

FIRST AMENDMENT
TO
CONTRACT FOR SERVICES

THIS FIRST AMENDMENT to the Contract for Services dated April 26, 2017 and made effective April 26, 2017, is made and entered into April 9, 2018 (the "First Amendment"), between 22nd Century Technologies, Inc., having an office located at 220 Davidson Avenue, Suite 118, Somerset NJ, 08873 ("Contractor"), and the HOUSING TRUST FUND CORPORATION, having its principal office at 38-40 State Street, Albany, New York 12207 ("HTFC").

WITNESSETH:

WHEREAS, Contractor was a successful bidder pursuant to a request for proposals issued by HTFC on August 23, 2016 (the "RFP"); and

WHEREAS, HTFC and Contractor entered into a Contract for Services (the "Agreement") on April 26, 2017, pursuant to which Contractor provides certain services in support of HTFC's administration of the State of New York's Community Development Block Grant-Disaster Recovery ("CDBG-DR") program; and

WHEREAS, HTFC's Governor's Office of Storm Recovery ("GOSR") is specifically tasked with administering the State of New York's CDBG-DR program and therefore oversees and administers this particular Agreement; and

WHEREAS, HTFC/GOSR wishes to obtain continued services from Contractor that are within the scope of services sought under the RFP and provided by Contractor under the Agreement; and

WHEREAS, HTFC/GOSR and Contractor desire to amend the Agreement by means of this First Amendment in order to amend Exhibit A, Exhibit B, and extend the Term;

NOW, THEREFORE, pursuant to and in consideration of the above, and other mutual covenants and obligations herein contained, it is

STIPULATED AND AGREED as follows:

1. The first sentence of Section 4 of the Agreement, entitled "Period of Agreement," is hereby deleted and replaced with the following: "This Agreement shall commence as of the Effective Date and shall terminate on April 30, 2019".
2. Exhibit A to the Agreement is hereby replaced by Exhibit A1, as appended hereto.
3. Effective January 1, 2018, the rate table contained in the Section titled "Health Insurance" contained in the Exhibit B Fee Schedule is hereby replaced with the following:

For employees with annualized salaries equal to \$41,756 or less		For employees with annualized salaries greater than \$41,756	
Employee's bi-weekly cost		Employee's bi-weekly cost	
Individual	Family	Individual	Family
Contractor's bi-weekly cost, chargeable to GOSR		Contractor's bi-weekly cost, chargeable to GOSR	
Individual	Family	Individual	Family

4. All other terms and conditions, including appendices, attachments, exhibits, riders and Letter Agreements to the Agreement are hereby continued in full force and effect as though set forth herein.

IN WITNESS WHEREOF, the parties executed this First Amendment on the day and year first above written.

22nd Century Technologies, Inc.

By 

Name: Kulpreet Singh
Title: Director Sales
Date: 03/30/2018

Housing Trust Fund Corporation

By 

Name: Daniel Greene
Title: General Counsel, Governor's Office
Storm Recovery
Date: 4/9/18

EXHIBIT A1
SCOPE OF SERVICES

1. Project Overview: Contractor will support HTFC in meeting its Key Objective by providing temporary staffing services for GOSR.

2. Key Objective:

a. Contractor will provide temporary staff for, but not limited to, the following positions (the “Temporary Employee Classifications”):

- i. Administrative Assistant
- ii. Business Analyst
- iii. Compliance Officer
- iv. Contract Manager
- v. Data Analyst
- vi. Executive Assistant
- vii. File Clerk
- viii. Financial Analyst
- ix. Human Resources Assistant
- x. Human Resources Manager
- xi. Information Technology Specialist
- xii. Paralegal
- xiii. Policy Analyst
- xiv. Procurement Analyst
- xv. Program Administrator
- xvi. Program Assistant
- xvii. Program Manager
- xviii. Project Coordinator
- xix. Project Manager
- xx. Receptionist
- xxi. Unknown

b. The Temporary Employee Classifications are general guidelines only and is not inclusive of all positions that GOSR may need filled on a temporary basis during

the term of the Agreement. In the event that positions are added or modified, GOSR will submit a job description to each qualified Contractor in order to solicit hourly rate ranges for the new or modified position.

- c. Contractor must be prepared to commence these Services within ten (10) days of the execution of this Agreement.
- d. Upon execution of this Agreement, Contractor shall begin to develop a pool of candidates to match GOSR's staffing needs pursuant to Section 2(a) of this Exhibit A.

3. Deliverables for Key Objective: The key deliverables to be provided include the following:

a. Onboarding

- i. Upon receiving a request that GOSR has a temporary staffing need, Contractor shall seek out temporary staff to submit to GOSR for consideration. Prior to submitting candidates to GOSR, Contractor must complete Step 1 of the Employment Verification and Background Check in Section 3(b)(i) of this Exhibit A.
- ii. Contractor shall provide no fewer than three (3) prospective temporary staff for GOSR's consideration within five (5) days of receiving such request.
- iii. If the prospective temporary staff are deemed unsatisfactory, for whatever reason and at GOSR's sole discretion, then Contractor shall provide an additional pool of at least three (3) prospective temporary staff until such time as GOSR either deems a candidate satisfactory or cancels such request.
- iv. Upon notification by GOSR that a qualified temporary staff candidate has been identified, the Contractor will complete Step 2 of the Employment Verification and Background Check in Section 3(b)(ii) of this Exhibit A.
- v. If the prospective temporary staff candidate successfully passes the Employment Verification and Background Screening in both Sections

3(b)(i)-(ii), the sufficiency of which will be determined at GOSR's sole discretion, then Contractor shall make an offer of employment to the identified candidate(s).

b. **Employment Verification and Background Screening**

- i. Contractor must verify the education, professional certifications, and the previous five (5) year work history of each prospective candidate prior to sending any resume to GOSR in response to a request to fill. GOSR will then interview candidates it deems suitable following the initial screening.
- ii. For final selected candidates, prior to extending an offer, Contractor must verify professional and educational credentials, contact at least two (2) professional references (or one (1) professional reference if the candidate has been employed by that employer for five (5) years or more) and complete a criminal history background check. At a minimum, criminal background checks must include: a social security number search; multijurisdictional (national) seven (7)-year criminal search, including but not limited to sex offender registry, terrorist watch list, Patriot Act search, Office of Foreign Assets Control and Warrants; and a seven (7)-year county criminal search in the candidate's county of residence. Additionally, and only upon written request by GOSR, Contractor shall perform a background check that includes but is not limited to credit history, personal interviews, computer testing, psychological evaluations, drug testing, and social security tracing, as applicable. GOSR must be provided all background screening results within three (3) business days of request, upon which an extension of offer or continuation of employment offer are contingent. Should HTFC determine the background check inadequate, it reserves the right to either reject or require additional investigation from Contractor prior to engaging any employee of Contractor. Unless authorized by HTFC in writing, an employee of

Contractor may not perform services for HTFC prior to Contractor conducting a background check on such employee.

- iii. For candidates referred internally at GOSR, no professional reference or educational credential check is required, unless instructed by GOSR.

c. **Personnel Management**

- i. Contractor's temporary employees will perform under GOSR's operational supervision. GOSR shall provide operational supervision to Contractor's employees, which includes, but is not limited to, directing and controlling the manner and duration in which work is to be performed.
- ii. Contractor shall provide overall personnel management and staffing services, which will include, but not be limited to, the following:
 - 1. Recruitment and preliminary selection of qualified candidates for the positions described in Section 2(a) of this Exhibit A;
 - 2. Maintaining a pool of qualified candidates that will continuously be made available as needed and upon request by GOSR. The pool of potential candidates must be sufficient to meet GOSR's needs within five (5) business days of the request;
 - 3. Hiring and terminating employees;
 - 4. Collection and return of GOSR property following an employee's separation from GOSR;
 - 5. Disciplining employees; and
 - 6. Managing employee health benefits and enforcing paid time off limitations pursuant to Sections 3(d) and 3(e) of this Exhibit A.
- iii. Contractor shall assume all legal responsibility as the employer of the temporary service employee, including payment of wages and other

compensation due to employees. In addition, Contractor shall maintain compliance with all Federal and State payroll tax requirements, including but not limited to:

1. Payroll and related forms;
 2. Payment of social security, Medicare and withholding taxes;
 3. Benefits, as applicable;
 4. Worker's compensation insurance;
 5. Statutory disability benefits;
 6. Unemployment insurance;
 7. Other costs required by law or ordinarily furnished by Contractor;
 8. Computation of all payroll records and expenses and release of paychecks to employees;
 9. Provide all W-2 forms, as appropriate;
 10. Provide general liability for each employee, as required; and
 11. Furnish reports detailing employee work activity in a form and frequency to the satisfaction of GOSR.
- iv. Contractor shall administer any additional employment-related forms as requested by GOSR.
- v. Contractor shall provide GOSR with needed resources during peak demand periods, staffing shortages, or the vacations of regular employees.
- vi. Contractor shall accurately communicate and describe the job duties required to the temporary employee.

- vii. Contractor must ensure temporary employees report to work at the time and place specified by GOSR.
- viii. Contractor must make any arrangements necessary for GOSR to conduct interviews of potential temporary employees.
- ix. Contractor must offer, for optional use by temporary employees, a web-based timesheet process which monitors leave usage and balance information.
- x. Contractor must offer, for optional use by temporary employees, the direct deposit of paychecks.
- xi. Contractor shall perform all services provided in the contract in accordance with customary and reasonable industry standards.
- xii. GOSR's exact needs are unpredictable; however, the position titles specified in section 3.1 of the RFP includes those classifications from which GOSR is most likely to draw.

d. **Employee Health Benefits**

- i. Contractor must offer health insurance coverage to HTFC temporary employees that meet or exceed the standards of the Affordable Care Act of 2010—Platinum Plan (for New York City—Zip Code 10004) or the New York State Health Insurance Program Empire Plan, according to the same rates and terms as specified in Contractor's Bid submitted in response to Request for Proposal # 201608_049 for Temporary Staffing Services, for the Term of the Agreement. Prior to execution of this Agreement and upon request, Contractor must provide HTFC proof of such health insurance coverage. Should Contractor fail to secure the aforementioned coverage, HTFC has the sole discretion to reject Contractor's insurance coverage plan and provide Contractor a reasonable opportunity to secure alternate coverage.

- ii. **Effective Date of Insurance.** Contractor's health benefits plan must be made effective no later than the first day of employment for each temporary employee under this Agreement.
- iii. **Termination of Coverage.** Should Contractor's health coverage plan terminate for any reason, Contractor must secure replacement coverage pursuant to the requirements in Exhibit A Section 3(d)(i) in a timely manner such that no interruption of coverage results for any employee.
- iv. **Modifying Health Insurance Rates.** Temporary employee health insurance contribution rates shall match those of NYSHIP for the appropriate plan year. Effective for future calendar years starting with the 2018 calendar year, as New York State amends NYSHIP employee contribution rates at the beginning of each calendar year, Contractor may submit for GOSR review and approval, an employer contribution adjustment detailing the amended amount to be billed to GOSR. GOSR has the sole authority to reject or accept the adjusted rates.

e. **Paid Time Off**

- i. **Paid Time Off.** GOSR shall have the sole authority to establish a policy for paid time off and shall have the sole authority to determine its applicability to each employee. Contractor must provide paid time off benefits as directed by GOSR in its Standard Operating Procedure (the "SOP"), agreed to by the Parties. Contractor will be reimbursed by HTFC at a fixed multiplier rate of 1.20 for paid time off hours. Paid time off accrual for each employee shall begin on the first day of employment.
- ii. **Holiday Pay** for all New York State observed holidays. Contractor shall be reimbursed for all New York State observed holidays and all New York State floating holidays, in accordance with GOSR's SOP. Contractor will be reimbursed by HTFC at a fixed multiplier rate of 1.20 for these hours.
- iii. **Paid Sick Leave.** For eligible employees, Contractor must provide paid sick leave at the following accrual rate: a maximum of forty (40) annual

hours at an accrual rate of one (1) hour of sick leave for every thirty (30) hours worked, with no rollover from year to year. Such policy must comply with all applicable laws, including but not limited to New York City's Earned Sick Time Act as applicable to employees placed in positions located in New York City. This requirement is independent from and in addition to the Paid Time Off requirements of Section 3(e)(i)-(ii). Contractor will not be reimbursed by GOSR for these hours. GOSR shall have the sole authority to establish a standard for paid sick leave and shall have the sole authority to determine its applicability to each employee.

- iv. Overtime. GOSR shall have the sole authority to establish a policy for overtime eligibility and shall have the sole authority to determine its applicability to each employee. Eligible employees are entitled to receive overtime pay for hours worked in excess of forty (40) in a workweek, exclusive of any paid time off and/or sick leave time taken during the relevant billing cycle and exclusive of any make up time for preceding pay period(s), at a rate of one and a half times their regular rate of pay. Any time scheduled over forty (40) hours must be pre-authorized by the appropriate supervisor/manager prior to the employee working hours that extend beyond their normal schedule. The method of authorization shall be directed by GOSR in accordance with the most current policy.

f. **Reporting Requirements**

- i. By the fifth day of each month following the effective date of this Agreement, Contractor must provide GOSR with a report detailing the following information from the preceding month: (1) total number of hours worked each day by all employees placed in GOSR offices, as well as total daily dollar amount to be billed to GOSR; (2) total number of overtime hours authorized for each employee eligible to receive overtime pay and the total dollar amount of overtime hours to be billed to GOSR; (3) the total number of hours of the following categories accrued and

billed for each employee: floating holidays, holidays, paid time off, and sick time; and (4) any other report requested by GOSR.

g. **Additional Terms**

i. Travel

1. Travel expenses to and from GOSR offices shall not be reimbursable to Contractor.
 2. Should travel be required for a legitimate GOSR work activity or function, travel expenses shall be reimbursable in accordance with HTFC's Travel Policy
 3. Travel time outside the standard workday schedule will not be reimbursable to Contractor.
 4. Any and all travel-related activities must be pre-approved in writing by GOSR and will be determined on a case-by-case basis.
- ii. GOSR reserves the right to initiate wage increases and/or promotions at any time. GOSR-initiated wage increases will have no effect on the dollar value of the applicable mark-up unless the temporary employee is promoted to a new position title that warrants a different mark-up identified on the price proposal. Any Contractor -initiated wage increase shall not be charged to GOSR.
- iii. Contractor must timely submit each invoice in accordance with GOSR's invoicing procedure, within thirty (30) days following the date of service, unless otherwise approved by GOSR in writing.

h. **Modifications**

- i. Any reasonable modifications to this Exhibit A1 shall be reflected in GOSR's SOP, effectuated upon written agreement by the Parties.