



Dallas County
BRIEFING / COURT ORDER
Commissioners Court - Apr 21 2020

- ☐ Resolution
- ☐ Solicitation/Contract
- ☐ Executive Session
- ☒ Addendum

**Dallas County Office of Homeland Security & Emergency Management (HSEM) -
Personal Services Agreements**

Briefing Date: Apr 21 2020
Funding Source: Project COVID-19
Originating Department: Budget
Prepared by: Ronica Watkins, Budget Assistant Director
Recommended by: Janette Weedon, Budget Director

BACKGROUND INFORMATION:

On March 12, 2020 Dallas County Judge Clay Jenkins declared a local disaster because of the threat of the global pandemic *Coronavirus Disease 2019 (COVID-19)*. In response, the Dallas County Office of Homeland Security & Emergency Management (HSEM) identified additional staff needed in key positions to assist in managing the County's emergency response efforts. The purpose of this briefing is to notify Commissioners Court of the additional staff. The Personal Services Agreements require approval in order for the Auditor's Office Accounts Payable department to process payments.

OPERATIONAL IMPACT:

HSEM is the lead department for the County and tasked with emergency activities. Miguel E. Solis, Philip Haigh, and Patricia Nava have been identified to serve as part of the core internal policy team as identified in the Personal Services Agreements – Scope of Work. The individuals will perform assigned functions as determined by HSEM and the County Judge's Office. The three Personal Services Agreements are attached for further details.

FINANCIAL IMPACT:

The financial impact would be approximately \$228,111 (\$76,037 per contract) for the three Personal Services Agreement. HSEM has determined that this is a necessary expenditure due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19). Expenditures will be charged to the COVID-19 project established for this event and funding will come from direct relief assistance provided by the Coronavirus Aid, Relief, and Economic Security (CARES) Act (532.0000.1020.0000.5003.94573.00000.0000).

LEGAL IMPACT:

The Civil DA has reviewed and approved to form the three Personal Services Agreements.

PROJECT SCHEDULE:

N/A

SBE PARTICIPATION:

N/A

ADMINISTRATIVE PLAN COMPLIANCE:

The County's Administrative Plan recommends that the County is operationally a model government entity. The proposed Personal Services Agreements with the Dallas County Office of Homeland Security & Emergency Management (HSEM) are consistent with the recommendation as it results in additional staff to assist HSEM in response to the threat of the global pandemic COVID-19. The additional staff is needed to increase the effectiveness of the HSEM's response in aspects of communication and coordination of all activities related to the COVID-19 national emergency.

RECOMMENDATION:

Approval of the three Personal Services Agreements for Miguel E. Solis, Philip Haigh, and Patricia Nava. The payments of services are related to the Coronavirus Disease 2019 (COVID-19). Expenditures will be charged to the COVID-19 fund and project established for this event and funding will come from direct relief assistance provided by the Coronavirus Aid, Relief, and Economic Security (CARES) Act (532.0000.1020.0000.5003.94573.00000.0000).

MOTION:

On a motion made by TBD, and seconded by TBD, the following order will be voted on by the Commissioners Court of Dallas County, State of Texas:

Be it resolved and ordered that the Dallas County Commissioners Court does hereby Approve the three Personal Services Agreements for Miguel E. Solis, Philip Haigh, and Patricia Nava. The payments of services are related to the Coronavirus Disease 2019 (COVID-19). Expenditures will be charged to the COVID-19 fund and project established for this event and funding will come from direct relief assistance provided by the Coronavirus Aid, Relief, and Economic Security (CARES) Act (532.0000.1020.0000.5003.94573.00000.0000).

ATTACHMENTS:

[Haigh - Personal Servs Agreement](#)

[Nava - Personal Servs Agreement \(002\)](#)

[Solis - Personal Servs Agreement](#)

THE STATE OF TEXAS

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THE COUNTY OF DALLAS

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PERSONAL SERVICES AGREEMENT (“Agreement”)

Between

DALLAS COUNTY (“County”)

and

Philip Haigh (“Haigh” or “Contractor”)

This Agreement is entered into by and between Dallas County, Texas (hereinafter, “County”), acting by and through the Dallas County Commissioners Court (hereinafter, “Commissioners Court”) located at 411 Elm Street, 2nd Floor, Dallas, Texas 75202, and Philip Haigh, located at 1910 Lansford Avenue, Dallas, TX 75224 (hereinafter, “Haigh” or “Contractor”) or individually as a “Party” or collectively the “Parties” for certain personal services, as identified in this Agreement under authority of Texas Local Government Code § 262.024(a)(4), for certain personal services, as identified herein.

WHEREAS, the Dallas County Office of Homeland Security & Emergency Management (“HSEM”) is a function of Dallas County government. HSEM is responsible for management of a county-wide emergency management program, the homeland security program, and the county emergency operations center (“EOC”). HSEM works with municipalities, state and federal agencies, partners, NGO, volunteer groups, and others to provide emergency protective actions for the 2.5 million residents of Dallas County, Texas; and

WHEREAS, on March 12, 2020, Dallas County Judge Clay Jenkins declared a local disaster because of the threat of the global pandemic COVID-19 coronavirus (“COVID-19”); and

WHEREAS, the County began taking steps to thwart the spread of COVID-19 including identifying additional staff needed in key positions to help manage the County’s emergency response effort; and

WHEREAS, Haigh has agreed to provide services as indicated herein;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereafter set forth and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the County and Contractor agree as follows:

1. PURPOSE:

The purpose of this staff augmentation is to increase the effectiveness of HSEM's response in all aspects of communication and coordination throughout the County in response to the COVID-19 national emergency. HSEM is the lead department for the County and tasked with integrating the emergency response activities of local municipalities in alignment with federal guidance.

2. TERM:

The term of this Agreement shall begin upon the day of execution of this Agreement by the County and continue until the services are rendered and the deliverables detailed herein are completed, unless terminated earlier under any provision hereof. Notwithstanding the foregoing, the services and deliverables detailed herein shall be completed by March 19, 2021. This Agreement shall automatically terminate on March 19, 2021 (collectively the "Term").

3. SCOPE OF WORK:

The contractor will serve as part of the core internal policy team for Dallas County Judge Clay Jenkins who is leading the Dallas County response to the global pandemic COVID-19. Assigned functions include participating in daily strategy meetings with partners, including local emergency managers, elected officials, and county administration as assigned; serving as the primary contact for Chambers of Commerce; leading the effort to preserve the local economy; and assisting with media relations and messaging utilizing experience from the 2014 Ebola Crisis Response team.

4. COUNTY'S OBLIGATIONS:

County agrees to the following:

- (a) Dallas County will assist Contractor in scheduling appointment with key County personnel and employees;
- (b) Dallas County will provide computer assets; and
- (c) Dallas County will provide a work space.

5. TERMS AND CONDITIONS OF PAYMENT FOR SERVICES:

County agrees to compensate Contractor for approved budget expenses incurred and for documented units of services performed, subject to the following limitations:

County agrees to compensate Contractor for approved budget expenses incurred and for documented units of services performed, subject to the following limitations:

- (a) Compensation for Personal Services. Contractor has agreed to be compensated for the services described herein.

- (b) Not to Exceed Amount. Contractor understands and agrees that the maximum total amount payable for the services described herein shall not exceed seventy-six thousand thirty-seven dollars and no cents (\$76,037.00) (hereinafter "Not to Exceed Amount") unless a formal written amendment is executed by the Parties hereto and is formally approved by the Commissioners Court. Contractor assures County that it will not perform services that would cause the amounts payable to Contractor for the services described herein to exceed the Not To Exceed Amount without following the procedures described in this subsection (b).
- (c) Travel costs to be paid to Contractor are included in the above Not to Exceed Amount.
- (d) Contractor agrees to submit complete, fully documented, and accurate itemized invoices with appropriate documentation, as required by County, following the completion of the services detailed herein.
- (e) Payment will be made to Contractor by County upon receipt of a verified and proper billing for services actually rendered. Any payments by County to Contractor may be withheld if the Contractor fails to comply with County's reporting requirements, performance objectives, or other requirements relating to Contractor's performance of work, deliverables, and services under this Agreement. County shall pay Contractor only for those costs that are allowable under applicable rules and regulations, as stated in this Agreement. County shall have the right to withhold all or part of any payments to the Contractor to offset any reimbursement made to Contractor for ineligible expenditures or undocumented units of services billed.
- (f) Contractor understands and agrees that all billings must be submitted to County within thirty (30) days of expiration or termination of this Agreement. County must approve any exceptions to this billing procedure in writing. All billings must have appropriate supporting documentation before such billings will be approved.
- (g) County will make payment to Contractor upon receipt of a verified and proper invoice in accordance with Texas Government Code, Chapter 2251.
- (h) County agrees to review Contractor's invoices and will forward payment to Contractor within thirty (30) days of receipt of invoice after County, at its sole discretion, determines that such funds are in fact due and owing.
- (i) The Dallas County Auditor is responsible for monitoring fiscal compliance activities and shall resolve any dispute between the Parties regarding County's payments to Contractor for services rendered under this Agreement.
- (j) Prior Debts. County shall not be liable for costs incurred or performances rendered by Contractor before or after the Term; for expenses not billed to County within the applicable time frames set forth in this Contract; or for any payment for services or activities not provided pursuant to the terms of this Contract.

6. REPORTING AND ACCOUNTABILITY:

- (a) Reporting. Contractor agrees to submit all required documentation and reports on a timely basis and in accordance with the specified time frames pursuant to this Agreement. Penalties for delinquent reporting may include withholding of payments until such time all reports are received, cancellation and/or termination of this Agreement with no obligation to pay for undocumented services, or both.
- (b) Access to Records. Contractor agrees that County, or any of its duly authorized representatives, has the right of timely and unrestricted access to any books, documents, papers, reports, or other records of Contractor that are pertinent to the fulfillment of the requirements of this Agreement, in order to make audit, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable access to Contractor's personnel for the purpose of reviewing, interviewing, evaluating, and monitoring related to such documents. All such items shall be furnished to the County in Dallas County, Texas.
- (c) Ownership. Contractor agrees that all information, data, and supporting documentation that relates to the services provided hereunder shall remain the property of County.
- (d) Maintenance of Records. Contractor's records, books, and other documents reasonably related to this Agreement shall be kept and maintained in standard accounting form. Such records, books, and documents shall be made available in Dallas County subject to inspection by County or authorized County personnel upon request.
- (e) Audit. The Dallas County Auditor, its assigns, or any other governmental entity approved by County shall have the unrestricted right to audit all data or documents related to this Agreement. Such data shall be furnished in Dallas County at a mutually convenient time within a reasonable time. Should County determine it reasonably necessary, Contractor shall make all of its records, books, and documents reasonably related to this Agreement available to authorized County personnel, at reasonable times and within reasonable periods, for inspection or auditing purposes or to substantiate the provisions of services under this Agreement.
- (f) Retention of Records. All records, books, and documents reasonably related to this Agreement shall be maintained and kept by Contractor for a minimum of four (4) years and ninety (90) days after termination or expiration of this Agreement. If any litigation, claim, or audit involving these documents and/or records begins before the specified period expires, Contractor must keep the records and documents for not less than four (4) years and ninety (90) days and until all litigation, claims, or audit findings are resolved, whichever is later. **Contractor is strictly prohibited from destroying or discarding any records, books, or other documents reasonably related to this Agreement, unless the time period for maintaining such under this subsection (f) has lapsed.**

7. CONFIDENTIALITY:

- (a) Contractor shall not disclose privileged or confidential communications or information acquired in the course of the performance of the services under this Agreement, unless authorized by law. Contractor agrees to adhere to all confidentiality requirements, as applicable, for the services performed for County under this Agreement.
- (b) Public Information Act. The Parties acknowledge and agree that County is subject, as a matter of law, to TEX. GOV'T CODE ANN. § 552 (Vernon 1994), also known as the "Texas Public Information Act" (hereinafter "Public Information Act"). Notwithstanding any other provision, the Parties agree that in the event that any provision of this Agreement, or other documents related to this Agreement, including, but not limited to, any exhibit, attachment, amendment, addendum, or other incorporated document, is in conflict with the Public Information Act, such provision shall be of no force or effect. Furthermore, it is expressly acknowledged and agreed that the County, County Commissioners Court, County Judge, Elected County Officials, County Department Heads and County Employees (hereinafter "County Requestors") may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any software, hardware, firmware, or any part thereof, or other equipment or item, data or information, or any other thing or item furnished to or in the possession or knowledge of County. It is further acknowledged and agreed that the County Requestors have the right and obligation by law to rely on the advice, decisions and opinions of the Texas Attorney General. Contractor hereby releases the County Requestors from any and all liability or obligation of any type, kind or nature regarding any disclosure of any software, hardware, firmware, or any part thereof, or other equipment or item, data or information, or any other thing or item furnished by Contractor or in the possession or knowledge of the County that is determined by County or in reliance on any advice, decision or opinion of the Texas Attorney General to be available to the public or any persons.
- (c) Notwithstanding the foregoing, the Parties agree, to the extent permitted by the Public Information Act, to keep confidential (and store in a secure area with limited access) and will not copy, publish, sell, exchange, disclose, or provide to others or use any information, documents or data, provided to or disclosed to the other Party, or any information related to this Agreement, including, but not limited to, any exhibit, attachment, amendment, addendum, or other incorporated document, for any purposes other than performing each Party's obligations under this Agreement.

8. CONFIDENTIAL OR PROPRIETARY MARKING:

Any information or documents the Contractor uses in the performance of the services provided under this Agreement that Contractor considers confidential or proprietary or that contains trade secrets must be clearly marked accordingly. This marking must be explicit as to the designated information. The designation, however, may not necessarily guarantee the non-release of the

documents or information under the Texas Public Information Act or otherwise required by law.

9. INDEMNIFICATION:

DALLAS COUNTY, DALLAS COUNTY COMMISSIONERS, ELECTED OFFICIALS, APPOINTED OFFICIALS, OFFICERS, DIRECTORS EMPLOYEES, AGENTS AND REPRESENTATIVES (HEREINAFTER, "INDEMNITEES") SHALL NOT BE LIABLE TO CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, AGENTS, INVITEES, LICENSEES, ASSIGNS OR TO ANY OTHER PERSON WHOMSOEVER OR ENTITY WHATSOEVER, FOR ANY INJURY TO PERSON OR DAMAGE TO PROPERTY, ON OR ABOUT COUNTY PROPERTY, INCLUDING, BUT NOT LIMITED TO, CONSEQUENTIAL DAMAGE: (1) CAUSED BY ANY ACT OR OMISSION OF CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, AGENTS, INVITEES, LICENSEES, ASSIGNS OR OF ANY OTHER PERSON ENTERING COUNTY PROPERTY BY EXPRESS OR IMPLIED INVITATION OF CONTRACTOR OR SUBCONTRACTOR; OR (2) OCCASIONED BY OR THROUGH ANY ACT OR OMISSION OF CONTRACTOR OR ITS SUBCONTRACTOR ON COUNTY PROPERTY OR OF ANY OTHER PERSONS WHOMSOEVER; OR (3) ARISING OUT OF THE USE OF COUNTY PROPERTY BY CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, LICENSEES, INVITEES OR ASSIGNS; OR (4) ARISING OUT OF ANY BREACH OR DEFAULT BY CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, LICENSEES, INVITEES OR ASSIGNS OF ANY OF THE REQUIREMENTS OR PROVISIONS OF THIS AGREEMENT OR IN THE EXECUTION OR PERFORMANCE OF ITS OBLIGATIONS HEREUNDER; OR (5) OCCASIONED BY OR THROUGH THE USE OF ANY COUNTY PROVIDED UTILITIES, COMPUTERS, SOFTWARE, FIRMWARE, HARDWARE OR ANY VIRUS OR SIMILAR RELATED ITEMS THAT MAY BE CONTRACTED BY CONTRACTOR THROUGH SUCH USE.

CONTRACTOR ASSURES THAT IT IS AN INDEPENDENT CONTRACTOR AND NOT AN AGENT, SERVANT, OR EMPLOYEE OF COUNTY. CONTRACTOR AGREES, AND SHALL REQUIRE ALL SUBCONTRACTORS TO AGREE, TO PROTECT, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES AGAINST ALL CLAIMS, DEMANDS, ACTIONS, SUITS, LOSSES, DAMAGES, LIABILITIES, COSTS AND/OR EXPENSES OF EVERY KIND AND NATURE (INCLUDING, BUT NOT LIMITED TO, COURT COSTS, LITIGATION EXPENSES AND ATTORNEY'S FEES) AND ALL RECOVERABLE INTEREST THEREON, INCURRED BY OR SOUGHT TO BE IMPOSED ON INDEMNITEES BECAUSE OF BODILY INJURY (INCLUDING DEATH) OR DAMAGE TO PROPERTY (WHETHER REAL, PERSONAL OR INCHOATE), ARISING OUT OF OR IN ANY WAY RELATED (WHETHER DIRECTLY OR INDIRECTLY, CAUSALLY OR OTHERWISE) TO: (1) THE PERFORMANCE OF, ATTEMPTED PERFORMANCE OF, OR FAILURE TO PERFORM, THE SERVICES UNDER THIS AGREEMENT BY CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, AGENTS, INVITEES, LICENSEES, ASSIGNS OR TO ANY OTHER PERSON WHOMSOEVER AND/OR ANY OTHER PERSON OR ENTITY; (2) THE NEGLIGENT ACT OR OMISSION OF CONTRACTOR, SUBCONTRACTORS, EMPLOYEES, AGENTS, INVITEES, LICENSEES, ASSIGNS IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT; (3) THE CONDITION OF THE PREMISES ON WHICH SAID SERVICES ARE BEING PERFORMED; (4) THE SELECTION, PROVISION, USE OR FAILURE TO USE, BY ANY PERSON OR ENTITY, OF ANY POWER SOURCE, HARDWARE, SOFTWARE, TOOLS, SUPPLIES, MATERIALS, EQUIPMENT OR VEHICLES (WHETHER OWNED OR SUPPLIED BY INDEMNITEES, CONTRACTOR, OR ANY OTHER PERSON OR ENTITY) IN CONNECTION WITH SAID SERVICES; (5) THE PRESENCE

ON COUNTY PROPERTY OF CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, INDEPENDENT CONTRACTORS, AGENTS, INVITEES, LICENSEES, ASSIGNS OR ANY OTHER PERSON ACTING BY OR ON BEHALF OF CONTRACTOR; (6) THE SERVICES UPON OR ADJACENT TO ALL OR ANY PART OF COUNTY PROPERTY, WHETHER OR NOT CAUSED BY OR CONTRIBUTED TO BY THE PRESENCE IN OR OPERATION OF ANY FACILITY OR ANY OPERATION, STRUCTURE OR FACILITIES OF COUNTY, OR ANY OTHER PARTY, OR BY NEGLIGENCE OR ALLEGED NEGLIGENCE ON THE PART OF INDEMNITEES OR ANY OF INDEMNITEES' AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, INVITEES OR LICENSEES; (7) THE BREACH OF ANY OF THE REQUIREMENTS AND PROVISIONS OF THIS AGREEMENT OR ANY FAILURE OF CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, AGENTS, INVITEES, LICENSEES, OR ASSIGNS IN ANY RESPECT TO COMPLY WITH AND PERFORM ALL OF THE REQUIREMENTS AND PROVISIONS; (8) OCCASIONED THROUGH THE LOSS OF FUNDS OR RIGHTS TO RECEIVE ANY SUM OF MONEY IN ANY FORM OR MEDIUM ARISING OUT OF THE BREACH OF ANY OF THE REQUIREMENTS AND PROVISIONS OF THIS AGREEMENT; AND (9) OCCASIONED BY ANY CIVIL OR CRIMINAL ACTIVITY OR PENALTY UNDER STATE OR FEDERAL LAW BY CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, AGENTS, INVITEES, LICENSEES, OR ASSIGNS ARISING OUT OF THE BREACH OF ANY OF THE REQUIREMENTS AND PROVISIONS OF THIS AGREEMENT. IN ADDITION, CONTRACTOR HEREBY COVENANTS AND AGREES THAT IT WILL HOLD INDEMNITEES HARMLESS FOR ALL PERSONAL PROPERTY OF CONTRACTOR, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, AGENTS, GUESTS, CONSULTANTS, SUBCONTRACTORS, LICENSEES, SUBLICENSEES, INVITEES OR OTHER PARTY HAVING ANY PERSONAL PROPERTY ON COUNTY PREMISES IN RELATION TO THE CONTRACTOR'S USE OF THE AREA. CONTRACTOR FURTHER AGREES TO DEFEND, AT ITS SOLE COST AND EXPENSE (AT THE ELECTION OF COUNTY), AGAINST ANY CLAIM, DEMAND, ACTION OR SUIT FOR WHICH INDEMNIFICATION IS PROVIDED HEREUNDER.

APPROVAL AND ACCEPTANCE OF CONTRACTOR'S SERVICES BY COUNTY SHALL NOT CONSTITUTE NOR BE DEEMED A RELEASE OF THE RESPONSIBILITY AND LIABILITY OF CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, OFFICERS, AGENTS, INVITEES, LICENSEES OR ASSIGNS FOR THE ACCURACY AND COMPETENCY OF THEIR SERVICES; NOR SHALL SUCH APPROVAL AND ACCEPTANCE BE DEEMED TO BE AN ASSUMPTION OF SUCH RESPONSIBILITY BY THE COUNTY FOR ANY DEFECT, ERROR OR OMISSION IN THE SERVICES PERFORMED BY CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, OFFICERS, AGENTS, INVITEES, LICENSEES OR ASSIGNS IN THIS REGARD. CONTRACTOR SHALL DEFEND, HOLD HARMLESS AND INDEMNIFY THE COUNTY FOR DAMAGES RESULTING FROM SUCH DEFECTS, ERRORS OR OMISSIONS.

WITHOUT IN ANY WAY LIMITING OR RESTRICTING THE INDEMNIFICATION AND DEFENSE AGREEMENTS STATED ABOVE, CONTRACTOR AGREES THAT IT IS THE INTENTION OF THE PARTIES HERETO THAT CONTRACTOR, ITS CONTRACTORS AND SUBCONTRACTORS, AND THEIR INSURERS BEAR THE ENTIRE RISK OF LOSS OR INJURY TO ANY OF CONTRACTOR'S EMPLOYEES, "BORROWED SERVANTS," INDEPENDENT CONTRACTORS, AGENTS, REPRESENTATIVES, SUBCONTRACTORS, VENDORS, MATERIALMEN, OR ANY OTHER PERSON PRESENT ON THE PROPERTY OR PERFORMING ANY OTHER ACT OR SERVICE ON CONTRACTOR'S BEHALF OR AT ITS REQUEST, WHETHER OR NOT ANY SUCH LOSS OR INJURY IS CAUSED IN WHOLE OR IN PART

BY ANY NEGLIGENCE OR FAULT OF INDEMNITEES, AND WITHOUT SEEKING ANY CONTRIBUTION THEREFOR FROM INDEMNITEES OR ITS INSURERS.

THESE PROVISIONS SHALL APPLY, WHETHER OR NOT ANY SUCH INJURY OR DAMAGE HAS BEEN, OR IS ALLEGED TO HAVE BEEN, CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR FAULT OF INDEMNITEES, OR ON ANY OTHER THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INTENTIONAL WRONGDOING, STRICT PRODUCTS LIABILITY, OR THE BREACH OF A NON-DELEGATABLE DUTY.

THESE PROVISIONS SHALL SURVIVE TERMINATION, EXPIRATION OR CANCELLATION OF THIS AGREEMENT OR ANY DETERMINATION THAT THIS AGREEMENT OR ANY PORTION HEREOF IS VOID, VOIDABLE, INVALID OR UNENFORCEABLE.

10. EXPENSES

Unless prior written approval by County is obtained or otherwise detailed in this Agreement, Contractor shall be responsible for all mileage and other expenses related to the fulfillment of the requirements of this Agreement.

11. TERMINATION:

- (a) Suspension. Should County desire to suspend the services, but not terminate the Agreement, County shall issue a written order to stop work. The written order shall set out the terms of the suspension. Contractor shall stop all services as set forth in this Agreement and will cease to incur costs to County during the term of the suspension. Contractor shall resume work when notified to do so by County in a written authorization to proceed. If a change in the terms and conditions of payment for services of this Agreement is necessary because of a suspension, a mutually agreed contract amendment will be executed in accordance with this Agreement.
- (b) Termination. Either Party may, at its option and without prejudice to any other remedy to which it may be entitled to at law or in equity, or elsewhere under this Agreement, terminate this Agreement, in whole or part, by giving thirty (30) days prior written notice thereof to the other Party with the understanding that all services being performed under this Agreement shall cease upon the date specified in such notice. County shall compensate the Contractor in accordance with the terms of this Agreement for the services performed prior to the date specified in such notice. In the event of cancellation, Contractor shall cease any and all services under this Agreement on the date of termination and to the extent specified in the notice of termination. Upon receipt of such notice, Contractor shall not incur any new obligations or perform any additional services and shall cancel any outstanding obligations or services to be provided. Upon termination of this Agreement as herein above provided, any and all unspent funds that were paid by County to Contractor under this Agreement and any and all County data, documents and information in Contractor's possession shall be returned

to County within five (5) working days of the date of termination. In no event shall County's termination of this Agreement, for any reason, subject County to liability.

1. Without Cause: This Agreement may be terminated, in whole or in part, without cause, by either party upon thirty (30) days prior written notice to the other party.
2. With Cause: County reserves the right to terminate this Agreement immediately, in whole or in part, at its sole discretion, for the following reasons:
 - A. Lack of, or reduction in, funding or resources in accordance with Section 38 (Fiscal Funding Clause);
 - B. Non-performance by Contractor or Contractor's failure or inability to perform or substantially perform, for whatever reason, the services required under this Agreement;
 - C. Contractor's improper, misuse or inept performance of services under this Agreement;
 - D. Contractor's failure to comply with the terms and provisions of this Agreement;
 - E. Contractor's submission of invoices, data, statements and/or reports that are incorrect, incomplete, or false in any way;
 - F. Contractor's failure to comply with County's reporting requirements, the program objectives, the terms, conditions, or standards of this Agreement, applicable federal, state, or local laws, rules, regulations and ordinances, or any other requirement set forth in this Agreement;
 - G. Contractor's failure to perform the work and services required by this Agreement within the time specified herein or any extension thereof;
 - H. Contractor's failure to provide County with proper notice of an assignment in accordance with Section 31 (Assignment);
 - I. If Contractor becomes or is declared insolvent or bankrupt, or is the subject of any proceedings relating to its liquidation or insolvency or for the appointment of a receiver or similar officer for it, has a receiver of its assets or property appointed or makes an assignment for the benefit of all or substantially all of its creditors, institutes or causes to be instituted any proceeding in bankruptcy or reorganization or rearrangement of its affairs, enters into an agreement for the composition, extension, or adjustment of all or substantially all of its obligations, or has a material change in its key employees; and/or

- J. Contractor's inability to perform under this Agreement due to judicial order, injunction or any other court proceeding.

24. NOTICE:

Any notice to be given under this Agreement shall be deemed to have been given if reduced to writing and delivered in person or mailed by overnight or Registered Mail, postage pre-paid, to the party who is to receive such notice, demand or request at the addresses set forth below. Such notice, demand or request shall be deemed to have been given three (3) days subsequent to the date it was so delivered or mailed.

TO COUNTY:

Judge Clay Jenkins
Dallas County
411 Elm St. 2nd Floor
Dallas County, Texas 75202
(214) 653-7949 (office)
(214) 653-6586 (fax)

TO CONTRACTOR:

Philip Haigh
1910 Lansford Avenue
Dallas, TX 75224
(972) 977-0397
Philip.Haigh08@gmail.com

With a copy to:

Russell Roden
Chief, Civil Division
Dallas County District Attorney's Office
411 Elm Street, 5th Floor
Dallas, Texas 75202

25. SEVERABILITY:

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 other provisions in this Agreement. The illegal or invalid provision will be deemed stricken and deleted, but all other provisions shall continue and be given effect as if the illegal or invalid provisions had never been incorporated.

26. SOVEREIGN IMMUNITY:

This Agreement is expressly made subject to County's Sovereign Immunity, Title 5 of the Texas Civil Practices and Remedies Code, and all applicable federal and state law. The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability that the County has by operation of law.

27. COMPLIANCE WITH LAWS:

In providing services required by this Agreement, Contractor must observe and comply with all applicable federal, state, and local statutes, ordinances, rules, and regulations. Contractor shall be responsible for ensuring its compliance with any laws and regulations applicable to its business, including maintaining any necessary licenses and permits.

28. GOVERNING LAW AND VENUE:

The validity and interpretation of this Agreement, and the rights and obligations of the Parties hereunder, shall be governed by and construed in accordance with the laws of the State of Texas. This Agreement is performable and enforceable in Dallas County, Texas where the principal office of County is located and the state courts of Dallas County shall be the sole and exclusive venue for any litigation, special proceeding, or other proceeding as between the Parties that may be brought, or arise out of, in connection with, or by reason of this Agreement.

29. AMENDMENTS AND CHANGES IN THE LAW:

No modification, amendment, novation, renewal or other alteration of this Agreement shall be effective unless mutually agreed upon in writing and executed by the Parties hereto. Any alteration, addition or deletion to the terms of this Agreement which are required by changes in federal or state law are automatically incorporated herein without written amendment to this Agreement and shall be effective on the date designated by said law.

30. THIRD PARTIES:

The obligations of each Party to this Agreement shall inure solely to the benefit of the other Party, and no other person or entity shall be a third party beneficiary of this Agreement or have any right to enforce any obligation created or established under this Agreement.

31. ASSIGNMENT:

Contractor may not assign its rights and duties under this Agreement without the prior written consent of County and approval of the Dallas County Commissioners Court, even if such assignment is due to a change in ownership or affiliation. Any assignment attempted without such prior consent shall be null and void. Such consent shall not relieve the assignor of liability in the event of default by its assignee.

32. CONTRA PROFERENTUM:

The doctrine of contra proferentum shall not apply to this Agreement. If an ambiguity exists in this Agreement, the Agreement shall not be construed against the party who drafted the Agreement and such party shall not be responsible for the language used.

33. ENTIRE AGREEMENT:

This Agreement, including its attachments, exhibits, and addendums incorporated as a part hereof, shall constitute the entire agreement relating to the subject matter hereof between the Parties hereto and supersedes any other agreement concerning the subject matter of this transaction, whether oral or written, and except as otherwise provided herein, this Agreement may not be modified without prior written agreement of the Parties. Each Party acknowledges that the other Party, or anyone acting on behalf of the other Party has made no representations, inducements, promises or agreements, orally or otherwise, unless such representations, inducements, promises or agreements are embodied in this Agreement, expressly or by incorporation.

34. BINDING EFFECT:

This Agreement and the respective rights and obligations of the Parties hereto shall inure to the benefit and be binding upon the successors and assigns of the Parties hereto, as well as the Parties themselves.

35. REMEDIES/WAIVER OF BREACH:

Pursuit of any remedy provided in this Agreement shall not preclude pursuit of any other remedies herein provided or any other remedies provided by law or equity, including injunctive relief, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any obligation of the defaulting party hereunder or of any damages accruing by reason of the violation of any of the terms, provisions, and covenants herein contained. No waiver of any term, covenant, condition or violation of this Agreement shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, and covenants herein contained, and forbearance to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. Any waiver of any provision of this Agreement or violation thereof must be by a written instrument.

36. FEDERAL FUNDED PROJECT:

If this Agreement is funded in part by either the State of Texas or the federal government, Contractor agrees to timely comply, without additional cost or expense to County, unless otherwise specified herein, with any statute, rule, regulation, grant, contract provision or other state or federal law, rule, regulation, or other similar restriction that imposes additional or greater requirements than stated herein and that is directly applicable to the services rendered under the terms of this Agreement.

37. DEFAULT/CUMULATIVE RIGHTS/MITIGATION:

It is not a waiver of default if the non-defaulting party fails to immediately declare a default or delays in taking any action. The rights and remedies provided by this Agreement are cumulative, and either Party's use of any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the Parties may have by

law, statute, ordinance or otherwise. Contractor has a duty to mitigate damages.

38. PREVENTION OF FRAUD AND ABUSE:

Contractor shall establish, maintain and utilize internal management procedures sufficient to provide for the proper, effective management of all activities funded under this Agreement. Any known or suspected incident of fraud or program abuse involving Contractor's employees or agents shall be reported immediately to the County by Contractor. Moreover, Contractor warrants that it is not listed on a local, county, state or federal consolidated list of debarred, suspended and ineligible contractors and grantees. Contractor and County agree that every person who, as part of their employment, receives, disburses, handles or has access to funds collected pursuant to this Agreement does not participate in accounting or operating functions that would permit them to conceal accounting records and the misuse of said funds. Contractor shall, upon notice by County, refund expenditures of the Contractor that are contrary to this Agreement and deemed inappropriate by the County.

39. FISCAL FUNDING CLAUSE:

Notwithstanding any provisions contained herein, the obligations of the County under this Agreement is expressly contingent upon the availability of funding for each item and obligation contained herein for the term of the Agreement and any extensions thereto. Contractor shall have no right of action against County in the event County is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this Agreement or failure to budget or authorize funding for this Agreement during the current or future fiscal years. In the event that County is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding, or if funds become unavailable, County, at its sole discretion, may provide funds from a separate source or may terminate this Agreement by written notice to Contractor at the earliest possible time prior to the end of its fiscal year.

40. NO BOYCOTT OF ISRAEL

Pursuant to Section 2270.002 of the Texas Government Code, Contractor verifies that it:

- (a) Does not boycott Israel; and
- (b) Will not boycott Israel during the Term of this Agreement.

41. COUNTERPARTS, NUMBER/GENDER AND HEADINGS:

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Words of any gender used in this Agreement shall be held and construed to include any other gender. Any words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings herein are for the convenience of reference only and shall not be considered in any

interpretation of this Agreement.

42. INDEPENDENT CONTRACTOR:

Contractor, including its employees, agents or licensees, is an independent contractor and not an agent, servant, joint enterprise or employee of the County, and is responsible for its own acts, omissions, forbearance, negligence and deeds, and for those of its agents or employees in conjunction with the performance of services covered under this Agreement, and shall be specifically responsible for sufficient supervision and inspection to ensure compliance in every respect with the contract requirements. There shall be no contractual relationship between any subcontractor, agent, employee or supplier of the Contractor and the County by virtue of this Agreement.

43. SUBCONTRACTING:

Contractor may not enter into agreements with subcontractors for delivery of the designated services outlined in this Agreement without prior written consent of and approval by County. The costs of all subcontracted services are included in the fees paid herein. Subcontracts, if any, entered into by the Contractor will be in writing and subject to all requirements herein. Contractor agrees that it will solely be responsible to County for the performance of this Agreement. Contractor shall pay all subcontractors in a timely manner. County shall have the right to prohibit Contractor from using any subcontractor.

44. ASSURANCES:

- (a) In providing services required by this Agreement, Contractor agrees to observe and comply with all grant requirements, licenses, legal certifications, or inspections required for the services, facilities, equipment, or materials, and all applicable federal, state, and local statutes, ordinances, rules, and regulations. Contractor's failure to comply with this assurance shall be treated as a default and/or breach of this Agreement.
- (b) Contractor assures that it will not transfer or assign its interest in this Agreement without written consent of County. Contractor understands that in the event that all or substantially all of Contractor's assets are acquired by another entity, Contractor is still obligated to fulfill the terms and conditions of this Agreement. County approval to transfer or assign Contractor's interest in this Agreement to an entity that acquires all or substantially all of Contractor's assets is subject to formal approval by the Commissioners Court.
- (c) Contractor, by acceptance of the terms of this Agreement, agrees and ensures that personnel providing the services hereunder are duly licensed and/or qualified to perform the required services. Contractor further agrees and ensures that all program and/or facility licenses or permits necessary to perform the required services are current and that County will be notified immediately if such licenses or permits become invalid during the term of this Agreement.

- (d) Contractor agrees to adhere to confidentiality requirements, as applicable, for the services performed for County under this Agreement, and any other confidentiality provisions or laws, whether federal or state, relating to the services being providing hereunder.
- (e) Contractor assures that it will not use any information, documents, or data provided to Contractor by County for any proprietary purposes and shall not copy, sell, exchange, disclose or provide to others or use any information, documents or data reasonably related to this Agreement for its own proprietary interests.
- (f) Contractor agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
- (g) Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations and non-discrimination laws and regulations. When required, Contractor shall furnish County satisfactory proof of compliance therewith.
- (h) Contractor certifies that it is not aware of any conflicts of interest involving any Dallas County official or employee related to this Agreement or the services provided under this Agreement.
- (i) Contractor certifies that it is not currently involved, either directly or indirectly, with any litigation against or involving Dallas County.
- (j) Contractor will develop and implement an agency-wide drug free work place policy. Contractor will also require that all contracts between itself and subcontractors also comply with said requirements.
- (k) Contractor understands that reimbursement for costs under this Agreement shall be in accordance with all applicable federal rules, regulations, cost principles, and other requirements relating to reimbursement.
- (l) Under Section 231.006, Texas Family Code, Contractor certifies to County that Contractor is not delinquent in any child support obligations and therefore ineligible to receive payment under the terms of this Agreement. Contractor hereby acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- (m) Contractor, by executing this Agreement, hereby certifies that it is not delinquent in its Texas franchise tax payments, or that it is exempt from, or not subject to such a tax. A false statement concerning the corporation's franchise tax status shall constitute grounds for

termination of this Agreement at the sole option of the County.

- (n) Contractor certifies to County that Contractor is not delinquent on the repayment of any federal, state, or local debt or other obligation.
- (o) Contractor certifies that neither it nor any of its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal, state, or local department or agency.
- (p) Contractor shall pay all subcontractors in a timely manner. County shall have no liability to any subcontractors in the event Contractor does not pay or delays payment to any subcontractors. At termination or expiration of this Agreement, Contractor shall deliver to County an affidavit of all bills paid. Final payment shall be contingent upon receipt of such affidavits as resolution of all accounting for which County is or may be liable under this Agreement.
- (q) Failure to comply with any of these assurances or any other requirements specified within this Agreement will put Contractor in default and/or breach of this Agreement and may result, at the sole discretion of County, in the disallowance of funds and the withholding of future awards, in addition to any other remedies permitted by law.

45. PROMPT PAYMENT ACT:

Contractor agrees that a temporary delay in making payments due to the County's accounting and disbursement procedures shall not place the County in default of this Agreement and shall not render the County liable for interest or penalties, provided such delay shall not exceed thirty (30) days after its due date. Any payment not made within thirty (30) days of its due date shall bear interest in accordance with Chapter 2251 of the Texas Government Code.

46. TAX

Dallas County, as a county of the State of Texas, is exempted from the payment of Texas state and local sales, excise, and use taxes pursuant to Tex. Loc. Gov't Code § 151.309, and shall therefore not be liable or responsible to the Contractor for the payment of such taxes under this Agreement.

The fees paid to Contractor pursuant to this Agreement are inclusive of any applicable sales, use, personal property or other taxes attributable to periods on or after the applicable effective date of this Agreement and based upon or measured by Contractor's cost in acquiring or providing products and/or services and related materials and supplies furnished or used by Contractor in performing his obligations hereunder, including all personal property and use taxes, if any, due on equipment or software owned by Contractor.

Contractor accepts full and exclusive liability for the payment of any and all contributions or taxes for Social Security, Workers' Compensation Insurance, Unemployment Insurance, or Retirement Benefits, Pensions, or annuities now or hereafter imposed under any state or federal laws which are measured by the wages, salaries, or other remuneration pay to persons employed by Contractor for work performed under the terms of this Agreement **and agrees to indemnify and save harmless the County from any such contribution or taxes or liability.**

47. TRANSITION SERVICES REQUIRED OF CONTRACTOR:

Upon notice of termination and/or expiration of this Agreement, the County shall immediately have the right to audit any and all records of Contractor relating to this Agreement. Moreover, upon the termination and/or expiration date of this Agreement, Contractor agrees to transition the services provided herein in a cooperative manner and provide anything requested from the County at no additional cost, including, but not limited to the following, upon date of termination and/or expiration: (i) All contract and services documentation, including all records, books and data reasonably related to this Agreement, maintained in accordance with Section 8 (Reporting and Accountability) of this Agreement and identified in a complete, neat and orderly manner; (ii) A good faith pledge to cooperate with County upon transition of services to another contractor or County department providing the same or similar services; (iii) Records, books and data, including electronic data, in a format compatible with County's information technology capabilities, or in a format compatible with a succeeding contractor's information technology capabilities, as determined by County; (iv) Final accounting of all income derived from the Agreement; (v) Downloading and removal of all County information from Contractor's equipment and software; and (vi) Removal of Contractor's services without degradation or other adverse affect on County's system. This provision shall survive termination or cancellation of this Agreement.

48. SIGNATORY WARRANTY:

The undersigned signatories for the Parties hereby represent and warrant that they are officers of their respective organizations for which they have executed this Agreement and that they have full and complete authorities to enter into this Agreement on behalf of their respective organizations and that the executions thereof are the acts of the parties involved and have been delivered and constitute legal, valid and binding obligations of the respective parties.

[Remainder of page intentionally left blank.]

49. ACCEPTANCES:

By their signatures below, the duly authorized representatives of County and Contractor accept the terms of this Agreement in full.

EXECUTED this _____ day of _____, 2020.

DALLAS COUNTY:

CONTRACTOR:

BY: Clay Jenkins
Dallas County Judge

BY: Philip Haigh
Consultant

Recommended:

BY: Gordon Hikel
Assistant County Administrator
Office of Small Business Enterprises

*Approved as to Form:

JOHN CREUZOT
DISTRICT ATTORNEY

BY: Lacey B. Lucas
Assistant District Attorney
Dallas County DA's Office, Civil Division

*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).

THE STATE OF TEXAS

§

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THE COUNTY OF DALLAS

§

PERSONAL SERVICES AGREEMENT (“Agreement”)

Between

DALLAS COUNTY (“County”)

and

PATRICIA NAVA (“Nava” or “Contractor”)

This Agreement is entered into by and between Dallas County, Texas (hereinafter, “County”), acting by and through the Dallas County Commissioners Court (hereinafter, “Commissioners Court”) located at 411 Elm Street, 2nd Floor, Dallas, Texas 75202, and Patricia Nava, located at 2513 Benbrook Blvd. Fort Worth, TX 76109 (hereinafter, “Hernandez” or “Contractor”) or individually as a “Party” or collectively the “Parties” for certain personal services, as identified in this Agreement under authority of Texas Local Government Code § 262.024(a)(4), for certain personal services, as identified herein.

WHEREAS, the Dallas County Office of Homeland Security & Emergency Management (“HSEM”) is a function of Dallas County government. HSEM is responsible for management of a county-wide emergency management program, the homeland security program, and the county emergency operations center (“EOC”). HSEM works with municipalities, state and federal agencies, partners, NGO, volunteer groups, and others to provide emergency protective actions for the 2.5 million residents of Dallas County, Texas; and

WHEREAS, on March 12, 2020 Dallas County Judge Clay Jenkins declared a local disaster because of the threat of the global pandemic COVID-19 coronavirus (“COVID-19”); and

WHEREAS, the County began taking steps to thwart the spread of COVID-19 including identifying additional staff needed in key positions to help manage the County’s emergency response effort; and

WHEREAS, Nava has agreed to provide personal services as indicated herein;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereafter set forth and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the County and Contractor agree as follows:

1. PURPOSE:

The purpose of this staff augmentation is to increase the effectiveness of HSEM's response in all aspects of communication and coordination throughout the County in response to the COVID-19 national emergency. HSEM is the lead department for the County and tasked with integrating the emergency response activities of local municipalities in alignment with federal guidance.

2. TERM:

The term of this Agreement shall begin upon the day of execution by the County and continue until the services are rendered and the deliverables detailed in Section 3. Scope of Work are completed, unless terminated earlier under any provision hereof. Notwithstanding the foregoing, the services and deliverables detailed herein shall be completed by March 19, 2021. This Agreement shall automatically terminate on March 19, 2021 (collectively the "Term").

3. SCOPE OF WORK:

Contractor will serve as part of the core internal policy team for Dallas County Judge Clay Jenkins, who is leading the Dallas County response to COVID-19. Assigned functions include: participating in daily strategy meetings with partners, including local emergency managers and county administration; assisting DCHHS Director Dr. Philip Huang and his Chief of Staff, Katy Womble, with public health emergency orders; and coordinating with mayors and city managers of the 26 cities in Dallas County to assist with the federal stimulus relief package.

4. COUNTY'S OBLIGATIONS:

County agrees to the following:

- (a) Dallas County will assist Contractor in scheduling appointment with key County personnel and employees;
- (b) Dallas County will provide computer assets; and
- (c) Dallas County will provide a work space.

5. TERMS AND CONDITIONS OF PAYMENT FOR SERVICES:

County agrees to compensate Contractor for approved budget expenses incurred and for documented units of services performed, subject to the following limitations:

- (a) Compensation for Personal Services. Contractor agrees to be compensated for the services described herein.
- (b) Not to Exceed Amount. Contractor understands and agrees that the maximum total amount payable for the services described herein shall not exceed seventy-six thousand thirty-seven dollars and no cents (\$76,037.00) (hereinafter "Not to Exceed Amount") unless a formal written amendment is executed by the Parties hereto and is formally approved by the

Commissioners Court. Contractor assures County that it will not perform services that would cause the amounts payable to Contractor for the services described herein to exceed the Not To Exceed Amount, without following the procedures described in this subsection (b).

- (c) Travel costs to be paid to Contractor are included in the above Not to Exceed Amount.
- (d) Contractor agrees to submit complete, fully documented, and accurate itemized invoices with appropriate documentation, as required by County, following the completion of the services detailed herein.
- (e) Payment will be made to Contractor by County upon receipt of a verified and proper billing for services actually rendered. Any payments by County to Contractor may be withheld if the Contractor fails to comply with County's reporting requirements, performance objectives, or other requirements relating to Contractor's performance of work, deliverables, and services under this Agreement. County shall pay Contractor only for those costs that are allowable under applicable rules and regulations, as stated in this Agreement. County shall have the right to withhold all or part of any payments to the Contractor to offset any reimbursement made to Contractor for ineligible expenditures or undocumented units of services billed.
- (f) Contractor understands and agrees that all billings must be submitted to County within thirty (30) days of expiration or termination of this Agreement. County must approve any exceptions to this billing procedure in writing. All billings must have appropriate supporting documentation before such billings will be approved.
- (g) County will make payment to Contractor upon receipt of a verified and proper invoice in accordance with Texas Government Code, Chapter 2251.
- (h) County agrees to review Contractor's invoices and will forward payment to Contractor within thirty (30) days of receipt of invoice after County, at its sole discretion, determines that such funds are in fact due and owing.
- (i) The Dallas County Auditor is responsible for monitoring fiscal compliance activities and shall resolve any dispute between the Parties regarding County's payments to Contractor for services rendered under this Agreement.
- (j) Prior Debts. County shall not be liable for costs incurred or performances rendered by Contractor before or after the Term; for expenses not billed to County within the applicable time frames set forth in this Contract; or for any payment for services or activities not provided pursuant to the terms of this Contract.

6. REPORTING AND ACCOUNTABILITY:

- (a) Reporting. Contractor agrees to submit all required documentation and reports on a timely basis and in accordance with the specified time frames pursuant to this Agreement. Penalties

for delinquent reporting may include withholding of payments until such time all reports are received, cancellation and/or termination of this Agreement with no obligation to pay for undocumented services, or both.

- (b) Access to Records. Contractor agrees that County, or any of its duly authorized representatives, has the right of timely and unrestricted access to any books, documents, papers, reports, or other records of Contractor that are pertinent to the fulfillment of the requirements of this Agreement, in order to make audit, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable access to Contractor's personnel for the purpose of reviewing, interviewing, evaluating, and monitoring related to such documents. All such items shall be furnished to the County in Dallas County, Texas.
- (c) Ownership. Contractor agrees that all information, data, and supporting documentation that relates to the services provided hereunder shall remain the property of County.
- (d) Maintenance of Records. Contractor's records, books, and other documents reasonably related to this Agreement shall be kept and maintained in standard accounting form. Such records, books, and documents shall be made available in Dallas County subject to inspection by County or authorized County personnel upon request.
- (e) Audit. The Dallas County Auditor, its assigns, or any other governmental entity approved by County shall have the unrestricted right to audit all data or documents related to this Agreement. Such data shall be furnished in Dallas County at a mutually convenient time within a reasonable time. Should County determine it reasonably necessary, Contractor shall make all of its records, books, and documents reasonably related to this Agreement available to authorized County personnel, at reasonable times and within reasonable periods, for inspection or auditing purposes or to substantiate the provisions of services under this Agreement.
- (f) Retention of Records. All records, books, and documents reasonably related to this Agreement shall be maintained and kept by Contractor for a minimum of four (4) years and ninety (90) days after termination or expiration of this Agreement. If any litigation, claim, or audit involving these documents and/or records begins before the specified period expires, Contractor must keep the records and documents for not less than four (4) years and ninety (90) days and until all litigation, claims, or audit findings are resolved, whichever is later. **Contractor is strictly prohibited from destroying or discarding any records, books, or other documents reasonably related to this Agreement, unless the time period for maintaining such under this subsection (f) has lapsed.**

7. CONFIDENTIALITY:

- (a) Contractor shall not disclose privileged or confidential communications or information acquired in the course of the performance of the services under this Agreement, unless

authorized by law. Contractor agrees to adhere to all confidentiality requirements, as applicable, for the services performed for County under this Agreement.

- (b) Public Information Act. The Parties acknowledge and agree that County is subject, as a matter of law, to TEX. GOV'T CODE ANN. § 552 (Vernon 1994), also known as the "Texas Public Information Act" (hereinafter "Public Information Act"). Notwithstanding any other provision, the Parties agree that in the event that any provision of this Agreement, or other documents related to this Agreement, including, but not limited to, any exhibit, attachment, amendment, addendum, or other incorporated document, is in conflict with the Public Information Act, such provision shall be of no force or effect. Furthermore, it is expressly acknowledged and agreed that the County, County Commissioners Court, County Judge, Elected County Officials, County Department Heads and County Employees (hereinafter "County Requestors") may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any software, hardware, firmware, or any part thereof, or other equipment or item, data or information, or any other thing or item furnished to or in the possession or knowledge of County. It is further acknowledged and agreed that the County Requestors have the right and obligation by law to rely on the advice, decisions and opinions of the Texas Attorney General. Contractor hereby releases the County Requestors from any and all liability or obligation of any type, kind or nature regarding any disclosure of any software, hardware, firmware, or any part thereof, or other equipment or item, data or information, or any other thing or item furnished by Contractor or in the possession or knowledge of the County that is determined by County or in reliance on any advice, decision or opinion of the Texas Attorney General to be available to the public or any persons.
- (c) Notwithstanding the foregoing, the Parties agree, to the extent permitted by the Public Information Act, to keep confidential (and store in a secure area with limited access) and will not copy, publish, sell, exchange, disclose, or provide to others or use any information, documents or data, provided to or disclosed to the other Party, or any information related to this Agreement, including, but not limited to, any exhibit, attachment, amendment, addendum, or other incorporated document, for any purposes other than performing each Party's obligations under this Agreement.

8. CONFIDENTIAL OR PROPRIETARY MARKING:

Any information or documents the Contractor uses in the performance of the services provided under this Agreement that Contractor considers confidential or proprietary or that contains trade secrets must be clearly marked accordingly. This marking must be explicit as to the designated information. The designation, however, may not necessarily guarantee the non-release of the documents or information under the Texas Public Information Act or otherwise required by law.

9. INDEMNIFICATION:

DALLAS COUNTY, DALLAS COUNTY COMMISSIONERS, ELECTED OFFICIALS, APPOINTED OFFICIALS, OFFICERS, DIRECTORS EMPLOYEES, AGENTS AND REPRESENTATIVES (HEREINAFTER, "INDEMNITEES") SHALL NOT BE LIABLE TO CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, AGENTS, INVITEES, LICENSEES, ASSIGNS OR TO ANY OTHER PERSON WHOMSOEVER OR ENTITY WHATSOEVER, FOR ANY INJURY TO PERSON OR DAMAGE TO PROPERTY, ON OR ABOUT COUNTY PROPERTY, INCLUDING, BUT NOT LIMITED TO, CONSEQUENTIAL DAMAGE: (1) CAUSED BY ANY ACT OR OMISSION OF CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, AGENTS, INVITEES, LICENSEES, ASSIGNS OR OF ANY OTHER PERSON ENTERING COUNTY PROPERTY BY EXPRESS OR IMPLIED INVITATION OF CONTRACTOR OR SUBCONTRACTOR; OR (2) OCCASIONED BY OR THROUGH ANY ACT OR OMISSION OF CONTRACTOR OR ITS SUBCONTRACTOR ON COUNTY PROPERTY OR OF ANY OTHER PERSONS WHOMSOEVER; OR (3) ARISING OUT OF THE USE OF COUNTY PROPERTY BY CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, LICENSEES, INVITEES OR ASSIGNS; OR (4) ARISING OUT OF ANY BREACH OR DEFAULT BY CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, LICENSEES, INVITEES OR ASSIGNS OF ANY OF THE REQUIREMENTS OR PROVISIONS OF THIS AGREEMENT OR IN THE EXECUTION OR PERFORMANCE OF ITS OBLIGATIONS HEREUNDER; OR (5) OCCASIONED BY OR THROUGH THE USE OF ANY COUNTY PROVIDED UTILITIES, COMPUTERS, SOFTWARE, FIRMWARE, HARDWARE OR ANY VIRUS OR SIMILAR RELATED ITEMS THAT MAY BE CONTRACTED BY CONTRACTOR THROUGH SUCH USE.

CONTRACTOR ASSURES THAT IT IS AN INDEPENDENT CONTRACTOR AND NOT AN AGENT, SERVANT, OR EMPLOYEE OF COUNTY. CONTRACTOR AGREES, AND SHALL REQUIRE ALL SUBCONTRACTORS TO AGREE, TO PROTECT, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES AGAINST ALL CLAIMS, DEMANDS, ACTIONS, SUITS, LOSSES, DAMAGES, LIABILITIES, COSTS AND/OR EXPENSES OF EVERY KIND AND NATURE (INCLUDING, BUT NOT LIMITED TO, COURT COSTS, LITIGATION EXPENSES AND ATTORNEY'S FEES) AND ALL RECOVERABLE INTEREST THEREON, INCURRED BY OR SOUGHT TO BE IMPOSED ON INDEMNITEES BECAUSE OF BODILY INJURY (INCLUDING DEATH) OR DAMAGE TO PROPERTY (WHETHER REAL, PERSONAL OR INCHOATE), ARISING OUT OF OR IN ANY WAY RELATED (WHETHER DIRECTLY OR INDIRECTLY, CAUSALLY OR OTHERWISE) TO: (1) THE PERFORMANCE OF, ATTEMPTED PERFORMANCE OF, OR FAILURE TO PERFORM, THE SERVICES UNDER THIS AGREEMENT BY CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, AGENTS, INVITEES, LICENSEES, ASSIGNS OR TO ANY OTHER PERSON WHOMSOEVER AND/OR ANY OTHER PERSON OR ENTITY; (2) THE NEGLIGENT ACT OR OMISSION OF CONTRACTOR, SUBCONTRACTORS, EMPLOYEES, AGENTS, INVITEES, LICENSEES, ASSIGNS IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT; (3) THE CONDITION OF THE PREMISES ON WHICH SAID SERVICES ARE BEING PERFORMED; (4) THE SELECTION, PROVISION, USE OR FAILURE TO USE, BY ANY PERSON OR ENTITY, OF ANY POWER SOURCE, HARDWARE, SOFTWARE, TOOLS, SUPPLIES, MATERIALS, EQUIPMENT OR VEHICLES (WHETHER OWNED OR SUPPLIED BY INDEMNITEES, CONTRACTOR, OR ANY OTHER PERSON OR ENTITY) IN CONNECTION WITH SAID SERVICES; (5) THE PRESENCE ON COUNTY PROPERTY OF CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, INDEPENDENT CONTRACTORS, AGENTS, INVITEES, LICENSEES, ASSIGNS OR ANY OTHER PERSON ACTING BY OR ON BEHALF OF CONTRACTOR; (6) THE SERVICES UPON OR ADJACENT TO ALL OR ANY PART OF COUNTY PROPERTY, WHETHER OR NOT CAUSED BY OR CONTRIBUTED TO BY THE PRESENCE IN

OR OPERATION OF ANY FACILITY OR ANY OPERATION, STRUCTURE OR FACILITIES OF COUNTY, OR ANY OTHER PARTY, OR BY NEGLIGENCE OR ALLEGED NEGLIGENCE ON THE PART OF INDEMNITEES OR ANY OF INDEMNITEES' AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, INVITEES OR LICENSEES; (7) THE BREACH OF ANY OF THE REQUIREMENTS AND PROVISIONS OF THIS AGREEMENT OR ANY FAILURE OF CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, AGENTS, INVITEES, LICENSEES, OR ASSIGNS IN ANY RESPECT TO COMPLY WITH AND PERFORM ALL OF THE REQUIREMENTS AND PROVISIONS; (8) OCCASIONED THROUGH THE LOSS OF FUNDS OR RIGHTS TO RECEIVE ANY SUM OF MONEY IN ANY FORM OR MEDIUM ARISING OUT OF THE BREACH OF ANY OF THE REQUIREMENTS AND PROVISIONS OF THIS AGREEMENT; AND (9) OCCASIONED BY ANY CIVIL OR CRIMINAL ACTIVITY OR PENALTY UNDER STATE OR FEDERAL LAW BY CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, AGENTS, INVITEES, LICENSEES, OR ASSIGNS ARISING OUT OF THE BREACH OF ANY OF THE REQUIREMENTS AND PROVISIONS OF THIS AGREEMENT. IN ADDITION, CONTRACTOR HEREBY COVENANTS AND AGREES THAT IT WILL HOLD INDEMNITEES HARMLESS FOR ALL PERSONAL PROPERTY OF CONTRACTOR, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, AGENTS, GUESTS, CONSULTANTS, SUBCONTRACTORS, LICENSEES, SUBLICENSEES, INVITEES OR OTHER PARTY HAVING ANY PERSONAL PROPERTY ON COUNTY PREMISES IN RELATION TO THE CONTRACTOR'S USE OF THE AREA. CONTRACTOR FURTHER AGREES TO DEFEND, AT ITS SOLE COST AND EXPENSE (AT THE ELECTION OF COUNTY), AGAINST ANY CLAIM, DEMAND, ACTION OR SUIT FOR WHICH INDEMNIFICATION IS PROVIDED HEREUNDER.

APPROVAL AND ACCEPTANCE OF CONTRACTOR'S SERVICES BY COUNTY SHALL NOT CONSTITUTE NOR BE DEEMED A RELEASE OF THE RESPONSIBILITY AND LIABILITY OF CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, OFFICERS, AGENTS, INVITEES, LICENSEES OR ASSIGNS FOR THE ACCURACY AND COMPETENCY OF THEIR SERVICES; NOR SHALL SUCH APPROVAL AND ACCEPTANCE BE DEEMED TO BE AN ASSUMPTION OF SUCH RESPONSIBILITY BY THE COUNTY FOR ANY DEFECT, ERROR OR OMISSION IN THE SERVICES PERFORMED BY CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, OFFICERS, AGENTS, INVITEES, LICENSEES OR ASSIGNS IN THIS REGARD. CONTRACTOR SHALL DEFEND, HOLD HARMLESS AND INDEMNIFY THE COUNTY FOR DAMAGES RESULTING FROM SUCH DEFECTS, ERRORS OR OMISSIONS.

WITHOUT IN ANY WAY LIMITING OR RESTRICTING THE INDEMNIFICATION AND DEFENSE AGREEMENTS STATED ABOVE, CONTRACTOR AGREES THAT IT IS THE INTENTION OF THE PARTIES HERETO THAT CONTRACTOR, ITS CONTRACTORS AND SUBCONTRACTORS, AND THEIR INSURERS BEAR THE ENTIRE RISK OF LOSS OR INJURY TO ANY OF CONTRACTOR'S EMPLOYEES, "BORROWED SERVANTS," INDEPENDENT CONTRACTORS, AGENTS, REPRESENTATIVES, SUBCONTRACTORS, VENDORS, MATERIALMEN, OR ANY OTHER PERSON PRESENT ON THE PROPERTY OR PERFORMING ANY OTHER ACT OR SERVICE ON CONTRACTOR'S BEHALF OR AT ITS REQUEST, WHETHER OR NOT ANY SUCH LOSS OR INJURY IS CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENCE OR FAULT OF INDEMNITEES, AND WITHOUT SEEKING ANY CONTRIBUTION THEREFOR FROM INDEMNITEES OR ITS INSURERS.

THESE PROVISIONS SHALL APPLY, WHETHER OR NOT ANY SUCH INJURY OR DAMAGE HAS BEEN, OR IS ALLEGED TO HAVE BEEN, CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR FAULT

OF INDEMNITEES, OR ON ANY OTHER THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INTENTIONAL WRONGDOING, STRICT PRODUCTS LIABILITY, OR THE BREACH OF A NON-DELEGATABLE DUTY.

THESE PROVISIONS SHALL SURVIVE TERMINATION, EXPIRATION OR CANCELLATION OF THIS AGREEMENT OR ANY DETERMINATION THAT THIS AGREEMENT OR ANY PORTION HEREOF IS VOID, VOIDABLE, INVALID OR UNENFORCEABLE.

10. EXPENSES

Unless prior written approval by County is obtained or otherwise detailed in this Agreement, Contractor shall be responsible for all mileage and other expenses related to the fulfillment of the requirements of this Agreement.

11. TERMINATION:

- (a) Suspension. Should County desire to suspend the services, but not terminate the Agreement, County shall issue a written order to stop work. The written order shall set out the terms of the suspension. Contractor shall stop all services as set forth in this Agreement and will cease to incur costs to County during the term of the suspension. Contractor shall resume work when notified to do so by County in a written authorization to proceed. If a change in the terms and conditions of payment for services of this Agreement is necessary because of a suspension, a mutually agreed contract amendment will be executed in accordance with this Agreement.
- (b) Termination. Either Party may, at its option and without prejudice to any other remedy to which it may be entitled to at law or in equity, or elsewhere under this Agreement, terminate this Agreement, in whole or part, by giving thirty (30) days prior written notice thereof to the other Party with the understanding that all services being performed under this Agreement shall cease upon the date specified in such notice. County shall compensate the Contractor in accordance with the terms of this Agreement for the services performed prior to the date specified in such notice. In the event of cancellation, Contractor shall cease any and all services under this Agreement on the date of termination and to the extent specified in the notice of termination. Upon receipt of such notice, Contractor shall not incur any new obligations or perform any additional services and shall cancel any outstanding obligations or services to be provided. Upon termination of this Agreement as herein above provided, any and all unspent funds that were paid by County to Contractor under this Agreement and any and all County data, documents and information in Contractor's possession shall be returned to County within five (5) working days of the date of termination. In no event shall County's termination of this Agreement, for any reason, subject County to liability.
 - 1. Without Cause: This Agreement may be terminated, in whole or in part, without cause, by either party upon thirty (30) days prior written notice to the other party.

2. With Cause: County reserves the right to terminate this Agreement immediately, in whole or in part, at its sole discretion, for the following reasons:
- A. Lack of, or reduction in, funding or resources in accordance with Section 38 (Fiscal Funding Clause);
 - B. Non-performance by Contractor or Contractor's failure or inability to perform or substantially perform, for whatever reason, the services required under this Agreement;
 - C. Contractor's improper, misuse or inept performance of services under this Agreement;
 - D. Contractor's failure to comply with the terms and provisions of this Agreement;
 - E. Contractor's submission of invoices, data, statements and/or reports that are incorrect, incomplete, or false in any way;
 - F. Contractor's failure to comply with County's reporting requirements, the program objectives, the terms, conditions, or standards of this Agreement, applicable federal, state, or local laws, rules, regulations and ordinances, or any other requirement set forth in this Agreement;
 - G. Contractor's failure to perform the work and services required by this Agreement within the time specified herein or any extension thereof;
 - H. Contractor's failure to provide County with proper notice of an assignment in accordance with Section 31 (Assignment);
 - I. If Contractor becomes or is declared insolvent or bankrupt, or is the subject of any proceedings relating to its liquidation or insolvency or for the appointment of a receiver or similar officer for it, has a receiver of its assets or property appointed or makes an assignment for the benefit of all or substantially all of its creditors, institutes or causes to be instituted any proceeding in bankruptcy or reorganization or rearrangement of its affairs, enters into an agreement for the composition, extension, or adjustment of all or substantially all of its obligations, or has a material change in its key employees; and/or
 - J. Contractor's inability to perform under this Agreement due to judicial order, injunction or any other court proceeding.

24. NOTICE:

Any notice to be given under this Agreement shall be deemed to have been given if reduced to

writing and delivered in person or mailed by overnight or Registered Mail, postage pre-paid, to the party who is to receive such notice, demand or request at the addresses set forth below. Such notice, demand or request shall be deemed to have been given three (3) days subsequent to the date it was so delivered or mailed.

TO COUNTY:

Judge Clay Jenkins
Dallas County
411 Elm St. 2nd Floor
Dallas County, Texas 75202
(214) 653-7949 (office)
(214) 653-6586 (fax)

TO CONTRACTOR:

Patricia Nava
2513 Benbrook Blvd.
Fort Worth, TX 76109
(817)937-8560
pnavatx@gmail.com

With a copy to:

Russell Roden
Chief, Civil Division
Dallas County District Attorney's Office
411 Elm Street, 5th Floor
Dallas, Texas 75202

25. SEVERABILITY:

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 other provisions in this Agreement. The illegal or invalid provision will be deemed stricken and deleted, but all other provisions shall continue and be given effect as if the illegal or invalid provisions had never been incorporated.

26. SOVEREIGN IMMUNITY:

This Agreement is expressly made subject to County's Sovereign Immunity, Title 5 of the Texas Civil Practices and Remedies Code, and all applicable federal and state law. The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability that the County has by operation of law.

27. COMPLIANCE WITH LAWS:

In providing services required by this Agreement, Contractor must observe and comply with all applicable federal, state, and local statutes, ordinances, rules, and regulations. Contractor shall be responsible for ensuring its compliance with any laws and regulations applicable to its business, including maintaining any necessary licenses and permits.

28. GOVERNING LAW AND VENUE:

The validity and interpretation of this Agreement, and the rights and obligations of the Parties hereunder, shall be governed by and construed in accordance with the laws of the State of Texas. This Agreement is performable and enforceable in Dallas County, Texas where the principal office of County is located and the state courts of Dallas County shall be the sole and exclusive venue for any litigation, special proceeding, or other proceeding as between the Parties that may be brought, or arise out of, in connection with, or by reason of this Agreement.

29. AMENDMENTS AND CHANGES IN THE LAW:

No modification, amendment, novation, renewal or other alteration of this Agreement shall be effective unless mutually agreed upon in writing and executed by the Parties hereto. Any alteration, addition or deletion to the terms of this Agreement which are required by changes in federal or state law are automatically incorporated herein without written amendment to this Agreement and shall be effective on the date designated by said law.

30. THIRD PARTIES:

The obligations of each Party to this Agreement shall inure solely to the benefit of the other Party, and no other person or entity shall be a third party beneficiary of this Agreement or have any right to enforce any obligation created or established under this Agreement.

31. ASSIGNMENT:

Contractor may not assign its rights and duties under this Agreement without the prior written consent of County and approval of the Dallas County Commissioners Court, even if such assignment is due to a change in ownership or affiliation. Any assignment attempted without such prior consent shall be null and void. Such consent shall not relieve the assignor of liability in the event of default by its assignee.

32. CONTRA PROFERENTUM:

The doctrine of contra proferentum shall not apply to this Agreement. If an ambiguity exists in this Agreement, the Agreement shall not be construed against the party who drafted the Agreement and such party shall not be responsible for the language used.

33. ENTIRE AGREEMENT:

This Agreement, including its attachments, exhibits, and addendums incorporated as a part hereof, shall constitute the entire agreement relating to the subject matter hereof between the Parties hereto and supersedes any other agreement concerning the subject matter of this transaction, whether oral or written, and except as otherwise provided herein, this Agreement may not be modified without prior written agreement of the Parties. Each Party acknowledges that the other Party, or anyone acting on behalf of the other Party has made no representations,

inducements, promises or agreements, orally or otherwise, unless such representations, inducements, promises or agreements are embodied in this Agreement, expressly or by incorporation.

34. BINDING EFFECT:

This Agreement and the respective rights and obligations of the Parties hereto shall inure to the benefit and be binding upon the successors and assigns of the Parties hereto, as well as the Parties themselves.

35. REMEDIES/WAIVER OF BREACH:

Pursuit of any remedy provided in this Agreement shall not preclude pursuit of any other remedies herein provided or any other remedies provided by law or equity, including injunctive relief, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any obligation of the defaulting party hereunder or of any damages accruing by reason of the violation of any of the terms, provisions, and covenants herein contained. No waiver of any term, covenant, condition or violation of this Agreement shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, and covenants herein contained, and forbearance to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. Any waiver of any provision of this Agreement or violation thereof must be by a written instrument.

36. FEDERAL FUNDED PROJECT:

If this Agreement is funded in part by either the State of Texas or the federal government, Contractor agrees to timely comply, without additional cost or expense to County, unless otherwise specified herein, with any statute, rule, regulation, grant, contract provision or other state or federal law, rule, regulation, or other similar restriction that imposes additional or greater requirements than stated herein and that is directly applicable to the services rendered under the terms of this Agreement.

37. DEFAULT/CUMULATIVE RIGHTS/MITIGATION:

It is not a waiver of default if the non-defaulting party fails to immediately declare a default or delays in taking any action. The rights and remedies provided by this Agreement are cumulative, and either Party's use of any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the Parties may have by law, statute, ordinance or otherwise. Contractor has a duty to mitigate damages.

38. PREVENTION OF FRAUD AND ABUSE:

Contractor shall establish, maintain and utilize internal management procedures sufficient to provide for the proper, effective management of all activities funded under this Agreement. Any

known or suspected incident of fraud or program abuse involving Contractor's employees or agents shall be reported immediately to the County by Contractor. Moreover, Contractor warrants that it is not listed on a local, county, state or federal consolidated list of debarred, suspended and ineligible contractors and grantees. Contractor and County agree that every person who, as part of their employment, receives, disburses, handles or has access to funds collected pursuant to this Agreement does not participate in accounting or operating functions that would permit them to conceal accounting records and the misuse of said funds. Contractor shall, upon notice by County, refund expenditures of the Contractor that are contrary to this Agreement and deemed inappropriate by the County.

39. FISCAL FUNDING CLAUSE:

Notwithstanding any provisions contained herein, the obligations of the County under this Agreement is expressly contingent upon the availability of funding for each item and obligation contained herein for the term of the Agreement and any extensions thereto. Contractor shall have no right of action against County in the event County is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this Agreement or failure to budget or authorize funding for this Agreement during the current or future fiscal years. In the event that County is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding, or if funds become unavailable, County, at its sole discretion, may provide funds from a separate source or may terminate this Agreement by written notice to Contractor at the earliest possible time prior to the end of its fiscal year.

40. NO BOYCOTT OF ISRAEL

Pursuant to Section 2270.002 of the Texas Government Code, Contractor verifies that it:

- (a) Does not boycott Israel; and
- (b) Will not boycott Israel during the Term of this Agreement.

41. COUNTERPARTS, NUMBER/GENDER AND HEADINGS:

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Words of any gender used in this Agreement shall be held and construed to include any other gender. Any words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

42. INDEPENDENT CONTRACTOR:

Contractor, including its employees, agents or licensees, is an independent contractor and not an agent, servant, joint enterprise or employee of the County, and is responsible for its own acts,

omissions, forbearance, negligence and deeds, and for those of its agents or employees in conjunction with the performance of services covered under this Agreement, and shall be specifically responsible for sufficient supervision and inspection to ensure compliance in every respect with the contract requirements. There shall be no contractual relationship between any subcontractor, agent, employee or supplier of the Contractor and the County by virtue of this Agreement.

43. SUBCONTRACTING:

Contractor may not enter into agreements with subcontractors for delivery of the designated services outlined in this Agreement without prior written consent of and approval by County. The costs of all subcontracted services are included in the fees paid herein. Subcontracts, if any, entered into by the Contractor will be in writing and subject to all requirements herein. Contractor agrees that it will solely be responsible to County for the performance of this Agreement. Contractor shall pay all subcontractors in a timely manner. County shall have the right to prohibit Contractor from using any subcontractor.

44. ASSURANCES:

- (a) In providing services required by this Agreement, Contractor agrees to observe and comply with all grant requirements, licenses, legal certifications, or inspections required for the services, facilities, equipment, or materials, and all applicable federal, state, and local statutes, ordinances, rules, and regulations. Contractor's failure to comply with this assurance shall be treated as a default and/or breach of this Agreement.
- (b) Contractor assures that it will not transfer or assign its interest in this Agreement without written consent of County. Contractor understands that in the event that all or substantially all of Contractor's assets are acquired by another entity, Contractor is still obligated to fulfill the terms and conditions of this Agreement. County approval to transfer or assign Contractor's interest in this Agreement to an entity that acquires all or substantially all of Contractor's assets is subject to formal approval by the Commissioners Court.
- (c) Contractor, by acceptance of the terms of this Agreement, agrees and ensures that personnel providing the services hereunder are duly licensed and/or qualified to perform the required services. Contractor further agrees and ensures that all program and/or facility licenses or permits necessary to perform the required services are current and that County will be notified immediately if such licenses or permits become invalid during the term of this Agreement.
- (d) Contractor agrees to adhere to confidentiality requirements, as applicable, for the services performed for County under this Agreement, and any other confidentiality provisions or laws, whether federal or state, relating to the services being providing hereunder.
- (e) Contractor assures that it will not use any information, documents, or data provided to

Contractor by County for any proprietary purposes and shall not copy, sell, exchange, disclose or provide to others or use any information, documents or data reasonably related to this Agreement for its own proprietary interests.

- (f) Contractor agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
- (g) Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations and non-discrimination laws and regulations. When required, Contractor shall furnish County satisfactory proof of compliance therewith.
- (h) Contractor certifies that it is not aware of any conflicts of interest involving any Dallas County official or employee related to this Agreement or the services provided under this Agreement.
- (i) Contractor certifies that it is not currently involved, either directly or indirectly, with any litigation against or involving Dallas County.
- (j) Contractor will develop and implement an agency-wide drug free work place policy. Contractor will also require that all contracts between itself and subcontractors also comply with said requirements.
- (k) Contractor understands that reimbursement for costs under this Agreement shall be in accordance with all applicable federal rules, regulations, cost principles, and other requirements relating to reimbursement.
- (l) Under Section 231.006, Texas Family Code, Contractor certifies to County that Contractor is not delinquent in any child support obligations and therefore ineligible to receive payment under the terms of this Agreement. Contractor hereby acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- (m) Contractor, by executing this Agreement, hereby certifies that it is not delinquent in its Texas franchise tax payments, or that it is exempt from, or not subject to such a tax. A false statement concerning the corporation's franchise tax status shall constitute grounds for termination of this Agreement at the sole option of the County.
- (n) Contractor certifies to County that Contractor is not delinquent on the repayment of any federal, state, or local debt or other obligation.
- (o) Contractor certifies that neither it nor any of its principals is presently debarred, suspended,

proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal, state, or local department or agency.

- (p) Contractor shall pay all subcontractors in a timely manner. County shall have no liability to any subcontractors in the event Contractor does not pay or delays payment to any subcontractors. At termination or expiration of this Agreement, Contractor shall deliver to County an affidavit of all bills paid. Final payment shall be contingent upon receipt of such affidavits as resolution of all accounting for which County is or may be liable under this Agreement.
- (q) Failure to comply with any of these assurances or any other requirements specified within this Agreement will put Contractor in default and/or breach of this Agreement and may result, at the sole discretion of County, in the disallowance of funds and the withholding of future awards, in addition to any other remedies permitted by law.

45. PROMPT PAYMENT ACT:

Contractor agrees that a temporary delay in making payments due to the County's accounting and disbursement procedures shall not place the County in default of this Agreement and shall not render the County liable for interest or penalties, provided such delay shall not exceed thirty (30) days after its due date. Any payment not made within thirty (30) days of its due date shall bear interest in accordance with Chapter 2251 of the Texas Government Code.

46. TAX

Dallas County, as a county of the State of Texas, is exempted from the payment of Texas state and local sales, excise, and use taxes pursuant to Tex. Loc. Gov't Code § 151.309, and shall therefore not be liable or responsible to the Contractor for the payment of such taxes under this Agreement.

The fees paid to Contractor pursuant to this Agreement are inclusive of any applicable sales, use, personal property or other taxes attributable to periods on or after the applicable effective date of this Agreement and based upon or measured by Contractor's cost in acquiring or providing products and/or services and related materials and supplies furnished or used by Contractor in performing his obligations hereunder, including all personal property and use taxes, if any, due on equipment or software owned by Contractor.

Contractor accepts full and exclusive liability for the payment of any and all contributions or taxes for Social Security, Workers' Compensation Insurance, Unemployment Insurance, or Retirement Benefits, Pensions, or annuities now or hereafter imposed under any state or federal laws which are measured by the wages, salaries, or other remuneration pay to persons employed by Contractor for work performed under the terms of this Agreement **and agrees to indemnify and save harmless the County from any such contribution or taxes or liability.**

47. TRANSITION SERVICES REQUIRED OF CONTRACTOR:

Upon notice of termination and/or expiration of this Agreement, the County shall immediately have the right to audit any and all records of Contractor relating to this Agreement. Moreover, upon the termination and/or expiration date of this Agreement, Contractor agrees to transition the services provided herein in a cooperative manner and provide anything requested from the County at no additional cost, including, but not limited to the following, upon date of termination and/or expiration: (i) All contract and services documentation, including all records, books and data reasonably related to this Agreement, maintained in accordance with Section 8 (Reporting and Accountability) of this Agreement and identified in a complete, neat and orderly manner; (ii) A good faith pledge to cooperate with County upon transition of services to another contractor or County department providing the same or similar services; (iii) Records, books and data, including electronic data, in a format compatible with County's information technology capabilities, or in a format compatible with a succeeding contractor's information technology capabilities, as determined by County; (iv) Final accounting of all income derived from the Agreement; (v) Downloading and removal of all County information from Contractor's equipment and software; and (vi) Removal of Contractor's services without degradation or other adverse affect on County's system. This provision shall survive termination or cancellation of this Agreement.

48. SIGNATORY WARRANTY:

The undersigned signatories for the Parties hereby represent and warrant that they are officers of their respective organizations for which they have executed this Agreement and that they have full and complete authorities to enter into this Agreement on behalf of their respective organizations and that the executions thereof are the acts of the parties involved and have been delivered and constitute legal, valid and binding obligations of the respective parties.

[Remainder of page intentionally left blank.]

49. ACCEPTANCES:

By their signatures below, the duly authorized representatives of County and Contractor accept the terms of this Agreement in full.

EXECUTED this _____ day of _____, 2020.

DALLAS COUNTY:

CONTRACTOR:

BY: Clay Jenkins
Dallas County Judge

BY: Patricia Nava
Consultant

Recommended:

BY: Gordon Hikel
Assistant County Administrator
Office of Small Business Enterprises

***Approved as to Form:**

JOHN CREUZOT
DISTRICT ATTORNEY

BY: Lacey B. Lucas
Assistant District Attorney
Dallas County DA's Office, Civil Division

*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).

THE STATE OF TEXAS

§

§

THE COUNTY OF DALLAS

§

PERSONAL SERVICES AGREEMENT (“Agreement”)

Between

DALLAS COUNTY (“County”)

and

Miguel E. Solis (“Solis” or “Contractor”)

This Agreement is entered into by and between Dallas County, Texas (hereinafter, “County”), acting by and through the Dallas County Commissioners Court (hereinafter, “Commissioners Court”) located at 411 Elm Street, 2nd Floor, Dallas, Texas 75202, and Miguel E. Solis, located at 2215 Eriksson Lane, Dallas, Texas 75204 (hereinafter, “Solis” or “Contractor”) or individually as a “Party” or collectively the “Parties” for certain personal services, as identified in this Agreement under authority of Texas Local Government Code § 262.024(a)(4), for certain personal services, as identified herein.

WHEREAS, the Dallas County Office of Homeland Security & Emergency Management (“HSEM”) is a function of Dallas County government. HSEM is responsible for management of a county-wide emergency management program, the homeland security program, and the county emergency operations center (“EOC”). HSEM works with municipalities, state and federal agencies, partners, NGO, volunteer groups, and others to provide emergency protective actions for the 2.5 million residents of Dallas County, Texas; and

WHEREAS, on March 12, 2020 Dallas County Judge Clay Jenkins declared a local disaster because of the threat of the global pandemic COVID-19 coronavirus (“COVID-19”); and

WHEREAS, the County began taking steps to thwart the spread of COVID-19 including identifying additional staff needed in key positions to help manage the County’s emergency response effort; and

WHEREAS, Solis has agreed to provide services as indicated herein;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereafter set forth and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the County and Contractor agree as follows:

1. PURPOSE:

The purpose of this staff augmentation is to increase the effectiveness of HSEM's response in all aspects of communication and coordination throughout the County in response to the COVID-19 national emergency. HSEM is the lead department for the County and tasked with integrating the emergency response activities of local municipalities in alignment with federal guidance.

2. TERM:

The term of this Agreement shall begin upon the day of execution of this Agreement by the County and continue until the services are rendered and the deliverables detailed herein are completed, unless terminated earlier under any provision hereof. Notwithstanding the foregoing, the services and deliverables detailed herein shall be completed by March 19, 2021. This Agreement shall automatically terminate on March 19, 2021 (collectively the "Term").

3. SCOPE OF WORK:

The contractor will serve as part of the core internal policy team for Dallas County Judge Clay Jenkins who is leading the Dallas County response to the global pandemic COVID-19. Assigned functions include participating in daily strategy meetings with partners, including local emergency managers and county administration; coordinating with Dallas County HSEM for the production and distribution of hand sanitizer for first responders; identifying regional businesses with machinery and personnel for production; serving as point of contact with the philanthropic community for donations; and assisting with the repurposing of current manufacturing centers for the production of personal productive equipment and ventilators.

4. COUNTY'S OBLIGATIONS:

County agrees to the following:

- (a) Dallas County will assist Contractor in scheduling appointment with key County personnel and employees;
- (b) Dallas County will provide computer assets; and
- (c) Dallas County will provide a work space

5. TERMS AND CONDITIONS OF PAYMENT FOR SERVICES:

County agrees to compensate Contractor for approved budget expenses incurred and for documented units of services performed, subject to the following limitations:

- (a) Compensation for Personal Services. Contractor has agreed to be compensated for the services described herein.

- (b) Not to Exceed Amount. Contractor understands and agrees that the maximum total amount payable for the services described herein shall not exceed seventy-six thousand thirty-seven dollars and no cents (\$76,037.00) (hereinafter "Not to Exceed Amount") unless a formal written amendment is executed by the Parties hereto and is formally approved by the Commissioners Court. Contractor assures County that it will not perform services that would cause the amounts payable to Contractor for the services described herein to exceed the Not To Exceed Amount without following the procedures described in this subsection (b).
- (c) Travel costs to be paid to Contractor are included in the above Not to Exceed Amount.
- (d) Contractor agrees to submit complete, fully documented, and accurate itemized invoices with appropriate documentation, as required by County, following the completion of the services detailed herein.
- (e) Payment will be made to Contractor by County upon receipt of a verified and proper billing for services actually rendered. Any payments by County to Contractor may be withheld if the Contractor fails to comply with County's reporting requirements, performance objectives, or other requirements relating to Contractor's performance of work, deliverables, and services under this Agreement. County shall pay Contractor only for those costs that are allowable under applicable rules and regulations, as stated in this Agreement. County shall have the right to withhold all or part of any payments to the Contractor to offset any reimbursement made to Contractor for ineligible expenditures or undocumented units of services billed.
- (f) Contractor understands and agrees that all billings must be submitted to County within thirty (30) days of expiration or termination of this Agreement. County must approve any exceptions to this billing procedure in writing. All billings must have appropriate supporting documentation before such billings will be approved.
- (g) County will make payment to Contractor upon receipt of a verified and proper invoice in accordance with Texas Government Code, Chapter 2251.
- (h) County agrees to review Contractor's invoices and will forward payment to Contractor within thirty (30) days of receipt of invoice after County, at its sole discretion, determines that such funds are in fact due and owing.
- (i) The Dallas County Auditor is responsible for monitoring fiscal compliance activities and shall resolve any dispute between the Parties regarding County's payments to Contractor for services rendered under this Agreement.
- (j) Prior Debts. County shall not be liable for costs incurred or performances rendered by Contractor before or after the Term; for expenses not billed to County within the applicable time frames set forth in this Contract; or for any payment for services or activities not provided pursuant to the terms of this Contract.

6. REPORTING AND ACCOUNTABILITY:

- (a) Reporting. Contractor agrees to submit all required documentation and reports on a timely basis and in accordance with the specified time frames pursuant to this Agreement. Penalties for delinquent reporting may include withholding of payments until such time all reports are received, cancellation and/or termination of this Agreement with no obligation to pay for undocumented services, or both.
- (b) Access to Records. Contractor agrees that County, or any of its duly authorized representatives, has the right of timely and unrestricted access to any books, documents, papers, reports, or other records of Contractor that are pertinent to the fulfillment of the requirements of this Agreement, in order to make audit, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable access to Contractor's personnel for the purpose of reviewing, interviewing, evaluating, and monitoring related to such documents. All such items shall be furnished to the County in Dallas County, Texas.
- (c) Ownership. Contractor agrees that all information, data, and supporting documentation that relates to the services provided hereunder shall remain the property of County.
- (d) Maintenance of Records. Contractor's records, books, and other documents reasonably related to this Agreement shall be kept and maintained in standard accounting form. Such records, books, and documents shall be made available in Dallas County subject to inspection by County or authorized County personnel upon request.
- (e) Audit. The Dallas County Auditor, its assigns, or any other governmental entity approved by County shall have the unrestricted right to audit all data or documents related to this Agreement. Such data shall be furnished in Dallas County at a mutually convenient time within a reasonable time. Should County determine it reasonably necessary, Contractor shall make all of its records, books, and documents reasonably related to this Agreement available to authorized County personnel, at reasonable times and within reasonable periods, for inspection or auditing purposes or to substantiate the provisions of services under this Agreement.
- (f) Retention of Records. All records, books, and documents reasonably related to this Agreement shall be maintained and kept by Contractor for a minimum of four (4) years and ninety (90) days after termination or expiration of this Agreement. If any litigation, claim, or audit involving these documents and/or records begins before the specified period expires, Contractor must keep the records and documents for not less than four (4) years and ninety (90) days and until all litigation, claims, or audit findings are resolved, whichever is later. **Contractor is strictly prohibited from destroying or discarding any records, books, or other documents reasonably related to this Agreement, unless the time period for maintaining such under this subsection (f) has lapsed.**

7. CONFIDENTIALITY:

- (a) Contractor shall not disclose privileged or confidential communications or information acquired in the course of the performance of the services under this Agreement, unless authorized by law. Contractor agrees to adhere to all confidentiality requirements, as applicable, for the services performed for County under this Agreement.
- (b) Public Information Act. The Parties acknowledge and agree that County is subject, as a matter of law, to TEX. GOV'T CODE ANN. § 552 (Vernon 1994), also known as the "Texas Public Information Act" (hereinafter "Public Information Act"). Notwithstanding any other provision, the Parties agree that in the event that any provision of this Agreement, or other documents related to this Agreement, including, but not limited to, any exhibit, attachment, amendment, addendum, or other incorporated document, is in conflict with the Public Information Act, such provision shall be of no force or effect. Furthermore, it is expressly acknowledged and agreed that the County, County Commissioners Court, County Judge, Elected County Officials, County Department Heads and County Employees (hereinafter "County Requestors") may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any software, hardware, firmware, or any part thereof, or other equipment or item, data or information, or any other thing or item furnished to or in the possession or knowledge of County. It is further acknowledged and agreed that the County Requestors have the right and obligation by law to rely on the advice, decisions and opinions of the Texas Attorney General. Contractor hereby releases the County Requestors from any and all liability or obligation of any type, kind or nature regarding any disclosure of any software, hardware, firmware, or any part thereof, or other equipment or item, data or information, or any other thing or item furnished by Contractor or in the possession or knowledge of the County that is determined by County or in reliance on any advice, decision or opinion of the Texas Attorney General to be available to the public or any persons.
- (c) Notwithstanding the foregoing, the Parties agree, to the extent permitted by the Public Information Act, to keep confidential (and store in a secure area with limited access) and will not copy, publish, sell, exchange, disclose, or provide to others or use any information, documents or data, provided to or disclosed to the other Party, or any information related to this Agreement, including, but not limited to, any exhibit, attachment, amendment, addendum, or other incorporated document, for any purposes other than performing each Party's obligations under this Agreement.

8. CONFIDENTIAL OR PROPRIETARY MARKING:

Any information or documents the Contractor uses in the performance of the services provided under this Agreement that Contractor considers confidential or proprietary or that contains trade secrets must be clearly marked accordingly. This marking must be explicit as to the designated information. The designation, however, may not necessarily guarantee the non-release of the

documents or information under the Texas Public Information Act or otherwise required by law.

9. INDEMNIFICATION:

DALLAS COUNTY, DALLAS COUNTY COMMISSIONERS, ELECTED OFFICIALS, APPOINTED OFFICIALS, OFFICERS, DIRECTORS EMPLOYEES, AGENTS AND REPRESENTATIVES (HEREINAFTER, "INDEMNITEES") SHALL NOT BE LIABLE TO CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, AGENTS, INVITEES, LICENSEES, ASSIGNS OR TO ANY OTHER PERSON WHOMSOEVER OR ENTITY WHATSOEVER, FOR ANY INJURY TO PERSON OR DAMAGE TO PROPERTY, ON OR ABOUT COUNTY PROPERTY, INCLUDING, BUT NOT LIMITED TO, CONSEQUENTIAL DAMAGE: (1) CAUSED BY ANY ACT OR OMISSION OF CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, AGENTS, INVITEES, LICENSEES, ASSIGNS OR OF ANY OTHER PERSON ENTERING COUNTY PROPERTY BY EXPRESS OR IMPLIED INVITATION OF CONTRACTOR OR SUBCONTRACTOR; OR (2) OCCASIONED BY OR THROUGH ANY ACT OR OMISSION OF CONTRACTOR OR ITS SUBCONTRACTOR ON COUNTY PROPERTY OR OF ANY OTHER PERSONS WHOMSOEVER; OR (3) ARISING OUT OF THE USE OF COUNTY PROPERTY BY CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, LICENSEES, INVITEES OR ASSIGNS; OR (4) ARISING OUT OF ANY BREACH OR DEFAULT BY CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, LICENSEES, INVITEES OR ASSIGNS OF ANY OF THE REQUIREMENTS OR PROVISIONS OF THIS AGREEMENT OR IN THE EXECUTION OR PERFORMANCE OF ITS OBLIGATIONS HEREUNDER; OR (5) OCCASIONED BY OR THROUGH THE USE OF ANY COUNTY PROVIDED UTILITIES, COMPUTERS, SOFTWARE, FIRMWARE, HARDWARE OR ANY VIRUS OR SIMILAR RELATED ITEMS THAT MAY BE CONTRACTED BY CONTRACTOR THROUGH SUCH USE.

CONTRACTOR ASSURES THAT IT IS AN INDEPENDENT CONTRACTOR AND NOT AN AGENT, SERVANT, OR EMPLOYEE OF COUNTY. CONTRACTOR AGREES, AND SHALL REQUIRE ALL SUBCONTRACTORS TO AGREE, TO PROTECT, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES AGAINST ALL CLAIMS, DEMANDS, ACTIONS, SUITS, LOSSES, DAMAGES, LIABILITIES, COSTS AND/OR EXPENSES OF EVERY KIND AND NATURE (INCLUDING, BUT NOT LIMITED TO, COURT COSTS, LITIGATION EXPENSES AND ATTORNEY'S FEES) AND ALL RECOVERABLE INTEREST THEREON, INCURRED BY OR SOUGHT TO BE IMPOSED ON INDEMNITEES BECAUSE OF BODILY INJURY (INCLUDING DEATH) OR DAMAGE TO PROPERTY (WHETHER REAL, PERSONAL OR INCHOATE), ARISING OUT OF OR IN ANY WAY RELATED (WHETHER DIRECTLY OR INDIRECTLY, CAUSALLY OR OTHERWISE) TO: (1) THE PERFORMANCE OF, ATTEMPTED PERFORMANCE OF, OR FAILURE TO PERFORM, THE SERVICES UNDER THIS AGREEMENT BY CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, AGENTS, INVITEES, LICENSEES, ASSIGNS OR TO ANY OTHER PERSON WHOMSOEVER AND/OR ANY OTHER PERSON OR ENTITY; (2) THE NEGLIGENT ACT OR OMISSION OF CONTRACTOR, SUBCONTRACTORS, EMPLOYEES, AGENTS, INVITEES, LICENSEES, ASSIGNS IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT; (3) THE CONDITION OF THE PREMISES ON WHICH SAID SERVICES ARE BEING PERFORMED; (4) THE SELECTION, PROVISION, USE OR FAILURE TO USE, BY ANY PERSON OR ENTITY, OF ANY POWER SOURCE, HARDWARE, SOFTWARE, TOOLS, SUPPLIES, MATERIALS, EQUIPMENT OR VEHICLES (WHETHER OWNED OR SUPPLIED BY INDEMNITEES, CONTRACTOR, OR ANY OTHER PERSON OR ENTITY) IN CONNECTION WITH SAID SERVICES; (5) THE PRESENCE

ON COUNTY PROPERTY OF CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, INDEPENDENT CONTRACTORS, AGENTS, INVITEES, LICENSEES, ASSIGNS OR ANY OTHER PERSON ACTING BY OR ON BEHALF OF CONTRACTOR; (6) THE SERVICES UPON OR ADJACENT TO ALL OR ANY PART OF COUNTY PROPERTY, WHETHER OR NOT CAUSED BY OR CONTRIBUTED TO BY THE PRESENCE IN OR OPERATION OF ANY FACILITY OR ANY OPERATION, STRUCTURE OR FACILITIES OF COUNTY, OR ANY OTHER PARTY, OR BY NEGLIGENCE OR ALLEGED NEGLIGENCE ON THE PART OF INDEMNITEES OR ANY OF INDEMNITEES' AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, INVITEES OR LICENSEES; (7) THE BREACH OF ANY OF THE REQUIREMENTS AND PROVISIONS OF THIS AGREEMENT OR ANY FAILURE OF CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, AGENTS, INVITEES, LICENSEES, OR ASSIGNS IN ANY RESPECT TO COMPLY WITH AND PERFORM ALL OF THE REQUIREMENTS AND PROVISIONS; (8) OCCASIONED THROUGH THE LOSS OF FUNDS OR RIGHTS TO RECEIVE ANY SUM OF MONEY IN ANY FORM OR MEDIUM ARISING OUT OF THE BREACH OF ANY OF THE REQUIREMENTS AND PROVISIONS OF THIS AGREEMENT; AND (9) OCCASIONED BY ANY CIVIL OR CRIMINAL ACTIVITY OR PENALTY UNDER STATE OR FEDERAL LAW BY CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, AGENTS, INVITEES, LICENSEES, OR ASSIGNS ARISING OUT OF THE BREACH OF ANY OF THE REQUIREMENTS AND PROVISIONS OF THIS AGREEMENT. IN ADDITION, CONTRACTOR HEREBY COVENANTS AND AGREES THAT IT WILL HOLD INDEMNITEES HARMLESS FOR ALL PERSONAL PROPERTY OF CONTRACTOR, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, AGENTS, GUESTS, CONSULTANTS, SUBCONTRACTORS, LICENSEES, SUBLICENSEES, INVITEES OR OTHER PARTY HAVING ANY PERSONAL PROPERTY ON COUNTY PREMISES IN RELATION TO THE CONTRACTOR'S USE OF THE AREA. CONTRACTOR FURTHER AGREES TO DEFEND, AT ITS SOLE COST AND EXPENSE (AT THE ELECTION OF COUNTY), AGAINST ANY CLAIM, DEMAND, ACTION OR SUIT FOR WHICH INDEMNIFICATION IS PROVIDED HEREUNDER.

APPROVAL AND ACCEPTANCE OF CONTRACTOR'S SERVICES BY COUNTY SHALL NOT CONSTITUTE NOR BE DEEMED A RELEASE OF THE RESPONSIBILITY AND LIABILITY OF CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, OFFICERS, AGENTS, INVITEES, LICENSEES OR ASSIGNS FOR THE ACCURACY AND COMPETENCY OF THEIR SERVICES; NOR SHALL SUCH APPROVAL AND ACCEPTANCE BE DEEMED TO BE AN ASSUMPTION OF SUCH RESPONSIBILITY BY THE COUNTY FOR ANY DEFECT, ERROR OR OMISSION IN THE SERVICES PERFORMED BY CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, OFFICERS, AGENTS, INVITEES, LICENSEES OR ASSIGNS IN THIS REGARD. CONTRACTOR SHALL DEFEND, HOLD HARMLESS AND INDEMNIFY THE COUNTY FOR DAMAGES RESULTING FROM SUCH DEFECTS, ERRORS OR OMISSIONS.

WITHOUT IN ANY WAY LIMITING OR RESTRICTING THE INDEMNIFICATION AND DEFENSE AGREEMENTS STATED ABOVE, CONTRACTOR AGREES THAT IT IS THE INTENTION OF THE PARTIES HERETO THAT CONTRACTOR, ITS CONTRACTORS AND SUBCONTRACTORS, AND THEIR INSURERS BEAR THE ENTIRE RISK OF LOSS OR INJURY TO ANY OF CONTRACTOR'S EMPLOYEES, "BORROWED SERVANTS," INDEPENDENT CONTRACTORS, AGENTS, REPRESENTATIVES, SUBCONTRACTORS, VENDORS, MATERIALMEN, OR ANY OTHER PERSON PRESENT ON THE PROPERTY OR PERFORMING ANY OTHER ACT OR SERVICE ON CONTRACTOR'S BEHALF OR AT ITS REQUEST, WHETHER OR NOT ANY SUCH LOSS OR INJURY IS CAUSED IN WHOLE OR IN PART

BY ANY NEGLIGENCE OR FAULT OF INDEMNITEES, AND WITHOUT SEEKING ANY CONTRIBUTION THEREFOR FROM INDEMNITEES OR ITS INSURERS.

THESE PROVISIONS SHALL APPLY, WHETHER OR NOT ANY SUCH INJURY OR DAMAGE HAS BEEN, OR IS ALLEGED TO HAVE BEEN, CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR FAULT OF INDEMNITEES, OR ON ANY OTHER THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INTENTIONAL WRONGDOING, STRICT PRODUCTS LIABILITY, OR THE BREACH OF A NON-DELEGATABLE DUTY.

THESE PROVISIONS SHALL SURVIVE TERMINATION, EXPIRATION OR CANCELLATION OF THIS AGREEMENT OR ANY DETERMINATION THAT THIS AGREEMENT OR ANY PORTION HEREOF IS VOID, VOIDABLE, INVALID OR UNENFORCEABLE.

10. INSURANCE:

(a) Within ten (10) days after the effective date of this Agreement, Contractor shall furnish, at its sole cost and expense, the following minimum insurance coverage. Such insurance is a condition precedent to commencement of any services. Contractor shall, in the stated ten (10) day period, furnish to the Dallas County Purchasing Agent verification of the insurance coverage in the type and amount required herein, meeting all conditions in this Agreement, by an insurance company acceptable to County and authorized to do business in the State of Texas. Such insurance shall show the County as the certificate holder (general liability insurance). Coverage dates shall be inclusive of the entire Term of the Agreement and each renewal period, if any.

The following minimum insurance coverage is required:

1. General Liability Insurance. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
2. Automobile Liability Insurance. Minimum Limits: \$300,000 Combined Single Limit per Accident; or Bodily Injury: \$100,000 per person/\$300,000 per accident and Property Damage: \$50,000 per accident.
3. Professional Errors and Omissions Insurance. Such insurance shall carry individual limits of \$1,000,000 per claim or occurrence and an aggregate of \$1,000,000.
4. Workers' Compensation Insurance. If Contractor has or hires any employee(s), as defined by the Workers' Compensation Act, Contractor shall provide coverage in the amount as required by the law of the State of Texas or Federal law, meeting the acceptability requirements as established by the Texas Workers' Compensation Act, Title 5, Subtitle A, Texas Labor Code.

(b) Contractor agrees that, with respect to the above-referenced insurance, all insurance contracts will contain the following required provisions:

1. Name Dallas County, its elected officials, appointed officials, officers, directors, employees, agents, representatives, and volunteers as additional insureds (as the interest of each insured may appear) as to all applicable coverage.
2. Provide for thirty (30) days prior written notice to the County for cancellation, non-renewal or material change, or ten (10) days for non-payment of premium.
3. Provide that the inclusion of one or more persons, corporations, organizations, firms or entities as insureds under this policy shall not in any way affect the right of any such person, corporation, organization, firm or entity with respect to any claim, demand, suit, or judgment made, brought or recovered in favor of any other insured.
4. Provide that this policy shall protect each person, corporation, organization, firm or entity in the same as though a separate policy had been issued to each, provided that its endorsement shall not operate to increase the insurance company's limits of liability as set forth elsewhere in the policy.
5. Provide for an endorsement that the other insurance clause shall not apply to the County where the County is an additional insured on the policy.
6. Provide for notice to the County at the address shown below by registered mail.
7. Each applicable policy of insurance shall contain a waiver of subrogation, and Contractor agrees to waive subrogation against County, its elected officials, appointed officials, officers, directors, employees, agents, representatives, and volunteers for injuries, including death, property damage, or any other loss.

(c) Contractor shall be solely responsible for all cost of any insurance as required here, any and all deductible amount, which in no event shall exceed ten percent (10%) of the amount insured and in the event that an insurance company should deny coverage.

(d) It is the intent of these requirements and provisions that insurance covers all cost and expense so that the County will not sustain any expense, cost, liability or financial risk as a result of the performance of services under this Agreement.

(e) Except as otherwise expressly specified, Contractor shall agree that all policies of insurance shall be endorsed, waiving the issuing insurance company's right of recovery against County, whether by way of subrogation or otherwise.

- (f) Insurance certificates. The certificates of insurance shall list Dallas County as the certificate holder. Any and all copies of Certificates of Insurance shall reference this Agreement for which the insurance is being supplied. All insurance policies or duly executed certificates for the same are required to be carried by Contractor under this Agreement, together with satisfactory evidence of the payment of the premium thereof, shall be delivered to the **Dallas County Purchasing Agent located at Founders Square, 900 Jackson Street, 6th Floor, Suite 680, Dallas, TX 75202** within ten (10) days of execution and/or renewal of this Agreement and upon renewals and/or material changes of such policies, but not less than fifteen (15) days prior to the expiration of the term of such coverage, or such non-delivery shall constitute a default of this Agreement subject to immediate termination at County's sole discretion.
- (g) All insurance coverage shall be on a per claim/occurrence basis unless specifically approved in writing and executed by the Dallas County Purchasing Agent and Risk Manager.
- (h) All insurance required to be carried by Contractor and/or subcontractors under this Agreement shall be acceptable to County in form and content, in its sole discretion. All policies shall be issued by an insurance company acceptable and satisfactory to County and authorized to do business in the State of Texas. Acceptance of or the verification of insurance shall not relieve or decrease the liability of the Contractor.
- (i) If Contractor and/or his subcontractors fail to comply with any of the requirements relating to insurance, the County, in addition to all other remedies allowed by this Contract or in law, may, at its sole discretion and without waiving any rights that it may have, and in addition to all other remedies allowed by this Contract, obtain such insurance and deduct from the payments to Contractor the expense of obtaining such insurance and the cost of insurance premiums. However, neither Contractor nor any third party shall have any recourse against the County for payment of any premiums or assessment for any deductibles, or payment of any amount that would have been payable by any such insurance, as all such liability, cost, expense, premiums and deductibles are the sole responsibility and risk of the Contractor.
- (j) Approval, disapproval or failure to act by the County regarding any insurance supplied by Contractor shall not relieve Contractor of full responsibility or liability for damages and accidents as set forth herein. Neither shall bankruptcy, insolvency or denial of liability by any insurance company exonerate the Contractor from liability.
- (k) Minimum insurance is a condition precedent to any work performed under this Agreement and for the entire Term of this Agreement, including any renewals or extensions. In addition to any and all other remedies County may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, or such insurance lapses, is reduced below minimum requirements or is prematurely terminated for any reason, County shall have the right to:
1. order Contractor to stop work hereunder;

2. withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof and assurance and proof acceptable to County that there is no liability to County for failure to provide such required insurance;
 3. declare a material breach of this Agreement, which, at County's sole discretion, may result in:
 - A. immediate termination of this Agreement;
 - B. demand on any bond, as applicable;
 - C. the right of the County to hire a replacement contractor to perform the services. Contractor will be fully liable for the difference between the original Contract price and the actual price paid, which amount is payable to County by Contractor on demand; or
 - D. any combination of the above.
 4. any combination of the above.
- (l) Contractor shall advise County in writing within twenty-four (24) hours of any claim or demand against County or Contractor known to Contractor related to or arising out of Contractor's activities or services under this Agreement.
- (m) Acceptance of the services by County shall not constitute nor be deemed a release of the responsibility and liability of Contractor, its employees, associates, agents or subcontractors for the accuracy and competency of their services; nor shall such acceptance be deemed an assumption of responsibility or liability by County for any defect in the services performed by Contractor, its employees, subcontractors, and agents.
- (n) Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work or services covered under this Agreement.
- (o) Contractor shall provide that all provisions of this Agreement concerning liability, duty and standard of care, together with the indemnification provisions, shall be underwritten by contractual liability coverage sufficient to include obligation within applicable policies.
- (p) It is agreed that County shall deem Contractor's insurance primary with respect to any insurance or self insurance carried for liability arising out of operations under this Agreement.
- (q) Contractor shall notify County in the event of any change in coverage and shall give such notices not less than thirty (30) days prior to the change, which notice must be accompanied by a replacement certificate of insurance.

- (r) Standard of Care: Services provided by Contractor under this Contract will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar agreements.
- (s) The provisions of this Section are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- (t) The provisions of this Section shall survive termination or expiration of this Agreement or any determination that this Agreement or any portion hereof is void, voidable, invalid or unenforceable.
- (u) Insurance Lapse. If the Contractor fails to maintain the insurance required under the Agreement continuously at all times during the period stated in the Agreement, or otherwise has a lapse in any of the required insurance coverage, including workers' compensation coverage the Contractor shall reimburse the County for any and all costs, including attorney's fees incurred by the County in curing said default. In the event of any insurance lapse, the County shall retain five percent (5%) of the value of the total Agreement Sum for a period of six (6) months from the date of the cure of the insurance lapse or the date the Agreement has ended, whichever is later, to cover the County's potential exposure to liability during the period of the insurance lapse.

In the event that the Contractor does not maintain any and all insurance as required by this Agreement, the Contractor shall immediately cure such lapse at the Contractor's sole cost and expense, and pay the County in full for all costs and expenses incurred by the County under this Agreement as a result of the Contractor's failure to maintain insurance, including, but not limited to, any and all costs and reasonable attorney's fees relating to the County's efforts to cure such lapse in insurance coverage. Such costs and attorney's fees, which shall not exceed One Thousand Five Hundred Dollars and No Cents (\$1500.00), shall be automatically deducted from monies owed to the Contractor by the County under this Agreement. If the monies owed to the Contractor under this Agreement are less than the amount required to cure the lapse in coverage, the Contractor shall pay such monies to the County upon written demand. Moreover, upon any lapse of the required insurance by the Contractor, the County shall immediately retain five percent (5%) of the total value of this Agreement to cover the County's potential exposure to liability during the period of such insurance lapse. The five percent (5%) retainage shall be immediately deducted from any monies due to the Contractor by the County under this Agreement and held by the County for a period of six (6) months from the date of the cure of the insurance lapse or a period of six (6) months from the date this Agreement has terminated, expired, or otherwise ended, whichever is later. If no claims is received by or lawsuits filed against the County for any applicable matters, accidents or injuries that occurred during the lapse of insurance, the retainage shall be promptly returned to the Contractor upon written request. Notwithstanding the foregoing, in the event a claim is received by or lawsuit is filed against the County for applicable matters, accidents, or injuries that occurred during the Contractor's insurance lapse, the County shall use the retainage to defend, pay costs of defense, or settle

any and all such claims, lawsuits, or judgments, with any and all amounts in excess of the retainage to be paid by the Contractor upon written demand by the County.

11. EXPENSES

Unless prior written approval by County is obtained or otherwise detailed in this Agreement, Contractor shall be responsible for all mileage and other expenses related to the fulfillment of the requirements of this Agreement.

12. TERMINATION:

(a) Suspension. Should County desire to suspend the services, but not terminate the Agreement, County shall issue a written order to stop work. The written order shall set out the terms of the suspension. Contractor shall stop all services as set forth in this Agreement and will cease to incur costs to County during the term of the suspension. Contractor shall resume work when notified to do so by County in a written authorization to proceed. If a change in the terms and conditions of payment for services of this Agreement is necessary because of a suspension, a mutually agreed contract amendment will be executed in accordance with this Agreement.

(b) Termination. Either Party may, at its option and without prejudice to any other remedy to which it may be entitled to at law or in equity, or elsewhere under this Agreement, terminate this Agreement, in whole or part, by giving thirty (30) days prior written notice thereof to the other Party with the understanding that all services being performed under this Agreement shall cease upon the date specified in such notice. County shall compensate the Contractor in accordance with the terms of this Agreement for the services performed prior to the date specified in such notice. In the event of cancellation, Contractor shall cease any and all services under this Agreement on the date of termination and to the extent specified in the notice of termination. Upon receipt of such notice, Contractor shall not incur any new obligations or perform any additional services and shall cancel any outstanding obligations or services to be provided. Upon termination of this Agreement as herein above provided, any and all unspent funds that were paid by County to Contractor under this Agreement and any and all County data, documents and information in Contractor's possession shall be returned to County within five (5) working days of the date of termination. In no event shall County's termination of this Agreement, for any reason, subject County to liability.

1. Without Cause: This Agreement may be terminated, in whole or in part, without cause, by either party upon thirty (30) days prior written notice to the other party.

2. With Cause: County reserves the right to terminate this Agreement immediately, in whole or in part, at its sole discretion, for the following reasons:

A. Lack of, or reduction in, funding or resources in accordance with Section 38 (Fiscal Funding Clause);

- B. Non-performance by Contractor or Contractor's failure or inability to perform or substantially perform, for whatever reason, the services required under this Agreement;
- C. Contractor's improper, misuse or inept performance of services under this Agreement;
- D. Contractor's failure to comply with the terms and provisions of this Agreement;
- E. Contractor's submission of invoices, data, statements and/or reports that are incorrect, incomplete, or false in any way;
- F. Contractor's failure to comply with County's reporting requirements, the program objectives, the terms, conditions, or standards of this Agreement, applicable federal, state, or local laws, rules, regulations and ordinances, or any other requirement set forth in this Agreement;
- G. Contractor's failure to perform the work and services required by this Agreement within the time specified herein or any extension thereof;
- H. Contractor's failure to provide County with proper notice of an assignment in accordance with Section 31 (Assignment);
- I. If Contractor becomes or is declared insolvent or bankrupt, or is the subject of any proceedings relating to its liquidation or insolvency or for the appointment of a receiver or similar officer for it, has a receiver of its assets or property appointed or makes an assignment for the benefit of all or substantially all of its creditors, institutes or causes to be instituted any proceeding in bankruptcy or reorganization or rearrangement of its affairs, enters into an agreement for the composition, extension, or adjustment of all or substantially all of its obligations, or has a material change in its key employees; and/or
- J. Contractor's inability to perform under this Agreement due to judicial order, injunction or any other court proceeding.

24. NOTICE:

Any notice to be given under this Agreement shall be deemed to have been given if reduced to writing and delivered in person or mailed by overnight or Registered Mail, postage pre-paid, to the party who is to receive such notice, demand or request at the addresses set forth below. Such notice, demand or request shall be deemed to have been given three (3) days subsequent

to the date it was so delivered or mailed.

TO COUNTY:

Judge Clay Jenkins
Dallas County
411 Elm St. 2nd Floor
Dallas County, Texas 75202
(214) 653-7949 (office)
(214) 653-6586 (fax)

TO CONTRACTOR:

Miguel E. Solis
2215 Eriksson Lane
Dallas, Texas 75204
(409) 540-2160(cell)
mes198@mail.harvard.edu

With a copy to:

Russell Roden
Chief, Civil Division
Dallas County District Attorney's Office
411 Elm Street, 5th Floor
Dallas, Texas 75202

25. SEVERABILITY:

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 other provisions in this Agreement. The illegal or invalid provision will be deemed stricken and deleted, but all other provisions shall continue and be given effect as if the illegal or invalid provisions had never been incorporated.

26. SOVEREIGN IMMUNITY:

This Agreement is expressly made subject to County's Sovereign Immunity, Title 5 of the Texas Civil Practices and Remedies Code, and all applicable federal and state law. The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability that the County has by operation of law.

27. COMPLIANCE WITH LAWS:

In providing services required by this Agreement, Contractor must observe and comply with all applicable federal, state, and local statutes, ordinances, rules, and regulations. Contractor shall be responsible for ensuring its compliance with any laws and regulations applicable to its business, including maintaining any necessary licenses and permits.

28. GOVERNING LAW AND VENUE:

The validity and interpretation of this Agreement, and the rights and obligations of the Parties hereunder, shall be governed by and construed in accordance with the laws of the State of Texas. This Agreement is performable and enforceable in Dallas County, Texas where the principal office of County is located and the state courts of Dallas County shall be the sole and exclusive venue for any litigation, special proceeding, or other proceeding as between the Parties that may be brought, or arise out of, in connection with, or by reason of this Agreement.

29. AMENDMENTS AND CHANGES IN THE LAW:

No modification, amendment, novation, renewal or other alteration of this Agreement shall be effective unless mutually agreed upon in writing and executed by the Parties hereto. Any alteration, addition or deletion to the terms of this Agreement which are required by changes in federal or state law are automatically incorporated herein without written amendment to this Agreement and shall be effective on the date designated by said law.

30. THIRD PARTIES:

The obligations of each Party to this Agreement shall inure solely to the benefit of the other Party, and no other person or entity shall be a third party beneficiary of this Agreement or have any right to enforce any obligation created or established under this Agreement.

31. ASSIGNMENT:

Contractor may not assign its rights and duties under this Agreement without the prior written consent of County and approval of the Dallas County Commissioners Court, even if such assignment is due to a change in ownership or affiliation. Any assignment attempted without such prior consent shall be null and void. Such consent shall not relieve the assignor of liability in the event of default by its assignee.

32. CONTRA PROFERENTUM:

The doctrine of contra proferentum shall not apply to this Agreement. If an ambiguity exists in this Agreement, the Agreement shall not be construed against the party who drafted the Agreement and such party shall not be responsible for the language used.

33. ENTIRE AGREEMENT:

This Agreement, including its attachments, exhibits, and addendums incorporated as a part hereof, shall constitute the entire agreement relating to the subject matter hereof between the Parties hereto and supersedes any other agreement concerning the subject matter of this transaction, whether oral or written, and except as otherwise provided herein, this Agreement may not be modified without prior written agreement of the Parties. Each Party acknowledges that the other Party, or anyone acting on behalf of the other Party has made no representations, inducements, promises or agreements, orally or otherwise, unless such representations,

inducements, promises or agreements are embodied in this Agreement, expressly or by incorporation.

34. BINDING EFFECT:

This Agreement and the respective rights and obligations of the Parties hereto shall inure to the benefit and be binding upon the successors and assigns of the Parties hereto, as well as the Parties themselves.

35. REMEDIES/WAIVER OF BREACH:

Pursuit of any remedy provided in this Agreement shall not preclude pursuit of any other remedies herein provided or any other remedies provided by law or equity, including injunctive relief, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any obligation of the defaulting party hereunder or of any damages accruing by reason of the violation of any of the terms, provisions, and covenants herein contained. No waiver of any term, covenant, condition or violation of this Agreement shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, and covenants herein contained, and forbearance to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. Any waiver of any provision of this Agreement or violation thereof must be by a written instrument.

36. FEDERAL FUNDED PROJECT:

If this Agreement is funded in part by either the State of Texas or the federal government, Contractor agrees to timely comply, without additional cost or expense to County, unless otherwise specified herein, with any statute, rule, regulation, grant, contract provision or other state or federal law, rule, regulation, or other similar restriction that imposes additional or greater requirements than stated herein and that is directly applicable to the services rendered under the terms of this Agreement.

37. DEFAULT/CUMULATIVE RIGHTS/MITIGATION:

It is not a waiver of default if the non-defaulting party fails to immediately declare a default or delays in taking any action. The rights and remedies provided by this Agreement are cumulative, and either Party's use of any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the Parties may have by law, statute, ordinance or otherwise. Contractor has a duty to mitigate damages.

38. PREVENTION OF FRAUD AND ABUSE:

Contractor shall establish, maintain and utilize internal management procedures sufficient to provide for the proper, effective management of all activities funded under this Agreement. Any known or suspected incident of fraud or program abuse involving Contractor's employees or

agents shall be reported immediately to the County by Contractor. Moreover, Contractor warrants that it is not listed on a local, county, state or federal consolidated list of debarred, suspended and ineligible contractors and grantees. Contractor and County agree that every person who, as part of their employment, receives, disburses, handles or has access to funds collected pursuant to this Agreement does not participate in accounting or operating functions that would permit them to conceal accounting records and the misuse of said funds. Contractor shall, upon notice by County, refund expenditures of the Contractor that are contrary to this Agreement and deemed inappropriate by the County.

39. FISCAL FUNDING CLAUSE:

Notwithstanding any provisions contained herein, the obligations of the County under this Agreement is expressly contingent upon the availability of funding for each item and obligation contained herein for the term of the Agreement and any extensions thereto. Contractor shall have no right of action against County in the event County is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this Agreement or failure to budget or authorize funding for this Agreement during the current or future fiscal years. In the event that County is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding, or if funds become unavailable, County, at its sole discretion, may provide funds from a separate source or may terminate this Agreement by written notice to Contractor at the earliest possible time prior to the end of its fiscal year.

40. NO BOYCOTT OF ISRAEL

Pursuant to Section 2270.002 of the Texas Government Code, Contractor verifies that it:

- (a) Does not boycott Israel; and
- (b) Will not boycott Israel during the Term of this Agreement.

41. COUNTERPARTS, NUMBER/GENDER AND HEADINGS:

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Words of any gender used in this Agreement shall be held and construed to include any other gender. Any words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

42. INDEPENDENT CONTRACTOR:

Contractor, including its employees, agents or licensees, is an independent contractor and not an agent, servant, joint enterprise or employee of the County, and is responsible for its own acts, omissions, forbearance, negligence and deeds, and for those of its agents or employees in

conjunction with the performance of services covered under this Agreement, and shall be specifically responsible for sufficient supervision and inspection to ensure compliance in every respect with the contract requirements. There shall be no contractual relationship between any subcontractor, agent, employee or supplier of the Contractor and the County by virtue of this Agreement.

43. SUBCONTRACTING:

Contractor may not enter into agreements with subcontractors for delivery of the designated services outlined in this Agreement without prior written consent of and approval by County. The costs of all subcontracted services are included in the fees paid herein. Subcontracts, if any, entered into by the Contractor will be in writing and subject to all requirements herein. Contractor agrees that it will solely be responsible to County for the performance of this Agreement. Contractor shall pay all subcontractors in a timely manner. County shall have the right to prohibit Contractor from using any subcontractor.

44. ASSURANCES:

- (a) In providing services required by this Agreement, Contractor agrees to observe and comply with all grant requirements, licenses, legal certifications, or inspections required for the services, facilities, equipment, or materials, and all applicable federal, state, and local statutes, ordinances, rules, and regulations. Contractor's failure to comply with this assurance shall be treated as a default and/or breach of this Agreement.
- (b) Contractor assures that it will not transfer or assign its interest in this Agreement without written consent of County. Contractor understands that in the event that all or substantially all of Contractor's assets are acquired by another entity, Contractor is still obligated to fulfill the terms and conditions of this Agreement. County approval to transfer or assign Contractor's interest in this Agreement to an entity that acquires all or substantially all of Contractor's assets is subject to formal approval by the Commissioners Court.
- (c) Contractor, by acceptance of the terms of this Agreement, agrees and ensures that personnel providing the services hereunder are duly licensed and/or qualified to perform the required services. Contractor further agrees and ensures that all program and/or facility licenses or permits necessary to perform the required services are current and that County will be notified immediately if such licenses or permits become invalid during the term of this Agreement.
- (d) Contractor agrees to adhere to confidentiality requirements, as applicable, for the services performed for County under this Agreement, and any other confidentiality provisions or laws, whether federal or state, relating to the services being providing hereunder.
- (e) Contractor assures that it will not use any information, documents, or data provided to Contractor by County for any proprietary purposes and shall not copy, sell, exchange, disclose

or provide to others or use any information, documents or data reasonably related to this Agreement for its own proprietary interests.

- (f) Contractor agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
- (g) Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations and non-discrimination laws and regulations. When required, Contractor shall furnish County satisfactory proof of compliance therewith.
- (h) Contractor certifies that it is not aware of any conflicts of interest involving any Dallas County official or employee related to this Agreement or the services provided under this Agreement.
- (i) Contractor certifies that it is not currently involved, either directly or indirectly, with any litigation against or involving Dallas County.
- (j) Contractor will develop and implement an agency-wide drug free work place policy. Contractor will also require that all contracts between itself and subcontractors also comply with said requirements.
- (k) Contractor understands that reimbursement for costs under this Agreement shall be in accordance with all applicable federal rules, regulations, cost principles, and other requirements relating to reimbursement.
- (l) Under Section 231.006, Texas Family Code, Contractor certifies to County that Contractor is not delinquent in any child support obligations and therefore ineligible to receive payment under the terms of this Agreement. Contractor hereby acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- (m) Contractor, by executing this Agreement, hereby certifies that it is not delinquent in its Texas franchise tax payments, or that it is exempt from, or not subject to such a tax. A false statement concerning the corporation's franchise tax status shall constitute grounds for termination of this Agreement at the sole option of the County.
- (n) Contractor certifies to County that Contractor is not delinquent on the repayment of any federal, state, or local debt or other obligation.
- (o) Contractor certifies that neither it nor any of its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this

Agreement by any federal, state, or local department or agency.

- (p) Contractor shall pay all subcontractors in a timely manner. County shall have no liability to any subcontractors in the event Contractor does not pay or delays payment to any subcontractors. At termination or expiration of this Agreement, Contractor shall deliver to County an affidavit of all bills paid. Final payment shall be contingent upon receipt of such affidavits as resolution of all accounting for which County is or may be liable under this Agreement.
- (q) Failure to comply with any of these assurances or any other requirements specified within this Agreement will put Contractor in default and/or breach of this Agreement and may result, at the sole discretion of County, in the disallowance of funds and the withholding of future awards, in addition to any other remedies permitted by law.

45. PROMPT PAYMENT ACT:

Contractor agrees that a temporary delay in making payments due to the County's accounting and disbursement procedures shall not place the County in default of this Agreement and shall not render the County liable for interest or penalties, provided such delay shall not exceed thirty (30) days after its due date. Any payment not made within thirty (30) days of its due date shall bear interest in accordance with Chapter 2251 of the Texas Government Code.

46. TAX

Dallas County, as a county of the State of Texas, is exempted from the payment of Texas state and local sales, excise, and use taxes pursuant to Tex. Loc. Gov't Code § 151.309, and shall therefore not be liable or responsible to the Contractor for the payment of such taxes under this Agreement.

The fees paid to Contractor pursuant to this Agreement are inclusive of any applicable sales, use, personal property or other taxes attributable to periods on or after the applicable effective date of this Agreement and based upon or measured by Contractor's cost in acquiring or providing products and/or services and related materials and supplies furnished or used by Contractor in performing his obligations hereunder, including all personal property and use taxes, if any, due on equipment or software owned by Contractor.

Contractor accepts full and exclusive liability for the payment of any and all contributions or taxes for Social Security, Workers' Compensation Insurance, Unemployment Insurance, or Retirement Benefits, Pensions, or annuities now or hereafter imposed under any state or federal laws which are measured by the wages, salaries, or other remuneration pay to persons employed by Contractor for work performed under the terms of this Agreement **and agrees to indemnify and save harmless the County from any such contribution or taxes or liability.**

47. TRANSITION SERVICES REQUIRED OF CONTRACTOR:

Upon notice of termination and/or expiration of this Agreement, the County shall immediately have the right to audit any and all records of Contractor relating to this Agreement. Moreover, upon the termination and/or expiration date of this Agreement, Contractor agrees to transition the services provided herein in a cooperative manner and provide anything requested from the County at no additional cost, including, but not limited to the following, upon date of termination and/or expiration: (i) All contract and services documentation, including all records, books and data reasonably related to this Agreement, maintained in accordance with Section 8 (Reporting and Accountability) of this Agreement and identified in a complete, neat and orderly manner; (ii) A good faith pledge to cooperate with County upon transition of services to another contractor or County department providing the same or similar services; (iii) Records, books and data, including electronic data, in a format compatible with County's information technology capabilities, or in a format compatible with a succeeding contractor's information technology capabilities, as determined by County; (iv) Final accounting of all income derived from the Agreement; (v) Downloading and removal of all County information from Contractor's equipment and software; and (vi) Removal of Contractor's services without degradation or other adverse affect on County's system. This provision shall survive termination or cancellation of this Agreement.

48. SIGNATORY WARRANTY:

The undersigned signatories for the Parties hereby represent and warrant that they are officers of their respective organizations for which they have executed this Agreement and that they have full and complete authorities to enter into this Agreement on behalf of their respective organizations and that the executions thereof are the acts of the parties involved and have been delivered and constitute legal, valid and binding obligations of the respective parties.

[Remainder of page intentionally left blank.]

49. ACCEPTANCES:

By their signatures below, the duly authorized representatives of County and Contractor accept the terms of this Agreement in full.

EXECUTED this _____ day of _____, 2020.

DALLAS COUNTY:

CONTRACTOR:

BY: Clay Jenkins
Dallas County Judge

BY: Miguel E. Solis
Consultant

Recommended:

BY: Gordon Hikel
Assistant County Administrator
Office of Small Business Enterprises

*Approved as to Form:

JOHN CREUZOT
DISTRICT ATTORNEY

BY: Lacey B. Lucas
Assistant District Attorney
Dallas County DA's Office, Civil Division

*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).