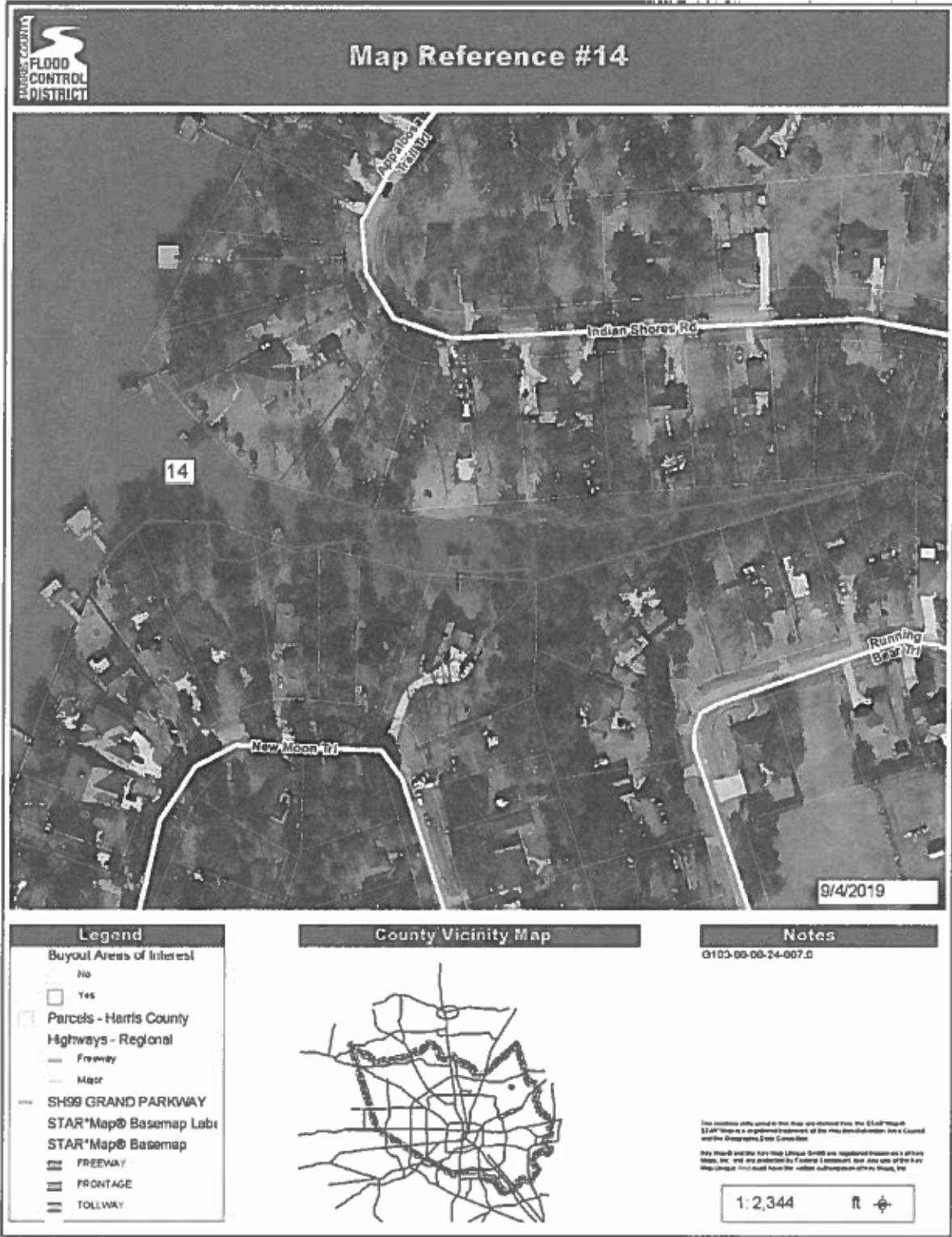




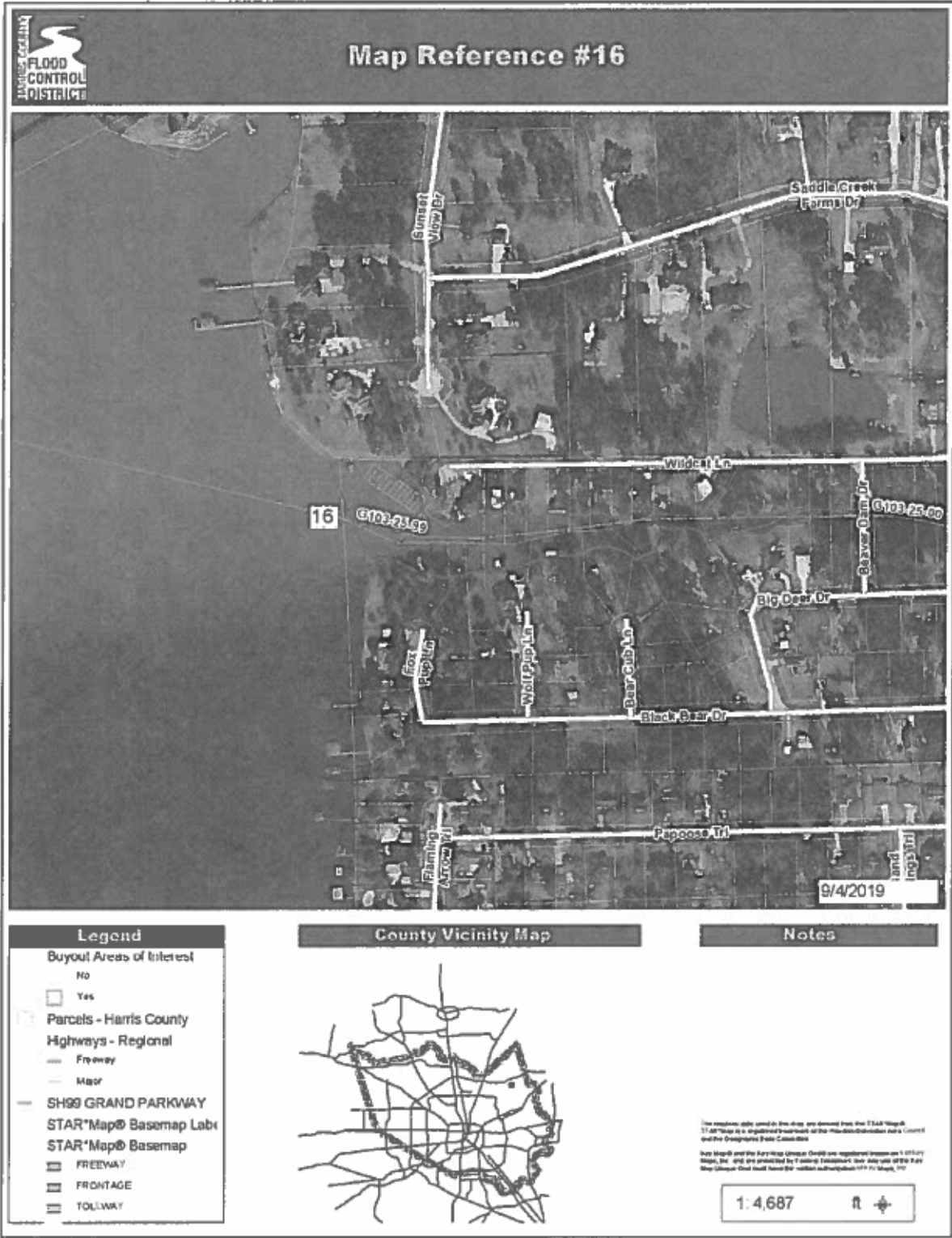


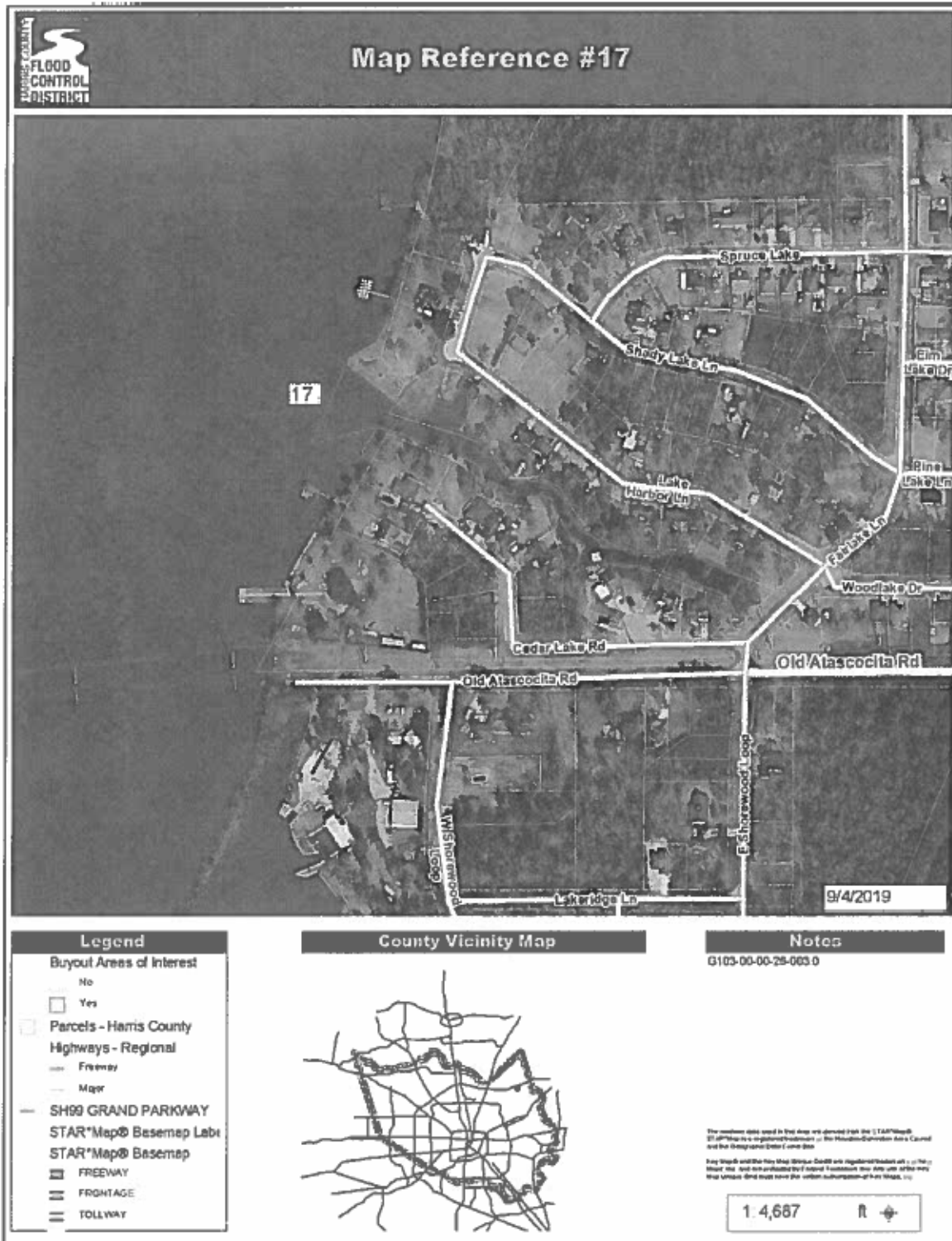














5

4

3

2

1

17

16

15

14

13

12

FOLEY

# Map Reference #1



## Legend

### Buyout Areas of Interest

No

Yes

Parcels - Harris County

Highways - Regional

Freeway

Major

SH99 GRAND PARKWAY

STAR\*Map® Basemap Lab

STAR\*Map® Basemap

FREEWAY

FRONTAGE

TOLLWAY

## County Vicinity Map



## Notes

Walden on Lake Houston

The highway data used in this map are derived from the STAR\*Map®. STAR\*Map is a registered trademark of the Houston-Galveston Area Council and the Geographic Data Committee.

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1:4,687

ft

## Map Reference #2



9/4/2019

### Legend

#### Buyout Areas of Interest

- ☐ No
- ☐ Yes

- ☐ Parcels - Harris County
- ☐ Harris County Boundary
- R.O.W. Labels
- ☐ R.O.W. (Proposed)
- ☐ R.O.W. (Acquired Grantee)
- ☐ Other
- ☐ City of Houston
- ☐ HCFCD
- ☐ Public
- ☐ State of Texas

### County Vicinity Map



### Notes

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1:4,687

ft

# Map Reference #3



## Legend

### Buyout Areas of Interest

No

Yes

Parcels - Harris County

Highways - Regional

Freeway

Major

SH99 GRAND PARKWAY

STAR\*Map® Basemap Labe

STAR\*Map® Basemap

FREEWAY

FRONTAGE

TOLLWAY

## County Vicinity Map



## Notes

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1:1,128

ft

# Map Reference #4



9/4/2019

## Legend

### Buyout Areas of Interest

No

Yes

Parcels - Harris County

Highways - Regional

Freeway

Major

SH99 GRAND PARKWAY

STAR\*Map® Basemap Labc

STAR\*Map® Basemap

FREEWAY

FRONTAGE

TOLLWAY

## County Vicinity Map



## Notes

G338-0N-NW-01-001.0

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1:1,128

ft

# Map Reference #5



## Legend

### Buyout Areas of Interest

- ☐ No
- ☐ Yes
- ☐ Parcels - Harris County
- Highways - Regional
  - Freeway
  - Major
- SH99 GRAND PARKWAY
- STAR\*Map® Basemap Lab
- STAR\*Map® Basemap
- FREEWAY
- FRONTAGE
- TOLLWAY

## County Vicinity Map



## Notes

G103-31-00-01-001 0

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1:2,257

ft

# Map Reference #6



## Legend

### Buyout Areas of Interest

- ☐ No
- ☐ Yes

### Parcels - Harris County

### Highways - Regional

- Freeway
- Major

### SH99 GRAND PARKWAY STAR\*Map® Basemap Labr STAR\*Map® Basemap

- FREEWAY
- FRONTAGE
- TOLLWAY

## County Vicinity Map



## Notes

G103-00-00-28-001.0  
G103-32-00-01-001.0

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1: 1,128

ft

# Map Reference #7



## Legend

### Buyout Areas of Interest

No

Yes

Parcels - Harris County

Highways - Regional

Freeway

Major

SH99 GRAND PARKWAY

STAR\*Map® Basemap Labr

STAR\*Map® Basemap

FREEWAY

FRONTAGE

TOLLWAY

## County Vicinity Map



## Notes

G103-00-00-28-001.0

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1:2,257

ft

# Map Reference #8



## Legend

### Buyout Areas of Interest

No

Yes

### Parcels - Harris County

### Highways - Regional

Freeway

Major

### SH99 GRAND PARKWAY

### STAR\*Map® Basemap Label

### STAR\*Map® Basemap

FREEWAY

FRONTAGE

TOLLWAY

## County Vicinity Map



## Notes

G103-00-00-28-001.0

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1:1,128

ft

# Map Reference #9



## Legend

### Buyout Areas of Interest

- ☐ No
- ☐ Yes

☐ Parcels - Harris County

Highways - Regional

Freeway

Major

SH99 GRAND PARKWAY

STAR\*Map® Basemap Label

STAR\*Map® Basemap

☐ FREEWAY

☐ FRONTAGE

☐ TOLLWAY

## County Vicinity Map



## Notes

G103-00-00-28-001.0

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1:2,257

ft

# Map Reference #10



## Legend

### Buyout Areas of Interest

- ☐ No
- ☐ Yes

### Parcels - Harris County

### Highways - Regional

- ☐ Freeway
- ☐ Major
- ☐ SH99 GRAND PARKWAY
- ☐ STAR\*Map® Basemap Labc
- ☐ STAR\*Map® Basemap
- ☐ FREEWAY
- ☐ FRONTAGE
- ☐ TOLLWAY

## County Vicinity Map



## Notes

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1:2,257

ft

# Map Reference #11



## Legend

### Buyout Areas of Interest

- ☐ No
- ☐ Yes

### Parcels - Harris County

### Highways - Regional

- Freeway
- Major
- SH99 GRAND PARKWAY
- STAR\*Map® Basemap Labc
- STAR\*Map® Basemap
- FREEWAY
- FRONTAGE
- TOLLWAY

## County Vicinity Map



## Notes

G103-00-00-22-001 0

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1:4,514

ft

# Map Reference #12



## Legend

### Buyout Areas of Interest

- ☐ No
- ☐ Yes

☐ Parcels - Harris County

### Highways - Regional

- ☐ Freeway
- ☐ Major

☐ SH99 GRAND PARKWAY  
STAR\*Map® Basemap Label  
STAR\*Map® Basemap

- ☐ FREEWAY
- ☐ FRONTAGE
- ☐ TOLLWAY

## County Vicinity Map



## Notes

G103-00-00-22-002.0

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1:4,687

ft

# Map Reference #13



## Legend

### Buyout Areas of Interest

- ☐ No
- ☐ Yes

- ☐ Parcels - Harris County
- Highways - Regional
  - Freeway
  - Major
- SH99 GRAND PARKWAY
- STAR\*Map® Basemap Lab
- STAR\*Map® Basemap
- == FREEWAY
- == FRONTAGE
- == TOLLWAY

## County Vicinity Map



## Notes

G103-00-00-24-007.0

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1:2,344

ft

# Map Reference #14



## Legend

### Buyout Areas of Interest

- ☐ No
- ☒ Yes

☐ Parcels - Harris County

Highways - Regional

Freeway

Major

— SH99 GRAND PARKWAY

STAR\*Map® Basemap Lab

STAR\*Map® Basemap

☒ FREEWAY

☒ FRONTAGE

☒ TOLLWAY

## County Vicinity Map



## Notes

G103-00-00-24-007.0

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1:2,344

ft

# Map Reference #15



## Legend

### Buyout Areas of Interest

No

Yes

### Parcels - Harris County

### Highways - Regional

Freeway

Major

### SH99 GRAND PARKWAY

### STAR\*Map® Basemap Labs

### STAR\*Map® Basemap

FREEWAY

FRONTAGE

TOLLWAY

## County Vicinity Map



## Notes

G103-00-00-25-005.0

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1:4,687

ft

# Map Reference #16



## Legend

### Buyout Areas of Interest

No

Yes

Parcels - Harris County

Highways - Regional

Freeway

Major

SH99 GRAND PARKWAY

STAR\*Map® Basemap Lab

STAR\*Map® Basemap

FREEWAY

FRONTAGE

TOLLWAY

## County Vicinity Map



## Notes

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1:4,687

ft

# Map Reference #17



## Legend

### Buyout Areas of Interest

- ☐ No
- ☐ Yes

### Parcels - Harris County

### Highways - Regional

- Freeway
- Major
- SH99 GRAND PARKWAY
- STAR\*Map® Basemap Lab
- STAR\*Map® Basemap
- FREEWAY
- FRONTAGE
- TOLLWAY

## County Vicinity Map



## Notes

G103-00-00-26-003.0

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1:4,687

ft

THE STATE OF TEXAS §  
§  
COUNTY OF HARRIS §

Ordinance # 2018-0347  
Contract # 4600014833

## AGREEMENT FOR DISASTER DEBRIS REMOVAL SERVICES

THIS AGREEMENT FOR DISASTER DEBRIS REMOVAL SERVICES ("Agreement") is made on the date countersigned by the City Controller ("Effective Date"), 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 DRC EMERGENCY SERVICES, LLC (the "Contractor"), a Louisiana limited liability company doing business in Texas. City and Contractor are referred to in this Agreement individually as the "Party" or collectively as the "Parties".

The Parties agree as follows:

### ARTICLE 1. PARTIES

#### 1.1. ADDRESS

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

<u>City</u>	<u>Contractor</u>
Director or Designee Solid Waste Management Department City of Houston P. O. Box 1562 Houston, Texas 77251	DRC Emergency Services LLC 110 Veterans Blvd., Suite 115 Metairie, Louisiana 70005 Attention: Kristy Fuentes

#### 1.2. TABLE OF CONTENTS

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

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### 1.3. PARTS INCORPORATED

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

### 1.4. CONTROLLING PARTS

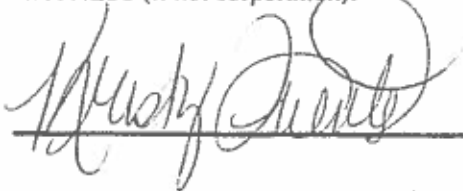
1.4.1. If a conflict among the articles and exhibits arises, the articles control over the exhibits.

**[SIGNATURE PAGE FOLLOWS]**

## 1.5. SIGNATURES

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

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

  
\_\_\_\_\_

DRC EMERGENCY SERVICES, LLC:

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

Name: John Sullivan

Title: Principal

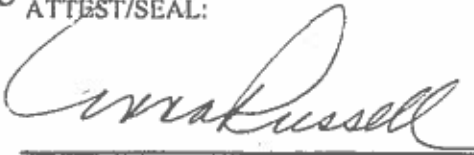
Federal Tax ID No.: 63-1283729

APPROVED

  
\_\_\_\_\_

Chief Procurement Officer

ATTEST/SEAL:

  
\_\_\_\_\_

City Secretary

CITY:

CITY OF HOUSTON, TEXAS

  
\_\_\_\_\_

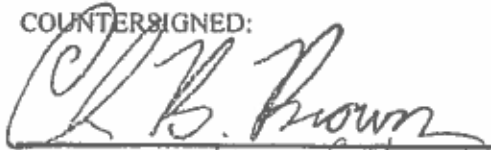
Mayor

APPROVED:

  
  
\_\_\_\_\_

Director, Solid Waste Management Department

COUNTERSIGNED:

  
\_\_\_\_\_

City Controller 

Countersignature Date: 5-1-18

APPROVED AS TO FORM:

  
\_\_\_\_\_

Sr. Assistant City Attorney

L.D. File No.: 0741800031006

## ARTICLE 2. DEFINITIONS

- 2.1. In addition to the words and terms defined elsewhere in this Agreement, the following terms have the meanings set out below:
- 2.1.1. "Accept" or "Acceptance" means the act of the Director by which the City assumes for itself, approval of specific services, as partial or complete performance of the Agreement.
- 2.1.2. "Agreement" means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.
- 2.1.3. "Business Day(s)" mean(s) any day that is not a Saturday, Sunday, or City Holiday. In the event that any deadline set forth in this Agreement falls on a Saturday, Sunday, or City Holiday, the deadline shall automatically be extended to the next day that is not a Saturday, Sunday, or City Holiday.
- 2.1.4. "Change Order" means either an increase or decrease in the Project Area, the Scope of Work, the locations of Disposal Site or other key elements of the projects.
- 2.1.4. "City" is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.1.5. "City Attorney" means the City Attorney of the City or any person designated by the City Attorney to perform one or more of the duties of the City Attorney under this Agreement.
- 2.1.6. "City Data" means all Documents and/or Information: (i) that the City discloses, supplies, or provides to Contractor under, pursuant to, or in connection with this Agreement, (ii) that Contractor obtains, receives, or collects under, pursuant to, or in connection with this Agreement, and/or (iii) collected, received, entered, stored, archived, retained, maintained, processed, or transmitted in, into, or by the Software. "City Data" does not include the Software, the Object Code, or the Source Code.
- 2.1.7. "City Holiday" means any official City of Houston holiday as determined each year by the City Council.
- 2.1.8. "City Personnel" means all City employees, but not elected officials.
- 2.1.9. "Confidential Information" means all non-public Documents or Information of a Party to this Agreement, including without limitation any such Documents or Information that is identified as or would be reasonably understood to be confidential, proprietary, and/or sensitive.
- 2.1.10. "Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.1.11. "Contractor Data" means all Documents and/or Information that Contractor discloses, supplies, or provides to the City under, pursuant to, or in connection with this Agreement. "Contractor Data" includes the Software, the Object Code, and the Source Code.
- 2.1.12. "CPO" means the City of Houston Chief Procurement Officer.

- 2.1.13. "Day(s)" means calendar day, including weekends and legal holidays, whether capitalized or not, unless otherwise specifically provided. In the case of plural "days", those days will be consecutive.
- 2.1.14. "Deliverable(s)" mean(s) any services, products, goods, software, case management databases and applications, documents, or other tangible item provided by Contractor to the City in connection with this Agreement.
- 2.1.15. "Director" means the Director of the Solid Waste Management Department, or any person designated by the Director to perform one or more of the Director's duties under this Agreement.
- 2.1.16. "Disclosing Party" means a Party who discloses, supplies, or provides Confidential Information to another Party or whose Confidential Information is otherwise in the possession, custody, or control of another Party.
- 2.1.17. "Disposal Site" means the location(s), as identified in the City's Debris Management Plan, attached hereto and incorporated herein for all purposes, where Contractor is to dispose of the disaster debris.
- 2.1.18. "Documents" means all original and non-identical copy of any written, typed, or printed matter, or electronically stored information, of any kind or description.
- 2.1.18.1. The word "documents" includes, but is not limited to, the following: agendas, analyses, audio or video recordings, bulletins, charts, circulars, communications (including any interoffice, social media, and other communications), computations, computer programs, copies, correspondence, data, databases, data compilations, data prototypes, designs, diagrams, diskettes, documents, drafts, drawings, electronic mail (email), electronically stored information, exhibits, facsimiles, forms, graphs, guides, images, information, inventions, items, letters, logs, manuals, maps, materials, memoranda, metadata, microfilm, minutes or meeting minutes, models, notes, notations, notebooks, operating manuals, original tracings of all drawings and plans, other graphic matter (however produced or reproduced), pamphlets, photographs (including any digital or film photographs), plans, printouts, policies, procedures, records, recordings (including any audio, video, digital, film, tape, and other recordings), reports, social media communications, software, specifications, tabulations, telegrams, underlying data, works, worksheets, work products, writings, and any other writings or recordings of any type or nature (and any revisions, modifications, or improvements to them).
- 2.1.19. "Documentation" means the written and/or electronic end-user or technical documentation pertaining to the Software and/or Equipment that is either directly or indirectly: (i) provided to the City by Contractor, or (ii) otherwise published or posted online by Contractor.
- 2.1.20. "Effective Date" means the date the City Controller countersigns the signature page of this Agreement and the Agreement becomes effective and binding.

- 2.1.21. "Equipment" or "equipment" mean(s) any and all hardware, equipment, material, goods, products, or other tangible items that Contractor provides or furnishes to City under, pursuant to, or in connection with this Agreement.
- 2.1.22. "Information" means all information, data, facts, or knowledge of any kind or description whether in tangible or intangible form.
- 2.1.23. "Include" and "including", and words of similar import, shall be deemed to be followed by the words "without limitation".
- 2.1.24. "Materials" means any component and/or part (hardware or software).
- 2.1.25. "Notice to Proceed" means a written communication from the Director to Contractor instructing Contractor to begin performance under this Agreement.
- 2.1.26. "Party" or "Parties" means City and Contractor who are bound by this Agreement, individually or collectively as indicated in the context by which it appears.
- 2.1.27. "Project" includes all labor, materials equipment and vehicles necessary to complete the collection, transportation and disposal of disaster debris resulting from a natural or man-made disaster.
- 2.1.28. "Project Area" means the City of Houston.
- 2.1.29. "Proprietary Rights" mean any copyrights, trademarks, trade secrets, patents, or any other intellectual or proprietary rights.
- 2.1.30. "Receiving Party" means a Party who obtains, receives, or collects Confidential Information of another Party or who otherwise has possession, custody, or control of Confidential Information of another Party.
- 2.1.31. "Services" means all services required by or reasonably inferable from the Agreement and Exhibit A including all labor, materials, tools, supplies, equipment, transportation, mobilization, insurance, subcontracts, supervision, management, reports, incidentals, quality control, and other items necessary or incidental by Contractor to fulfilling Contractor's obligations.
- 2.1.32. "Subcontractor" means any person or entity with whom the Contractor contracts to provide any part of the goods, services or work to be provided by Contractor under this Agreement, including subcontractors of any tier, suppliers and material men, whether or not in privity with the Contractor.
- 2.1.33. "Term" means the entire period during which this Agreement is in effect, starting on the Effective Date and continuing through the final date of termination or expiration of this Agreement, including any renewals or extensions.
- 2.1.34. "Work Products" means all Documents or Information that the City and/or Contractor creates, develops, modifies, prepares, produces, or writes under, pursuant to, or in connection with

this Agreement. "Work Products" does not mean or include the Software, the Source Code, or Object Code.

2.1.35. "Writing" or "written" shall mean a written communication from one Party to the other, including an electronic communication or e-mail.

2.2. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular include the plural.

2.3. The word "*shall*" is always mandatory and not merely permissive.

### ARTICLE 3. DUTIES OF CONTRACTOR

#### 3.1. SCOPE OF SERVICES

3.1.1. In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the Services and furnish the Deliverables described in Exhibit A.

#### 3.2. COORDINATE PERFORMANCE

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

#### 3.3. REPORTS

3.3.1. Contractor shall submit, at a minimum, to the Director, quarterly reports of progress on the project, including status of phase activity and the status of information requests made by the Director to the Contractor.

#### 3.4. SCHEDULE OF PERFORMANCE

##### 3.4.1. Time of Performance

3.4.1.1. The Director shall provide Contractor a written Notice to Proceed specifying a date to begin performance.

##### 3.4.2. Time Extensions

3.4.2.1. If Contractor requests an extension of time to complete its performance, then the Director may, in consultation with the CPO, extend the time so long as the extension does not exceed 180 calendar days. The extension must be in writing,



but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

### **3.5. SUBCONTRACTORS AND PROMPT PAYMENT OF SUBCONTRACTORS**

- 3.5.1. Contractor shall provide the Director with an updated list of all subcontractors including phone numbers of contact personnel.
- 3.5.2. Prior to the Director assigning any work, the Contractor shall provide the Director with an affidavit from each subcontractor stating that there is a signed contract between the Contractor and subcontractor.
- 3.5.3. The Director limit the number of subcontract firms working under Contractor or its subcontractors at the Director's sole discretion to ensure safety and quality of work provided.
- 3.5.4. 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 Agreement. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.**

### **3.6. CONTRACTOR'S PERSONNEL**

- 3.6.1. In selecting Contractor for this Agreement, the City relied on the qualifications and experience of those persons identified by Contractor by name as performing the Services ("Key Personnel") as listed in **Exhibit C**. Contractor must not reassign or replace Key Personnel without the Director's prior written approval. Upon the Director's approval, the Director shall update **Exhibit C**, which does not require amendment to this Agreement, to reflect the new Key Personnel.
- 3.6.2. Contractor shall replace any of its personnel, including Key Personnel, or subcontractors whose performance, work, or work product is deemed unsatisfactory at the Director's discretion.

### **3.7. RELEASE**

3.7.1. **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 AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY. CONTRACTOR HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS**

SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.

### 3.8. INDEMNIFICATION

3.8.1. 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 AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

3.8.1.1. CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 3.8.1.1.-3.8.1.3., "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

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

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

3.8.2. CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

### 3.9. INTELLECTUAL PROPERTY RELEASE AND INDEMNIFICATION

3.9.1. CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONTRACTOR, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR

FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, SERVICE MARK, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

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

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

### 3.10. SUBCONTRACTOR'S INDEMNITY

3.10.1. 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.

### 3.11. INDEMNIFICATION PROCEDURES

#### 3.11.1. *Notice of Claims.*

3.11.1.1. 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 10 days. The notice must include the following:

3.11.1.1.1. a description of the indemnification event in reasonable detail, and

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

3.11.1.1.3. the anticipated amount of the indemnified loss.

3.11.1.2. This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10-day period, it does not waive any right to indemnification

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

### 3.11.2. *Defense of Claims.*

3.11.2.1. *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.

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

## 3.12. INSURANCE

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

COVERAGE	LIMIT OF LIABILITY
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	<ul style="list-style-type: none"> <li>• Bodily Injury by Accident \$500,000 (each accident)</li> <li>• Bodily Injury by Disease \$500,000 (policy limit)</li> <li>• Bodily Injury by Disease \$500,000 (each employee)</li> </ul>
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence, and \$2,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Professional Liability Coverage	\$1,000,000 per occurrence; \$2,000,000 aggregate
Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability and Automobile Liability	\$1,000,000.00
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

- 3.12.2. *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, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. 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 except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.
- 3.12.3. *Form of Insurance.* The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Contract. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide.
- 3.12.4. *Required Coverage.* The City shall be an Additional Insured under this Contract, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other 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 contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this 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.
- 3.12.5. *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 sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.

### **3.13. PROFESSIONAL STANDARDS**

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

### **3.14. USE AND OWNERSHIP OF DATA AND WORK PRODUCTS**

- 3.14.1. The City may use and shall be permitted to use all City Data, Contractor Data, and Work Products.
- 3.14.2. Contractor warrants that it owns the copyright to Contractor Data.
- 3.14.3. Contractor conveys and assigns to the City its entire interest and full ownership worldwide in and to all Work Products and all Proprietary Rights therein.
- 3.14.4. Contractor shall not claim or exercise any Proprietary Rights in or to the Work Products. If requested by the Director, Contractor shall place a conspicuous notation on any Work Products indicating that the City owns the Work Products and the Proprietary Rights therein.
- 3.14.5. Contractor's assignment of its interest in the Work Products and the Proprietary Rights therein to the City does not constitute a mere license or franchise to the City.
- 3.14.6. Contractor shall execute all documents required by the Director to further evidence Contractor's assignment and the City's ownership of the Work Products and the Proprietary Rights therein. Contractor shall cooperate with City in registering, creating, and enforcing the City's ownership of the Work Products and the Proprietary Rights therein.
- 3.14.7. All Work Products are "works made for hire."
- 3.14.8. Contractor shall deliver to the Director all or any part of the original City Data, Contractor Data, Work Products, and/or all other files and materials that Contractor produces or gathers during its performance under this Agreement, in the format and on the media specified by Director, within five Business Days after written request from Director or after this Agreement terminates or otherwise expires.
- 3.14.9. Contractor may retain copies of the Work Products for its archives. Contractor shall not otherwise use, sell, license, or market the Work Products.
- 3.14.10. Notwithstanding anything to the contrary, the City is, will be, and shall remain at all times the sole owner of all City Documents and all Work Products. Contractor expressly acknowledges that the City has all right, title, or other ownership interest in all City Documents and all Work Products. Contractor shall not possess or assert any lien or other right against any City Documents or Work Products.



### **3.15. ACCEPTANCE AND REJECTION**

- 3.15.1. Contractor shall not be entitled to payment and the City shall have no duty to pay Contractor unless the Director has Accepted the Services and other Deliverables as set forth in **Exhibit A**.
- 3.15.2. Contractor shall provide written notice to the Director upon completion and/or delivery of the Services and other Deliverables as set forth in **Exhibit A**. The Director shall Accept in writing such Services and other Deliverables on or before the 20th Business Day after the date of receipt of such notice by the Director unless, prior to such 20th Business Day, the Director sends written notice to Contractor stating the reason(s) why any Services and other Deliverables have been rejected and not Accepted.
- 3.15.3. Notwithstanding anything to the contrary in **Exhibit A** or elsewhere, the Director may, in his sole discretion, approve in writing a partial Acceptance of the Services and other Deliverables set forth in **Exhibit A**.
- 3.15.4. If the Director rejects any Services or other Deliverables, Contractor shall have 10 Business Days after the Director sends written notice of rejection to correct or otherwise replace such Services or other Deliverables as necessary to conform to this Agreement, at no additional cost to the City. Contractor shall provide written notice to the Director upon completion of any such correction(s) or replacement(s) after the receipt of which the Director shall continue to either Accept or reject (as provided under this Section) and Contractor shall continue to make any necessary correction(s) or replacement(s) (as provided under this Section) until the Director Accepts in writing all previously rejected Services or other Deliverables.
- 3.15.5. Notwithstanding anything to the contrary herein or elsewhere, if the Director does not Accept any Services or other Deliverables after one or more attempted correction(s) or replacement(s) of such Services or other Deliverables by Contractor, the Director may, in his sole discretion, issue a final rejection notice to Contractor for all Services and other Deliverables (whether or not previously Accepted), the City shall return all Equipment and Software to Contractor at no cost to the City, the City shall have no obligation to pay any amount whatsoever under this Agreement, Contractor shall immediately refund any and all amounts paid by City under this Agreement, and this Agreement shall immediately terminate.
- 3.15.6. The City reserves all other available rights and remedies at law or in equity, including without limitation all rights and remedies and rights under Article 2 of the Texas Business and Commercial Code.

### **3.16. CONFIDENTIALITY**

- 3.16.1. Except as otherwise provided in this Agreement, each Receiving Party shall:

- 3.16.1.1. Hold all Confidential Information of a Disclosing Party in strict confidence;
  - 3.16.1.2. Protect all Confidential Information of a Disclosing Party with at least the same degree of care and in accordance with the security regulations by which it protects its own Confidential Information;
  - 3.16.1.3. Not use, reproduce, or copy any Confidential Information of a Disclosing Party except as necessary for purposes of performing any duties or exercising any rights under, pursuant to, or in connection with this Agreement unless the Disclosing Party otherwise agrees in writing;
  - 3.16.1.4. Not disclose any Confidential Information of a Disclosing Party to any person or entity except the Receiving Party's agents, contractors, employees, and representatives with a need to know for purposes of performing any duties or exercising any rights under, pursuant to, or in connection with this Agreement unless the Disclosing Party otherwise agrees in writing;
  - 3.16.1.5. Not remove any Confidential Information of a Disclosing Party from the continental United States;
  - 3.16.1.6. Return or destroy all Confidential Information of a Disclosing Party and any copies of such Confidential Information upon request of the Disclosing Party and, in any event, when no longer needed or permitted for use under, pursuant to, or in connection with this Agreement; and
  - 3.16.1.7. Advise its agents, contractors, employees, and representatives of their obligations with respect to the Confidential Information of a Disclosing Party.
- 3.16.2. No Receiving Party shall have any obligation under this Section (Confidentiality) as to any Confidential Information of a Disclosing Party that:
- 3.16.2.1. Was previously known to it free and clear of any obligation to keep it confidential;
  - 3.16.2.2. Except as otherwise provided under this Agreement, is disclosed to third parties by the Disclosing Party without restriction;
  - 3.16.2.3. Is or becomes publicly available by other than unauthorized disclosure;
  - 3.16.2.4. Is independently developed by it; or
  - 3.16.2.5. Is disclosed in response to requests made under the Texas Public Information Act or a court order. However, the Receiving Party ordered to disclose the Confidential Information shall: (i) give the Disclosing Party of the Confidential Information prompt written notice of all such requests, and

(ii) cooperate with the Disclosing Party's efforts to obtain a protective order protecting the Confidential Information from disclosure.

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

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

### **3.17. LICENSES AND PERMITS**

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

### **3.18. COMPLIANCE WITH LAWS**

3.18.1. Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.

3.18.2. Contractor acknowledges that Federal Emergency Management Agency (FEMA) financial assistance will be used to fund this Agreement.

3.18.3. Contractor shall comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures and directives.

3.18.4. 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.

3.18.5. 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 the Agreement.

3.18.6. Contractor shall not use the Department of Homeland ("DHS") seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

### **3.19. COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE**

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

3.19.2. Contractor shall comply with the applicable Equal Opportunity Clause required by the United States of America, including but not limited to the provisions of 41 CFR



§ 60-1.4(b). These provisions are inclusive of any amendments which may be made to such regulations. Further, Contractor shall include the summary of the provisions of 41 CFR § 60-1.4(b), as may be amended, in subcontracts it enters into under this Agreement. This summary is set forth in **Exhibit J**.

### **3.20. NON-DISCRIMINATION**

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

### **3.21. MWBE COMPLIANCE**

3.21.1. In its performance under this Agreement, Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 19 % of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunities ("OBO") and will comply with them.

3.21.2. Contractor shall maintain records showing:

3.21.2.1. Subcontracts and supply agreements with Minority Business Enterprises,

3.21.2.2. Subcontracts and supply agreements with Women's Business Enterprises,  
and

21.2.3. Specific efforts to identify and award subcontracts and supply agreements to MWBEs.

3.21.3. Contractor shall submit periodic reports of its efforts under this Section to the Director of the Office of Business Opportunity in the form and at the times he or she prescribes.

3.21.4. Contractor shall require written subcontracts with all MWBE subcontractors and suppliers.

### **3.22. DRUG ABUSE DETECTION AND DETERRENCE**

3.22.1. It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No.

1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

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

3.22.2.1. a copy of its drug-free workplace policy,

3.22.2.2. the Drug Policy Compliance Agreement substantially in the form set forth in **Exhibit E**, together with a written designation of all safety impact positions and,

3.22.2.3. if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in **Exhibit F**.

3.22.3. If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six months during the performance of this Agreement (or on completion of this Agreement if performance is less than six (6) months), a Drug Policy Compliance Declaration in a form substantially similar to **Exhibit G**. Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within thirty (30) days of the expiration of each 6-month period of performance and within thirty (30) days of completion of this Agreement. The first six-month period begins to run on the date the City issues its Notice to Proceed or, if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

3.22.4. Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

3.22.5. Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

### **3.23. CONTRACTOR'S PERFORMANCE**

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

### **3.24. PAY OR PLAY**

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

### **3.25. ANTI-BOYCOTT OF ISRAEL**

- 3.25.1. Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code. **3.26. ZERO**

### **TOLERANCE FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES**

- 3.26.1. The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Agreement'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 Agreement.

### **3.27. DEBARMENT AND SUSPENSION**

- 3.27.1. The Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- 3.27.2. The Contractor shall comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- 3.27.3. This certification as set out in **Exhibit H** is a material representation of fact relied upon by 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, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- 3.27.4. Contractor shall comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### **3.28. BYRD ANTI-LOBBYING AMENDMENT**

- 3.28.1. For any bid, offer, or agreement exceeding \$100,000, Contractor shall file with the City a Certification Regarding Lobbying substantially in the form set out in Exhibit I.
- 3.28.2. Contractor shall comply with 31 U.S.C. § 1352 and include a requirement to comply with these regulations in any subcontractor or lower tier covered transaction it enters into.

### **3.29. CONTRACT WORK AND SAFETY STANDARDS**

- 3.29.1. 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.
- 3.29.2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 3.21.1 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 (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 (b)(1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 2.21.1 of this section.
- 3.29.3. Withholding for unpaid wages and liquidated damages. FEMA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same 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 (b)(2) of this section.
- 3.29.4. Subcontracts. Contractor shall insert in any subcontracts the clauses set forth in paragraph 3.21.1 through 3.21.4 of this section and also a clause requiring the
- 3.29.5. 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 3.22.1 through 3.22.4 of this section.

### **3.30. ENVIRONMENTAL COMPLIANCE**

- 3.30.1. 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.).
- 3.30.2. Contractor shall report all violations to the City, Texas Division of Emergency Management, FEMA and the regional office of the Environmental Protection Agency.
- 3.30.3. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA. Contractor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6201 et seq.).

### **3.31. USE OF PRODUCTS**

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

## **ARTICLE 4. DUTIES OF CITY**

### **4.1. PAYMENT TERMS**

- 4.1.1. The City shall pay and Contractor shall accept fees set forth in Exhibit "B" as full compensation for all Services rendered by Contractor under this Agreement within 30 days of City's receipt and approval of Contractor's detailed invoice showing services provided during the invoice period. The fees must be paid from allocated funds as provided in Section 4.4., inclusive of all sections therein.

### **4.2. TAXES**

- 4.2.1. 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.

#### 4.3. METHOD OF PAYMENT

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

4.3.1.1. City shall withhold retainage of ten (10) percent from each progress payment to secure performance of the Contract and shall deposit in an interest-bearing account that portion of the retainage withheld that exceeds five (5) percent of the progress payment. In order to recover the retainage, the Contractor(s) must successfully complete, and receive a letter of completion from the City, for all work zones. Retainage will be held until final reconciliation is Complete. Portions of the retainage may be held by the City to repair damages caused by the Contractor (s) to public or private property.

4.3.1.2. The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:

4.3.1.2.1. Defective Work not remedied by the Contractor or, in the opinion of the City, likely to be remedied by the Contractor;

4.3.1.2.2. Claims of third parties against the City or the City's property;

4.3.1.2.3. Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion; evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;

4.3.1.2.4. Evidence that the Work will not be completed in the time required for substantial or final completion (final completion meaning the full and final completion of all work called for by this Contract and final acceptance by the Engineer and the City);

4.3.1.2.5. Persistent failure to carry out the Service in accordance with the Contract;

4.3.1.2.6. Damage to the City or a third party to whom the City is, or may be, liable;

4.3.1.2.7. Failure to submit an updated project schedule; or

4.3.1.2.8. Failure to submit record drawings.

4.3.1.3. In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this section, the Contractor shall promptly comply with such demand. The City shall have no duty to third parties to withhold payment to the Contractor and shall incur no liability for a failure to withhold funds.

- 4.3.2. If the Director disputes an invoice Contractor submits for any reason, including lack of supporting documentation (as may be required by the Director in his sole discretion), the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.
- 4.3.3 Early Payment Discount. The City of Houston's standard payment term is to pay 30 days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Texas Gov't Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from vendor as follows:

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

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

- 4.3.4 Contract Rate Adjustments. Beginning on the first anniversary of the Countersignature Date of the Agreement and on each anniversary thereafter, the fees will be adjusted, upward or downward as the case may, by the lesser of five percent (5%) or the net annual change in the Construction Cost Index as published in the Engineering News Record for the ensuing anniversary year.

#### 4.4. LIMIT OF APPROPRIATION

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

- 4.4.2. 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 \$ \$0.00 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the Parties have agreed to the following procedures and remedies:

- 4.4.2.1. The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.



**NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS**

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

\$

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

**4.5. CHANGES**

4.5.1. At any time during the Agreement Term, the Director may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work. Any Change to the scope of activities identified in **Exhibit A** shall be mutually agreed to prior to the issuance of a Change Order.

4.5.2. 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 Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

Subject to all terms and conditions of the Agreement, the City requests that 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]

4.5.3. The Director may issue more than one Change Order, subject to the following limitations:

4.5.3.1. Council expressly authorizes the Director to approve a Change Orders up to \$50,000. A Change Order of more than \$50,000 must be approved by the City Council.

4.5.3.2. If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.

4.5.3.3. The Total of all Change Orders issued under this Section may not increase the Original Agreement amount by more than 25%.

4.5.4. Whenever a Change Order is issued and executed by both Parties, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The Director's decision regarding a time extension is final.

4.5.5. A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.

4.5.6. Change Orders are subject to the Allocated Funds provisions of this Agreement.

#### 4.6. ACCESS TO DATA

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

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

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

#### 4.7. NO QUANTITY GUARANTEE

4.7.1. This Agreement does not create an exclusive right in Contractor to perform all services concerning the subject of this Agreement. The City may procure and

execute contracts with other consulting firms for the same, similar, or additional services as those set forth in this Agreement or any Scope of Services or Change Order.

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

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

### **5.1. TERM**

- 5.1.1. This Agreement is effective on the date of the Effective Date and expires three (3) years thereafter, unless sooner terminated in accordance with the terms and conditions of this Agreement.

### **5.2. RENEWALS**

- 5.2.1. If the Director, at his or her sole discretion, makes a written request for renewal to Contractor (with a copy of the request sent to the CPO) at least 30 days before expiration of the then-current term and if sufficient funds are allocated, then, upon expiration of the initial term, this Agreement is renewed for two successive two-year terms upon the same terms and conditions.

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

- 5.3.1. The Director may terminate this Agreement at any time by giving 30 days written notice to Contractor, with a copy of the notice to the CPO. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.
- 5.3.2. On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all Services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit a final invoice marked "FINAL" showing in detail the Services performed under this Agreement up to the termination date.
- 5.3.3. TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED, IF ANY, ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR

PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

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

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

5.4.1.1. Contractor fails to perform any of its material duties under this Agreement;

5.4.1.2. Contractor becomes insolvent;

5.4.1.3. All or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or

5.4.1.4. A receiver or trustee is appointed for Contractor.

5.4.2. If a default occurs, the Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The Director, at his sole option, may extend the termination date to a later date. If the Director allows Contractor to cure the default and Contractor does so to the Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate this Agreement on the termination date and pay Contractor for all Services performed, if any, through such date.

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

#### **5.5. REMOVAL OF CONTRACTOR-OWNED EQUIPMENT AND MATERIALS**

5.5.1. Upon expiration or termination of this Agreement, Contractor is permitted 10 days within which to remove Contractor-owned material and equipment from the City's premises. The City shall make such material and equipment readily available to Contractor. The time period may be extended upon approval by the Director. The Director reserves the right to deny any extension of time.

#### **5.6 LIQUIDATED DAMAGES**

5.6.1. The City will assess liquidated damages for late or untimely performance and may, at the Director's sole option, elect to allow Contractor to continue with the work under this Agreement, or may declare Contractor to be in breach and default of the Contract and order Contractor to remove all equipment and personnel from the work site. The

amount of actual damages resulting from Contractor's late or untimely performance may be difficult to ascertain and both Parties agree that the liquidated damages assessed are reasonable and are not a penalty.

5.6.2. All remedies for Contractor's late performance shall be nonexclusive and cumulative without waiver of any other, and the Director's election of one shall not preclude the City from pursuing any other.

5.6.3. Should Contractor fail to complete requirements set forth in **Exhibit A**, the City will suffer damage, including but not limited to unsafe and unsanitary conditions caused by the presence of disaster-generated debris, which constitutes a danger to the health and safety of the general public. Contractor shall pay the City, as liquidated damages, the following:

5.6.3.1. \$5,000.00 per calendar day of delay to mobilize in the City with the required resources and equipment set forth in Exhibit "D" to begin debris removal operations within 72 hours of the Notice to Proceed.

5.6.3.2. \$2500.00 per calendar day for failure to maintain at least 85% of loading devices and hauling available for the Exigency Period as defined herein.

5.6.3.3. \$ 1000.00 per day for failure to collect and haul to the debris disposal site at least 70% of hauling availability of disaster debris per day. Weather related incidents will be considered.

5.6.3.4. \$1,000.00 per load of disaster debris collected in the City that is not disposed of at a City approved DMS or City approved Final Disposal Site. Application of liquidated damages does not release the Contractor of all liability associated with hauling and depositing material to an unauthorized location.

5.6.3.5. \$500.00 per incident where the Contractor fails to repair damages that are caused by the Contractor or subcontractor(s). Application of liquidated damages does not release the Contractor from the responsibility of resolving or repairing damages.

5.6.3.6. \$500.00 per calendar day of delay to complete the project by the agreed upon project completion date.

5.6.3.7. \$500.00 per calendar day of delay to remediate each DMS to the original condition based on the completion date set forth by the City and Contractor per DMS.

5.6.3.8. \$100.00 per incident where the Contractor fails provide sufficient documentation to the City to support FEMA eligibility of the work performed. Additionally, no payment will be made for the work performed. This liquidated damage will only apply when the contract is activated for a FEMA eligible disaster.

5.6.3.9. \$10,000.00 per calendar day until final completion of Services, by either

Contractor, City, or any third Party, where Contractor abandons Services or fails to complete the requirements of this Agreement.

5.6.4. The amounts specified above are mutually agreed upon as reasonable and proper amount of damage the City should suffer by failure of the Contractor to complete requirements set forth in the scope of work.

5.6.5. If the Contractor fails to achieve final completion within the time fixed by the Director, Contractor shall pay the City the sum set forth above as liquidated damages per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of Services. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at or before the time of executing this Contract. When the Director reasonably believes that final completion will be inexcusably delayed, the Director shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the City to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the City has withheld payment, the City shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages. Liquidated damages shall be deducted first from any earned sums due to the Contractor.

## ARTICLE 6. MISCELLANEOUS

### 6.1. INDEPENDENT CONTRACTOR

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

### 6.2. FORCE MAJEURE

6.2.1. Timely performance by both Parties is essential to this Agreement. However, neither Party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a Party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, court orders, and the acts of superior governmental or military authority, and which the affected Party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to any reimbursement of expenses or any other payment whatsoever.

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

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

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

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

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

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

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

### **6.3. SEVERABILITY**

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

### **6.4. ENTIRE AGREEMENT**

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

### **6.5. WRITTEN AMENDMENT**

6.5.1. Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Contractor. The Director is only

authorized to perform the functions specifically delegated to him or her in this Agreement.

#### **6.6. APPLICABLE LAWS**

6.6.1. This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

6.6.2. Venue for any litigation relating to this Agreement is Harris County, Texas.

#### **6.7. NOTICES**

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

#### **6.8. CAPTIONS**

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

#### **6.9. NON-WAIVER**

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

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

#### **6.10. INSPECTIONS AND AUDITS**

6.10.1. City representatives may perform, or have performed, (i) audits of Contractor's books and records, and (ii) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least four years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

6.10.2. Contractor shall provide the Director, the FEMA 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 the 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 five years after this Agreement terminates or expires. This provision does not limit the applicable statute of limitations.

6.10.3. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6.10.4. Contractor shall provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement.

6.10.5. Contractor shall provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement.

#### **6.11. ENFORCEMENT**

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

#### **6.12. AMBIGUITIES**

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

#### **6.13. SURVIVAL**

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

#### **6.14. PUBLICITY**

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

## **6.15. RISK OF LOSS**

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

## **6.16. PARTIES IN INTEREST**

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

## **6.17. SUCCESSORS AND ASSIGNS**

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

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

- 6.18.1. Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in Section 9.406 of the Texas Business & 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.
- 6.18.2. Contractor shall not delegate any portion of its performance under this Agreement without the Director's prior written consent which consent shall not be unreasonably withheld.

## **6.19. DISPUTE RESOLUTION**

- 6.19.1. For purposes of this Section "Project Administrator" means the person the Director designates to monitor the progress of all Parties' performance under this Agreement.
- 6.19.2. Except as may otherwise be provided by law, a dispute that (i) does not involve a question of law; (ii) arises during the performance of this Agreement; and (iii) is not resolved between the Project Administrator and Contractor must be handled as described below:
- 6.19.2.1. The Project Administrator shall put its decision in writing and mail or otherwise furnish Contractor with a copy. Contractor may abide by the decision or may appeal the decision to the Director.

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

## **6.20. REMEDIES CUMULATIVE**

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

## **6.21 MWBE**

6.21.1 Vendor shall adhere to and comply with 2 CFR 200.321 if subcontracts are to be let under this agreement. The Vendor, if subcontracts are to be let, is required to take the following affirmative steps to ensure that small business firms, minority business firms, women's business enterprises, and labor surplus area firms are used when possible, pursuant to 2 CFR Section 200.321. Affirmative steps must include: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and (6) Vendor should clearly document the communication and outreach to the certified business. Documentation may include mail logs, phone logs, or similar records documenting the use of the above identified sources of information about MWSBE firms, the efforts to contact them, and other efforts to meet the above requirements.

## **6.22 ENVIRONMENTAL LAWS**

6.22.1 Contractor shall comply with all 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 with Environmental Laws.

6.21.2 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" means 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.

#### **6.23. CONTRACTOR DEBT**

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

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**EXHIBIT A**  
**SCOPE OF WORK**

**A.1 DEBRIS REMOVAL**

**PART 1 – GENERAL**

**1.01 DESCRIPTION**

- a. Scope of Work: Work under this section consists of post-hurricane/disaster debris removal from public property and the public rights of way within the City limits and proper disposal of the debris. The work consists of loading and hauling debris from the public rights-of-way to Debris Management Sites (DMS) (previously called Temporary Debris Storage and Reduction sites) and/or approved landfills.
- b. Preparedness: Key personnel, proposed by the Contractor under the pre-qualification process, must participate in the City's annual hurricane preparedness training activities, a maximum of two (2) days each year at no cost to the City if requested by the Director of Solid Waste Management (DSWM).
- c. Prepositioning: Upon notification from the DSWM, Contractor must provide a two-person management team on-site to participate in advance recovery preparations. Expected time frame is 24-36 hours prior to project hurricane landfall. The purpose is to initiate actions necessary to ensure that Contractor resources shall be able to begin recovery operations within 24-48 hours of receiving the Notice to Proceed from the City. The Contractor's resources are to be available within 24-48 hours and include at least 20 loading devices, such as cherry-pickers, grapplers or rear-steers, and 30-50 cavities with at least a 20-cubic yard capacity. Please note that self-loading equipment and double or tandem axle dump trailers are preferred. In addition, please note that bobcats, skid-steers, gradalls and excavators are not acceptable loading devices but may be used if a special exception is granted by the city debris manager or by his/her designee.
- d. Inspection of Debris: As soon as possible after the hurricane/disaster event has subsided, the Contractor must make a detailed and thorough on-site inspection of debris to be removed, and consider (1) amounts and types of debris; (2) working conditions such as traffic, street/road width, and land use; (3) means of ingress and egress to work areas; and (4) all other factors affecting the removal and disposal work.
- e. Coordination: Debris removal is limited to that which is determined by the City's Director of Solid Waste Management Department to be in the best public interest and that which is considered essential to the economic recovery of the affected area. The Director of Solid Waste Management shall determine priorities for debris removal. The Contractor must effect coordination with other contractors, city officials and parties as directed by the Director of Solid Waste Management (DSWM).
- f. City Limits: Work is limited to areas within the boundaries of the City of Houston.
- g. Quality Assurance: Work shall be closely monitored by City personnel and/or designated representatives. The Contractor must cooperate with all monitors representing the City.

- h. Subcontractors: Upon request, Contractor shall provide the Director with an updated list of all subcontractors including phone numbers of contact personnel.

Prior to the Director assigning any work, the Contractor shall provide the Director with an affidavit from each subcontractor stating that there is a signed contract between the Contractor and subcontractor.

The Director may, at his discretion, limit the number of subcontract firms working under Contractor or its subcontractors at the Director's sole discretion to ensure safety and quality of work provided.

## PART 2 – EXECUTION

### 2.01 DEBRIS REMOVAL

- a. General: The goal of the debris removal work is to load and haul disaster-related debris from public property and the public rights-of-way to assigned DMS and/or approved landfills. In general, but not exclusively, this consists of curbside debris removal on City property only. The types of debris to be removed include, but are not limited to trees, woody debris, brush, building wreckage, construction and demolition debris (C&D), and personal property and household goods on public property or in public rights-of-way. Debris removal operations also include the removal of tree stumps, cutting and removing partially uprooted or split trees and tree stumps, collection of debris laden sand and backfilling of stump craters. Debris is to be removed without regard to whether or not it was deposited in those areas as a result of the disaster or placed there by local citizen after the disaster. Hazardous materials are not covered by this scope of work.
- b. Preparations/Submittal: Prior to commencing any removal work, the beds of all hauling vehicles must be measured to determine their fully loaded capacities in cubic yards. The vehicles must be marked externally with the owner/operator's name, the contract number, vehicle ID number and the fully loaded capacity. Those markings must be clearly visible on both sides of the vehicle and on the front wall of the bed. All markings must be certified by the Contractor. A list of all vehicles, with the owner/operator's name, vehicle ID number and hauling capacity must be submitted to the Director of Solid Waste Management (DSWM) before the vehicles are placed in service. The City shall provide (4) multi-part load tickets for each vehicle at each loading site. The tickets must be signed by the vehicle driver and then presented to the City's monitor at the designated disposal site.
- c. Hazardous Materials: Hazardous and toxic wastes shall be loaded, hauled, and disposed of by others and are excluded from this work. The City shall execute a separate hazardous materials removal and disposal contract; however, collection schedules may not necessarily coincide with the debris removal work. Hazardous materials include chemicals, petroleum products, paint products, asbestos, power transformers, oxygen bottles, propane tanks, batteries, industrial and agricultural chemicals, cleaning agents and similar hazardous, dangerous or toxic materials. Some preliminary curbside separation shall be attempted, but Contractor must be aware that hazardous materials might be commingled with debris. Contractor shall take every precaution to avoid loading and hauling hazardous materials. Notwithstanding, Contractor forces must be aware of the appropriate safety precautions. Further, Contractor shall be responsible for safe and proper handling of any hazardous materials inadvertently loaded by

Contractor forces. Contractor forces must notify the Director of Solid Waste Management (DSWM) of locations where hazardous materials are encountered.

- d. Other Non-Collection Items: The following items must not be removed or hauled to the designated disposal sites:

- Regular household waste (e.g., bagged garbage, discarded food, paper, packaging)
- Electric company transformer, poles and other equipment and materials
- Telephone company transformers, poles and other equipment and materials
- Traffic signs, signals, and appurtenances
- Debris on private property
- Vehicles

Curbside collection of regular household waste shall be handled by the usual public and private haulers. Household garbage must not be mixed with storm debris. All utility equipment, traffic signs and signals that are encountered must be moved to a visible, accessible location at or near curbside for disposition by utility companies for the City. Debris on private property may be removed only upon receipt of authorization from the Director of Solid Waste Management (DSWM) to do so and only if it poses an immediate threat to public health and safety, interferes with prescribed removal operations, or is necessary to allow Contractor to perform assigned tasks. In such cases, authorization to enter onto private property must be obtained from the DSWM. Vehicles that are in the way of debris removal operations may not be moved. Instead, the Contractor shall report the locations of such vehicles to the DSWM.

- e. Debris Removal: Debris shall be removed from all parts of City as well as the DMS. During debris removal operations, extreme caution must be exercised by the Contractor to ensure that no damage is done to public or private properties. All crawler or tracked vehicles operated on public streets must have pads to prevent damage to hard-surfaced streets.
- f. Loading: All loose debris, such as tree limbs, must be reasonably compacted in the hauling vehicles during loading. All debris extending beyond the vehicle in any horizontal direction must be cut off or otherwise removed.
- g. Hauling: All vehicles utilized in hauling debris must be equipped with adequate means for containing the load, including canvas covering while transporting the debris to the DMS and/or approved landfills. Covering must effectively prevent debris from being blown or bounced off the vehicles. Sideboards or other extensions to the bed shall be permitted provided they meet state and local requirements, cover front and two sides, and are substantially constructed. Sideboards must be constructed of 2" x 6" boards or greater and may not extend more than 2 feet above the metal bed sides. Vehicles must be equipped with a tailgate or other devices that shall effectively contain the debris on the vehicle while hauling, and also permit the vehicle to be loaded to capacity.
- h. Dumping: All debris must be hauled to assigned DMS and/or approved landfills. All trees, woody debris, and brush shall be accepted at DMS and may be accepted at other sites specifically approved by the City. Construction and demolition debris must be similarly transported.
- i. Equipment Storage: The Contractor is responsible for locating areas where its equipment may be stored, serviced and repaired. Such areas must not be located within rights-of-way or in any

areas that would impact traffic flow or produce a safety hazard. This does not preclude parking equipment for short periods of time, including overnight, in rights-of-way areas where work is in progress; on-site refueling and operating checks including daily maintenance shall be allowed. Properly prepared areas within the DMS may be used for this purpose.

## 2.02 SCHEDULE

- a. Removal operations must begin within 24-48 hours of receiving the Notice-to-Proceed and be functioning at 100% of capacity within 5 days. These operations are to be fully integrated with the DMS operations. Removal may begin earlier if adequate disposal sites are available and properly prepared. The Director of Solid Waste Management (DSWM) reserves the right to increase or decrease the scope of the removal activity as he/she deems necessary to ensure effective management of the overall debris removal/disposal operations.
- b. Working Hours: Unless otherwise permitted by the City, working hours for removal operations shall be limited to daylight hours.

## 2.03 EXTRA WORK

At the Director's option, the scope of work may be expanded to include public parks, other recreational areas, drainage structures and channels, and reservoirs.

## 3.01 COMPENSATION FOR DEBRIS CLEARANCE AND HAULING

- a. Contractor shall be compensated by the cubic yard for those activities shown below to be measured by volume. Where a range of miles distant to the disposal site is shown, compensation shall be by cubic yard within the applicable range of miles to the disposal site. Those activities designated with a different unit of measure shall be compensated on a per unit basis. All measurements and units listed in this section are subject to change in accordance with the most current FEMA guidelines.

### Group 1. Rights-of-Way Vegetative Collection Rate

Vegetative debris collected from public or private rights-of-way (ROW) and improved public lands, hauled to, and dumped at the debris management site(s). This includes the removal, collection, hauling, and disposal of all stumps less than 24 inches in diameter and any stumps not originating in the ROW (including stumps removed by third parties and placed in the ROW).

Miles to disposal site  
0-15 miles  
16-30 miles  
31-60 miles

### Group 2. Private Property Vegetative Collection Rate

Vegetative debris collected from private property, hauled to, and dumped at the debris management site(s). This includes the removal, collection, hauling and disposal of all stumps less than 24 inches in diameter.

Miles to disposal site  
0-15 miles  
16-30 miles  
31-60 miles

- Group 3. Rights of Way Construction and Demolition Collection Rate**  
Construction and demolition debris collection from designated work zone, hauled to, and dumped at the debris management site(s) or other designated location.

Miles to disposal site  
0-15 miles  
16-30 miles  
31-60 miles

- Group 4. Cutting Partially Uprooted or Split Trees (Leaners)**  
Falling partially uprooted or split trees from the ROW or the overhanging portion of the ROW and placing the debris in the ROW for haul-off. Split Trees in this Group must measure 6 inches in diameter or greater at 4.5 feet above ground level, or measure in accordance with current FEMA guidelines.

**Partially Uprooted Leaner (50% or more of the root ball exposed; price is inclusive of excavating the root ball and placing it in the ROW).**

Diameter of tree at 2 feet from base:

Less than 24 inches

24-36 inches

Greater than 36 inches

**Split Leaner (less than 50% of the root ball exposed; price is inclusive of flush cutting the tree trunk.)**

Diameter of tree at 2 feet from base:

Less than 24 inches

24-36 inches

Greater than 36 inches

- Group 5. Removal of Dangerous Hanging Limbs (Hangers)**  
Removing hanging or partially broken limbs from trees in the ROW or limbs hanging over the ROW and placing the debris in the ROW for haul-off. Broken limbs or branches in this Group must measure 2 inches or larger in diameter, measured at the point of break.

- Group 6. Demolition and Collection Rate**  
Demolish identified structures in designated work zone. Remove C&D debris from designated work zone, haul to, and dump at the DMS or other designated location.

- Group 7. Hazardous Stump Removal and Collection Rate**

Removal and collection of stumps partially uprooted in the ROW (50 percent or more of root ball exposed). Price is inclusive of excavating the root ball and placing it in the ROW. Stumps shall be identified and certified in the ROW by the City or its representative. Stumps shall be hauled to and dumped at a debris management site(s) or other designated location.

**Diameter of Stump at 2 feet from base**

24-36 inches

36-48 inches

Greater than 48 inches

**Group 8. Other Stump Removal and Collection Rate**

Removal and collection of stumps less than 2 feet in diameter as measured 2 feet above the ground or stumps brought to the ROW. Stumps shall be hauled to and dumped at a debris management site(s) or other designated location.

On a cubic yard basis; volume calculated according to FEMA guidelines for conversion of stumps to cubic yards.

**Group 9. Sand Collection (Public Property) and Screening Rate**

Removal and collection of debris-laden sand from public property. Debris-laden sand shall be hauled to a designated location, screened, and stockpiled at a debris management site(s). Debris generated from screened rejects shall be hauled to a debris management site(s) or other designated location.

**Group 10. Sand Collection (Private Property) and Screening Rate**

Removal and collection of debris-laden sand from public property. Debris-laden sand shall be hauled to a designated location, screened, and stockpiled at a debris management site(s). Debris generated from screened rejects shall be hauled to a debris management site(s) or other designated location.

**Group 11. Backfill**

Supply and replacement of clean fill dirt into holes created by stump removal in the ROW.

**Group 12. Waterways**

Removal and collections of debris, wreckage, and sunken vessels from publicly and privately-owned waters to eliminate immediate threat of lives, public health and safety, or ensure economic recovery of the affected community.

## **A.2 DEBRIS MANAGEMENT SITE OPERATION**

### **PART 1 – GENERAL**

#### **1.01 DESCRIPTION**

- a. Scope of Work: Work under this section consists of preparation, operation, and closure of Debris Management Site (DMS) for the project. At these sites the Contractor must accept,



temporarily store, segregate, reduce, recycle as appropriate, and dispose of debris generated by the hurricane/disaster event and brought to the site by trucks under Contractor's control, or by other carriers specifically designated by the City.

- b. The Contractor shall, upon the commencement of this contract, identify properties within the Houston area and enter into separate agreements with the property owners to prepare and use the property as Debris Management Sites (DMS). The Contractor shall conduct environmental surveys, prepare the property as needed, acquire state permits as required and effect all other arrangements so as to be able to use the property on short notice as a DMS. The Contractor shall notify the DSWM of any such agreements upon their notification by all parties.

- c. At each DMS the Contractor must be fully prepared to:

Accept materials collected during debris removal operations.

Segregate materials into waste streams that can either be recycled, picked up by other Contractors (as in the case of HAZMAT waste), treated in a common manner (i.e. mechanical reduction) or taken to a common disposal point such as an approved landfill.

Reduce materials through mechanical reduction (chipping, grinding), incineration (if specially authorized by the Director of Solid Waste Management), and recycling onsite or post-collection resale for recycling or other purposes.

Conduct on-site air curtain burning of certain materials as may be directed by the City. Contractor should identify equipment and operator resources; however, no burning may take place without specific City direction.

Dispose of segregated or reduced debris through resale of materials or disposition of processing wastes in a properly permitted landfill or other disposal site.

- d. **City Limits:** The source of debris is limited to areas within the boundaries of the City of Houston.

- e. **Preparedness:** A representative of the Contractor or Subcontractor who shall operate the DMS must participate in the City's annual hurricane exercise at no cost to the City if requested by the DSWM.

- f. **Pre-positioning:** In order to expedite the implementation of DMS operations the Contractor must provide personnel on-site prior to a projected hurricane/disaster event to carry out any activities necessary to assure that the DMS shall be ready when needed. Actual preparation of the DMS must begin within 24-48 hours of receipt of the Notice-to-Proceed and the sites must be fully operational not more than 5 days thereafter.

- g. **Existing Conditions:** The Contractor must, as part of the site preparation actions, photo-document the site conditions using both a video camera and still photographs. The Contractor should keep one copy of the videotape and photographs for its records. The Contractor must provide one copy of the videotape and the still photographs to the Director of Solid Waste Management.

- h. The Contractor must be aware of, and abide by, the conditions of any permits under which he/she must operate. The Contractor is responsible for knowing the applicability and

requirements of all applicable environmental laws and regulations that could pertain to the operation of DMS.

The Contractor shall be responsible for paying any and all costs associated with violations of law or regulation relative to his/her activities. Such costs might include but are not limited to: site cleanup and/or remediation; fines, administrative or civil penalties; and third-party claims imposed on the City by any regulatory agency or by any third party as a result of noncompliance with Federal, State, or Local environmental laws and regulations or nuisance statutes by Contractor, his/her Subcontractors, or any other persons, corporations or legal entities retained by the Contractor under this contract.

- i. Meetings: The Contractor must attend any and all meetings required by the Director of Solid Waste Management or his/her designee to evaluate the operations of the DMS.
- j. Quality Assurance: The work shall be closely monitored by City monitors and/or designated representatives of the City. The Contractor shall cooperate with all monitors.

## PART 2 – EXECUTION

### 2.01 DMS PREPARATION

- a. Site Setup: Unless specifically directed otherwise by the Director of Solid Waste Management, site setup must commence as soon as possible after the hurricane/disaster event has subsided, but no later than 24-48 hours from the time that the Notice-to-Proceed is issued by the Director of Solid Waste Management. All DMS must be fully operational within 5 days receipt of the Notice-to-Proceed. The Contractor must prepare each site for operation by installing the following features:

- Perimeter fencing.
- Construction entrances including gates.
- Built-up aggregate access roads.
- Drainage and storm water retention features (where applicable).
- Erosion and sediment control fencing.
- Inspection tower.
- Operations trailer.
- All other site improvements necessary for the safe, efficient, economical and environmentally acceptable operation of the sites.

The Contractor must construct berms or provide suitable secondary containment around all non-truck mounted fuel storage tanks, hazardous wastes and stockpiled ash to prevent runoff of these materials into adjacent ditches and surface waters.

- b. Baseline Sampling and Testing: The Contractor must collect and test soil and groundwater samples at each DMS in areas designated for storm water retention, ash storage, vehicle maintenance fuel dispensing operations and any areas where hazardous substances and petroleum products are or might be generated, stored or used. Samples must be tested for Total Petroleum Hydrocarbons (TPH) and Resource Conservation and Recovery Act (RCRA) metals. The Contractor must secure independent laboratory analytical tests for the referenced substances tested and provide the results to the Director of Solid Waste Management prior to the commencement of operations at the DMS.

- c. Protection: Within the limits of or adjacent to the DMS, there may be existing underground electric, telephone and television cables and conduits, gas, water and sewer utility lines which cannot be located from existing data. It is the responsibility of the Contractor to determine their exact location and to carry out his/her work carefully and skillfully so as to avoid damage to them. The City may elect to provide this information to Contractor in advance. In any case, Contractor shall ensure the locations of such utility installations are adequately marked.
- d. Temporary Utilities: All temporary utilities including sewage disposal and potable water must be provided by the Contractor.
- e. Signage: The Contractor must provide signs at each of the DMS in accordance with City of Houston specifications and contain the following information:
- Contractor's superintendent's name, local address and local 24-hour telephone number.
  - Name of the DMS facility.
  - Name, address and telephone number of the City representative to contact in case of an emergency.
- f. Plans: The Contractor must develop and provide to the Director of Solid Waste Management the following materials prior to start-up:
- Site layout plan
  - Proposed operating procedures
  - Site/operations safety plan
- g. Startup: When all DMS preparations are completed, the Contractor must notify the Director of Solid Waste Management who shall inspect the site and approve the site for commencement of DMS operations.

## 2.02 DMS OPERATIONS

- a. General Operations: The Contractor shall operate each DMS in an effective and efficient manner for such time as the Director of Solid Waste Management deems necessary. DMS may operate on a 24-hour, 7-day basis unless otherwise directed by the Director of Solid Waste Management.

The Contractor must operate such equipment as is necessary to efficiently reduce by mechanical means or incineration all materials deposited at the DMS that require reduction before final disposal. The Contractor must segregate all debris in accordance with the method of processing and potential for recycling. The Contractor must separate and contain all hazardous wastes for pick up and disposal by the City's hazardous waste Contractor. Comestible garbage shall be separated and contained for pick-up by the City's designated hauler. The Contractor must staff the DMS with sufficient personnel to ensure the waste stream segregation and processing operation does not reduce the capacity to remove debris from City streets in a timely manner. The operation of each DMS must conform to these specifications and any permits issued for the DMS. The Contractor is responsible for all site and worker safety issues.

b. Control of Material: The Contractor must make every effort to control the nature of the material allowed into the DMS, with the objective being to have only C&D materials, clean woody debris, household debris (other than regular household waste and hazardous materials) and similar materials brought to and deposited in the DMS. All materials brought to the DMS by vehicles under Contractor's control but not accepted at the DMS must be disposed of by the Contractor at an approved landfill or by other legal means of disposal.

c. Environmental Controls: The contractor is responsible for monitoring the temperature of stockpiled mulch at least twice daily to detect hot spots resulting from natural microbial decomposition. Upon finding a hot spot, the Contractor must mechanically mix the affected mulch to cool it down and avoid creating a fire hazard. The Contractor must secure the services of an independent laboratory to sample and test any ash generated from burning prior to its lawful disposal. Copies of all documents pertaining to the disposition of the ash (e.g. analytical results, shipping manifests, certificates of destruction) must be submitted to the Director of Solid Waste Management.

The Contractor must, to the extent practicable, separate hazardous waste and asbestos from all woody and structural debris that is to be further processed, reduced, recycled or burned. Segregation of asbestos from curbside debris planned for direct disposal at a landfill shall not be required.

d. Control of Rodents, Vermin, Insects, Birds and Wildlife: The Contractor must operate the DMS in such manner as to minimize the possibility of infestation by rodents, other vermin and insects and to minimize the potential for attracting birds and wildlife. The Contractor shall be responsible for proper and safe application of rodenticide and insecticide as a precautionary tactic to minimize the potential for infestation. Additional applications of such materials shall be made as necessary to eradicate infestations. All sites and work areas shall be subject to inspection and monitoring by City health and safety personnel.

e. Debris Ownership and Disposal: The Contractor must remove or arrange for the removal and final disposal of all debris brought to the DMS. Options include but are not limited to sending the material to an authorized and properly permitted disposal area, recycling facility or resale entity. The Contractor must maintain records for all materials, including processed debris, residue, and hazardous materials, being transported from the DMS to disposal or recycling facilities. The Contractor must secure an EPA Identification Number prior to the lawful disposal of any ash determined to be hazardous based on analytical results. Copies of this documentation must be provided to the Director of Solid Waste Management for review. The Contractor shall be considered the owner of all debris brought to the DMS.

## 2.03 DMS CLOSURE

a. Restoration: The Contractor must restore all DMS to their original condition to the extent feasible or to the satisfaction of the Director of Solid Waste Management. Unless otherwise directed by the City, all improvements (e.g., fencing, haul roads, trailer) must be removed. The Contractor must reestablish grades (i.e. roads, and ditches) throughout each DMS. The Contractor must request and participate in site inspections by the Director of Solid Waste Management for final approval of all site closure and restoration activities.

b. Sampling and Testing: The Contractor must complete soil and groundwater closure sampling and testing in the areas described in the baseline sampling information. The same tests must

be completed as were performed prior to commencing with DMS operations (TPH and RCRA metals). The analytical results must be provided to the Director of the Solid Waste Management Department prior to closure of each DMS. Areas found to be contaminated above the baseline values must be remediated by the Contractor. The Contractor is regarded as the generator of such contaminants for the purposes of federal environmental statutes.

### **3.01 COMPENSATION**

- a. Debris Management site preparation, permitting operation, environmental assessment and closure shall be included in the fee per cubic yard for the various activities listed below.
- b. Contractor may bill and the City shall pay by the cubic yard for:
  - 1. Reduction of vegetative debris by burning of the DMS.
  - 2. Reduction of vegetative debris by grinding at the DMS.
  - 3. Reduction of C&D debris at the DMS.
  - 4. Loading and transport of reduced vegetative debris to the final disposal site.
  - 5. Loading and transport of C&D debris to the final disposal site
- c. The City shall pay the costs of final disposal incurred by the Contractor at a City approved Final Disposal Site that meets federal, state and local regulations for disposal. The payment for disposal costs will be reimbursed by the city as a pass through costs. Prior to reimbursement by the City, the Contractor must furnish the City or its designee an invoice in hard copy and electronic format matching scale/weight ticket numbers with load ticket or haul out ticket numbers and any other applicable information.

### **4.0 WARRANTY OF SERVICES:**

- 4.1 "Acceptance" as used in this clause, means the act of an authorized representative of the City by which the City assumes for itself, approval of specific services, as partial or complete performance of the Contract.
- 4.2 "Correction" as used in this clause, means the elimination of a defect.
- 4.3 Notwithstanding inspection and acceptance by the City or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this Contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Contract. The City shall give written notice of any defect or nonconformance to the Contractor within a one-year period from the date of acceptance by the City. This notice shall state either (1) that the Contractor shall correct or re-perform any defective or non-conforming services at no additional cost to the City, or (2) that the City does not require correction or re-performance.
- 4.4 If the Contractor is required to correct or re-perform, it shall be at no cost to the City, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the City may, by contract or otherwise correct or replace with similar services and charge to the Contractor the cost occasioned to the City thereby, or make an equitable adjustment in the Contract price.

- 4.5 If the City does not require correction or re-performance, the City shall make an equitable adjustment in the contract price.

**5.0 ADDITIONS AND DELETIONS:**

- 5.1 The City, by written notice from the City Chief Procurement Officer to the Contractor, at any time during the term of this contract, may add or delete like or similar equipment, supplies, locations and/or services to the list of equipment, supplies, locations, and/or services to be provided. Any such written notice shall take effect on the date stated in the notice from the City. Similar equipment, supplies, services, or locations added to the contract shall be in accordance with the contract specification/scope of services, and the charges or rates for items added shall be the same as specified in the fee schedule. In the event that the additional equipment, supplies, locations and/or services are not identical to the item(s) already under contract, the charges therefore will then be the Contractor's normal and customary charges or rates for the equipment, supplies, locations and/or services classified in the fee schedule.

**6.0 ESTIMATED QUANTITIES NOT GUARANTEED:**

- 6.1 The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of services during the term of this Contract. The quantities may vary depending upon the actual needs of the Department. The quantities specified herein are good faith estimates of usage during the term of this Contract. Therefore, the City shall not be liable for any contractual agreements/obligations the Contractor enters into based on the City purchasing all the quantities specified herein.

**7.0 INTERLOCAL AGREEMENT:**

- 7.1 Under the same terms and conditions hereunder, the Contract may be expanded to other government entities through inter-local agreements between the City of Houston and the respective government entity that encompass all or part of the products/services provided under this contract. Separate contracts will be drawn to reflect the needs of each participating entity.

## EXHIBIT B

### FEES

Item #	Description	Qty	U/M	Unit Cost
Group 1 - Rights-of-Way Vegetative Collection Rate (Per Specifications)				
1	0-15 miles to disposal site	4,000,000	YD	\$ 9.45
2	16-30 miles to disposal site	1,000,000	YD	\$ 10.80
3	31-60 miles to disposal site	1	YD	\$ 17.00
Group 2 - Private Property Vegetative Collection Rate (Per Specifications)				
4	0-15 miles to disposal site	125,000	YD	\$ 9.45
5	16-30 miles to disposal site	75,000	YD	\$ 10.80
6	31-60 miles to disposal site	1	YD	\$ 17.00
Group 3 - Rights of Way Construction and Demolition Collection Rate (Per Specifications)				
7	0-15 miles to disposal site	2,000,000	YD	\$ 10.98
8	16-30 miles to disposal site	500,000	YD	\$ 12.00
9	31-60 miles to disposal site	1	YD	\$ 18.00
Group 4 - Cutting Partially Uprooted or Split Trees (Leaners)				
10	Partially Uprooted Leaner (Price is inclusive of excavating the root ball and placing it in the ROW) Diameter of tree at 2 feet from base. LESS THAN 24 INCHES.	10,000	EA	\$ 26.25
11	Partially Uprooted Leaner (Price is inclusive of excavating the root ball and placing it in the ROW) Diameter of tree at 2 feet from base. 24-36 INCHES.	7,500	EA	\$ 52.50
12	Partially Uprooted Leaner (Price is inclusive of excavating the root ball and placing it in the ROW) Diameter of tree at 2 feet from base. GREATER THAN 36 INCHES	5,000	EA	\$ 78.25
13	Split Leaner (No exposed root ball) Price is inclusive of flush cutting the tree trunk. (Per Specifications) - Diameter of tree at 2 feet from base. LESS THAN 24 INCHES	10,000	EA	\$ 26.25
14	Split Leaner (No exposed root ball) Price is inclusive of flush cutting the tree trunk. (Per Specifications) - Diameter of tree at 2 feet from base. 24 - 36 INCHES	7,500	EA	\$ 52.50

15	Split Leaner (No exposed root ball) Price is inclusive of flush cutting the tree trunk. (Per Specifications) - Diameter of tree at 2 feet from base. GREATER THAN 36 INCHES	5,000	EA	\$ 78.25
Group 5 - Removal of Dangerous Hanging Limbs (Hangers) (Per Specifications)				
16	Removal of Dangerous Hanging Limbs (Hangers)	10,000	EA	\$ 95.00
Group 6 - Demolition and Collection Rate (Per Specifications)				
17	Demolition and Collection Rate (Per Specifications)	5,000	YD3	\$ 20.00
Group 7 - Hazardous Stump Removal and Collection Rate (Per Specifications) Diameter of Stump at 2 feet from base.				
18	24-36 inches	300	EA	\$ 140.00
19	36-48 inches	125	EA	\$ 190.00
20	Greater than 48 inches	75	EA	\$ 300.00
Group 8 - Stump Removal and Collection Rate (Per Specifications)				
21	Stump Removal and Collection Rate (Per Specifications)	100000	YD3	\$ 1.00
Group 9 Sand Collection (Public Property) and Screening Rate (Per Specifications)				
22	Sand Collection (Public Property) and Screening Rate (Per Specifications)	1	YD3	\$ 25.00
Group 10 - Sand Collection (Private Property) and Screening Rate (Per Specifications)				
23	Sand Collection (Private Property) and Screening Rate (Per Specifications)	1	YD3	\$ 25.00
Group 11 Backfill (Per Specifications)				
24	Backfill per specifications	1,000	YD3	\$ 30.00
Group 12 Waterways				
25	Removal and collection of debris, wreckage,	500,000	YD3	\$ 110.00

**EXHIBIT C**  
**KEY PERSONNEL**

**Lisa Garcia**  
Contract Manager  
DRC Emergency Services, LLC  
[lgarcia@drcusa.com](mailto:lgarcia@drcusa.com)  
504-715-9052

**Kristy Fuentes**  
Vice President  
Administration and Compliance  
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504-220-7682  
504-482-2848

## EXHIBIT D

### TITLE VI: NON-DISCRIMINATION

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

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

**EXHIBIT E**  
**DRUG POLICY COMPLIANCE AGREEMENT**

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

DRC Emergency Services, LLC (Contractor)  
(Name of Company)

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

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

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

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

Date

4/17/18

DRC Emergency Services, LLC  
(Contractor Name)

(Signature)

Vice President  
(Title)

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

I, Kristy Fuentes, Vice President, (Contractor)  
(Name) (Title)

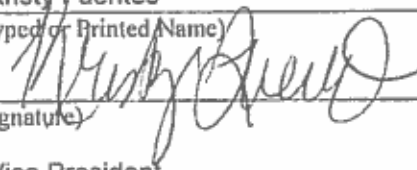
as an owner or officer of DRC Emergency Services, LLC have authority to bind  
(Name of Company)

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

in performing Disaster Debris Removal Services. Contractor  
(Project)

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

4/17/19  
(Date)

Kristy Fuentes  
(Typed or Printed Name)  
  
(Signature)  
Vice President  
(Title)

**EXHIBIT G  
DRUG POLICY COMPLIANCE DECLARATION**

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

DRC Emergency Services, LLC have personal knowledge and full  
(Contractor - Name of Company)  
authority to make the following declarations:

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

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

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

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

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

\_\_\_\_ (Initials) From \_\_\_\_\_ (Start date) to \_\_\_\_\_ (End date) the following test has occurred

	<i>RANDOM</i>	<i>REASONABLE SUSPICION</i>	<i>POST ACCIDENT</i>	<i>TOTAL</i>
Number Employees Tested				
Number Employees Positive				
Percent Employees Positive				

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

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

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

(Date) 11/17/13

Kristy Fuentes  
(Typed or Printed Name)  
Kristy Fuentes  
(Signature)  
Vice President  
(Title)

**EXHIBIT H**  
**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). As such, Vendor is required to confirm that none of the Vendor, 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, the Vendor, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a Vendor to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Agreement that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this 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 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
- 9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

**CERTIFICATION**

1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:

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

2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

DRC Emergency Services, LLC

Contractor Company Name

Kristy Fuentes, Vice President

Name and Title

Signature

Date

A handwritten signature in black ink, consisting of a stylized, cursive letter 'K' followed by a horizontal stroke.

## EXHIBIT I

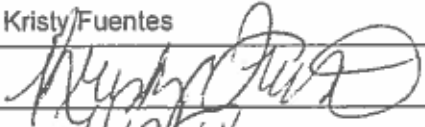
### Anti-Lobbying Certification

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

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

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

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

Contractor Name:	DRC Emergency Services, LLC
President:	John Sullivan
Name of Authorized Official:	Kristy Fuentes
Signature:	
Date:	4/17/18

## EXHIBIT J

### Equal Opportunity Clause

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

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

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

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

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

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

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

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

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

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

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of

September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

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

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

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

**ORDER OF COMMISSIONERS COURT**  
Authorizing Execution of an Interlocal Agreement

The Commissioners Court of Harris County, Texas, convened at a meeting of the Court at the Harris County Administration Building in the City of Houston, Texas, on \_\_\_\_\_, 2021 with all members present except \_\_\_\_\_.

A quorum was present. Among other business, the following was transacted:

**ORDER AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN  
THE HARRIS COUNTY FLOOD CONTROL DISTRICT AND  
THE CITY OF HOUSTON, TEXAS**

Commissioner \_\_\_\_\_ introduced an order and made a motion that the same be adopted. Commissioner \_\_\_\_\_ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

	Yes	No	Abstain
Judge Lina Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Adrian Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Tom S. Ramsey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. R. Jack Cagle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted follows:

WHEREAS, Hurricane Harvey and its associated events produced high winds and heavy rains within Harris County, including the City, causing silt to accumulate in portions of several channels that drain directly to Lake Houston as shown in attached **Exhibit A** ("Properties"); and

WHEREAS, it is in the interest of the health, safety and welfare of City and County residents to remove the silt in these channels as they enter into Lake Houston, to enable water to flow into Lake Houston ("Project"); and

WHEREAS, the City's Chief Resilience Officer, who serves as the City's liaison between local, state, and federal agencies, and City departments to collaborate and design strategies for resiliency and mitigation of flood risk for the City, has recommended that the City and the District coordinate efforts to de-silt these channels at the entrance to Lake Houston; and

WHEREAS, as a result of Hurricane Harvey, desilting waterways has become a critical component of the disaster recovery process for the City and the District; and

WHEREAS, said de-silt contract is attached hereto as **Exhibit B** and incorporated by reference herein; and

WHEREAS, the City is willing to manage the de-silt contract under the terms and conditions set forth in this Interlocal Agreement; and

WHEREAS, the District is willing to contribute up to a maximum of \$10 million to the City for the Project.

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF HARRIS COUNTY, TEXAS THAT:

Section 1: The recitals set forth in this order are true and correct.

Section 2: County Judge Lina Hidalgo is hereby authorized to execute an Interlocal Agreement between the Harris County Flood Control District and the City of Houston to de-silt waterways draining into Lake Houston for a maximum amount of \$ 10,000,000.00 to be paid to the City by the District, said Agreement being incorporated herein by reference for all purposes as though fully set forth verbatim herein.