

ORDINANCE No. _____
CONTRACT No. _____

**AGREEMENT FOR PROFESSIONAL
PARKING ACCESS AND REVENUE CONTROL SYSTEM INSTALLATION SERVICES
FOR THE HOUSTON AIRPORT SYSTEM**

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

THIS AGREEMENT FOR PURCHASE OF PARKING ACCESS AND REVENUE CONTROL SYSTEM (“PARCS”) AND PROFESSIONAL INSTALLATION SERVICES FOR THE HOUSTON AIRPORT SYSTEM (“Contract”) is made on the date countersigned by the City Controller (“Effective Date”) by and between the **CITY OF HOUSTON, TEXAS** (“City”), a Texas Home Rule City of the State of Texas principally situated in Harris County, and (“Contractor”), a Texas corporation. City and Contractor are referred to in this Contract individually as the “Party” or collectively as the “Parties”.

The Parties agree as follows:

ARTICLE 1. PARTIES

1.1 ADDRESS

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

<u>City</u>	<u>Contractor</u>
Director, Houston Airport System City of Houston PO Box 60106 Houston, TX 77205-0106	TBD

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1.2.1 This Contract consists of the following articles and exhibits:

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1.3 PARTS INCORPORATED

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

1.4 CONTROLLING PARTS

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

[SIGNATURE PAGE FOLLOWS]

1.5 SIGNATURE

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

CONTRACTOR

CITY OF HOUSTON, TEXAS

By: _____
Name:
Title:
Tax ID Number:_____

By: _____
Mayor

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

ATTEST/SEAL:
Signed by:

City Secretary

City Secretary

APPROVED:

APPROVED:

Director, Houston Airport System

Chief Procurement Officer

APPROVED AS TO FORM:

COUNTERSIGNED BY:

Assistant City Attorney
L.D. File No. 0042000129001

City Controller

DATE COUNTERSIGNED:

ARTICLE 2. DEFINITIONS

- 2.1 In addition to the words and terms defined elsewhere in this Contract, the following terms have the meanings set out below:
- 2.1.1 “Accept” or “Acceptance” means the act of the Director by which the City assumes for itself, approval of specific services, as partial or complete performance of the Contract.
 - 2.1.2 “Agreement” means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.
 - 2.1.3 “Applicable Law” means all laws, treaties, ordinances, judgments, decrees, injunctions, writs, orders, codes, rules, regulations, permits, and interpretations of any Governmental Authority having jurisdiction over the Parties, the Project, the Work, the Contract Documents, and each other document delivered hereunder or in connection herewith.
 - 2.1.4 “Business Day(s)” mean(s) any day that is not a Saturday, Sunday, or City Holiday. In the event that any deadline set forth in this Contract falls on a Saturday, Sunday, or City Holiday, the deadline shall automatically be extended to the next day that is not a Saturday, Sunday, or City Holiday.
 - 2.1.5 “Change Order” means either an increase or decrease in the Project Area, the Scope of Work, the locations of Disposal Site or other key elements of the projects.
 - 2.1.6 “City” is defined in the preamble of this Contract and includes its successors and assigns.
 - 2.1.7 “City Attorney” means the City Attorney of the City or any person designated by the City Attorney to perform one or more of the duties of the City Attorney under this Contract.
 - 2.1.8 “City Data” means all Documents and/or Information: (i) that the City discloses, supplies, or provides to Contractor under, pursuant to, or in connection with this Contract, (ii) that Contractor obtains, receives, or collects under, pursuant to, or in connection with this Contract, and/or (iii) collected, received, entered, stored, archived, retained, maintained, processed, or transmitted in, into, or by the Software. “City Data” does not include the Software, the Object Code, or the Source Code.
 - 2.1.9 “City Holiday” means any official City of Houston holiday as determined each year by the City Council.
 - 2.1.10 “City Personnel” means all City employees, but not elected officials.
 - 2.1.11 “Contractor” is defined in the preamble of this Contract and includes its successors and assigns. Any reference in this Contract to Contractor shall mean Contractor.

- 2.1.12 “Construction Phase Services” or “Construction Phase” means the implementation and execution of the construction work required by the Contract Documents. Construction Phase Services or Construction Phase includes Construction Contract Administration. The Construction Phase of the Project may be divided into different stages with each stage having different start and completion dates. Construction Phase Services shall not include the purchase of PARCS equipment.
- 2.1.13 “Contract Sum” shall mean the cost of completing all tasks described in the Contract Documents.
- 2.1.14 “Cost of the Work” means costs necessarily incurred by Contractor in the proper performance of the construction Work. Such costs shall be at rates and amounts not higher than the standard paid at the place of the Project except with the prior written consent of City Engineer to that specific rate or amount being higher than the standard. Cost of the Work shall not include costs not necessarily incurred or incurred at higher than permitted rates or amounts.
- 2.1.15 “CPO” means the City of Houston Chief Procurement Officer of the City of Houston, as set forth in Chapter 15 of the Houston Code of Ordinances.
- 2.1.16 “Day(s)” or “days” means calendar day, including weekends and legal holidays, whether capitalized or not, unless otherwise specifically provided. In the case of plural “days”, those days will be consecutive.
- 2.1.17 “Deliverable(s)” mean(s) any services, products, goods, software, case management databases and applications, documents, or other tangible item provided by Contractor to the City in connection with this Contract.
- 2.1.18 “Director” means the Director of the Houston Airport System, or any person designated by the Director to perform one or more of the Director’s duties under this Contract.
- 2.1.19 “Contract Documents” or “Documents” includes, but is not limited to, the following: scope of work, Construction Documents, General Conditions, Supplementary Conditions, Request for Proposal, agendas, analyses, audio or video recordings, bulletins, charts, circulars, communications (including any interoffice, social media, and other communications), computations, computer programs, copies, correspondence, data, databases, data compilations, data prototypes, designs, diagrams, diskettes, documents, drafts, drawings, electronic mail (email), electronically stored information, exhibits, facsimiles, forms, graphs, guides, images, information, inventions, items, letters, logs, manuals, maps, materials, memoranda, metadata, microfilm, minutes or meeting minutes, models, notes, notations, notebooks, operating manuals, original tracings of all drawings and plans, other graphic matter (however produced or reproduced), pamphlets, photographs (including any digital or film photographs), plans, printouts, policies, procedures, records, recordings (including any audio, video, digital, film, tape, and other recordings), reports, social media communications, software, specifications, tabulations, telegrams, underlying data, works, worksheets, work products,

writings, PARCS Demo and Replacement Manuals and any other writings or recordings of any type or nature (and any revisions, modifications, or improvements to them).

- 2.1.19.1 “Construction Documents” means those portions of the Contract Documents prepared by or for Contractor consisting of Drawings, diagrams, illustrations, schedules, reports, charts, analysis, maps, models, Specifications, the original reproducible of all Drawings and other submittal documents or other data that show the scope, extent, and character of the Work to be used for construction and further described in this Contract. “Construction Documents” shall also include the General Conditions, Supplementary Conditions and the Project Manuals related to PARCS Demo and Replacement.
- 2.1.20 “Effective Date” means the date the City Controller countersigns the signature page of this Contract and the Contract becomes effective and binding.
- 2.1.21 “Equipment” means _____, and as further described and listed in Exhibit “A” of this Contract.
- 2.1.22 “General Conditions” means the General Conditions of the Contract identified as the 00700 Documents (“Exhibit I”) which may include terms and conditions that are substantially the same as those found in this Contract and therefore shall be read together and interpreted by City and Contractor to eliminate conflict between the two. However, should a conflict exist, after City Engineer and Contractor have used best efforts to reconcile the conflict, the provision most favorable to the City shall prevail.
- 2.1.23 “Holiday” means any day that has been designated as such by City Council.
- 2.1.24 “HAS” means the City of Houston Airport System, the City of Houston’s department of aviation.
- 2.1.25 “Include” and “including”, and words of similar import, shall be deemed to be followed by the words “without limitation”.
- 2.1.26 “Letter of Authorization” or “LOA” means the fully executed document the Director sends to Contractor authorizing certain services to be performed by Contractor or products to be provided to City in accordance with this Contract. Unless otherwise specified in this Contract, all references to LOA in this Contract shall mean an LOA issued in accordance with and pursuant to this Contract.
- 2.1.27 “Notice to Proceed” means a written communication from the Director to Contractor instructing Contractor to begin performance under this Contract.
- 2.1.28 “Party” or “Parties” means City and Contractor who are bound by this Contract, individually or collectively as indicated in the context by which it appears.

- 2.1.29 “Project” includes all labor, materials equipment and vehicles necessary to complete the services described in Exhibit A of this Contract.
- 2.1.30 “Project Team” means City, Contractor, Project Architect, any separate contractors employed by City and other Contractors employed for the purpose of programming, design, and construction of the Project. The constitution of the Project Team may vary at different phases of the Project. The Project Team will be designated by the City Engineer and may be modified from time-to-time by the City Engineer.
- 2.1.31 “Project Schedule” means a schedule for Installation, Pre-Construction and Construction Phase Services as defined in Contract Documents or otherwise approved by the City Engineer.
- 2.1.32 “Services” means all services required by or reasonably inferable from the Contract, Specifications, the Request for Proposal and Exhibit A including all labor, materials, tools, supplies, equipment, transportation, mobilization, insurance, subcontracts, supervision, management, reports, incidentals, quality control, and other items necessary or incidental by Contractor to fulfilling Contractor’s obligations.
- 2.1.33 “Software” means the system described in Exhibit “A” of this Contract, including without limitation, any associated databases, user interfaces, software components or modules, and any documentation and user guides created or owned by Contractor.
- 2.1.34 “Term” means the entire period during which this Contract is in effect, starting on the Effective Date and continuing through the final date of termination or expiration of this Contract, including any renewals or extensions.
- 2.1.35 “Upgrades” means newer versions, new releases, improvements, software fixes, maintenance item, refreshes, updates, upgrades, modifications, customizations, enhancements, corrections, installation of patches, or other changes that have been made by the developer, seller, manufacturer, or licensor to the Software. The exterior form of the Upgrades may be reflected by changes to the version numbers/
- 2.1.36 “Work” means the provision of all services, labor, materials, supplies, and equipment, that are required, or reasonably inferable, to complete the Project in accordance with the requirements of the Contract Documents. The term “reasonably inferable” takes into consideration the understanding of the Parties that not every detail will be shown on the Drawings and included in the Specifications.
- 2.1.37 “Writing” or “written” shall mean a written communication from one Party to the other, including an electronic communication or e-mail.

- 2.2 When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular include the plural.
- 2.3 The word “*shall*” is always mandatory and not merely permissive.

SAMPLE

ARTICLE 3. DUTIES OF CONTRACTOR

3.1 SCOPE OF SERVICES

3.1.1 In consideration of the payments specified in this Contract, Contractor shall provide all labor, materials, and supervision necessary and reasonably inferable to install a new Parking Access and Revenue Control System (PARCS) using License Plate Recognition at the entrances and exits of George Bush Intercontinental Airport (IAH) and William P. Hobby Airport (HOU) parking facilities, and perform all Services and furnish the Deliverables described in the Scope/Specifications (Exhibit "A"). As articulated in the Scope/Specifications, certain aspects of this project may require construction services. The Contract Documents and the Construction Documents will be applicable to any such construction services.

3.2 COORDINATE PERFORMANCE

3.2.1 Contractor shall coordinate its performance with the Director as articulated in the Specifications and the Contract Documents. Contractor shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Contract.

3.3 REPORTS

3.3.1 As specified in the Specifications and the Contract Documents, Contractor shall submit to the Director, reports of progress on the project, including status of activity and the status of information requests made by the Director to the Contractor.

3.4 SCHEDULE OF PERFORMANCE

3.4.1 **The Schedule of Performance is articulated in the Project Schedule (Exhibit "K").**

3.4.2 *Time of Performance*

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

3.4.3 *Time Extensions*

3.4.3.1 If Contractor requests an extension of time to complete its performance, then the Director may, in consultation with the CPO, extend the time so long as the extension does not exceed 180 calendar days. The extension must be in writing but does not require amendment of this Contract. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

3.5 GENERAL CONTRACTOR REQUIREMENTS

3.5.1 Contractor represents and warrants that it has all the necessary rights, title, and interest to the Software, Equipment, documentation, and Documents to fully and legally comply with its obligations under this Contract. In the event there are third-party components in the Software, Equipment, documentation, and Documents, Contractor represents and warrants that these third-party components have been

fully licensed or purchased by Contractor for City's use for all purposes and therefore, City will not be subject to any other further licensing requirements, restrictions, or additional fees.

- 3.5.2 Contractor shall provide all Upgrades with respect to the Software, Equipment, hosting, maintenance, support, training, or professional services as specified in the Specifications. Contractor shall maintain the Software so that remote access and use by the City (and its end users) is available at all times. Contractor shall implement commercially reasonable procedures regarding application management, load balancing, back-up, recovery, and file and disk space utilization management, to ensure that the City can access the most recent Upgrades of the Software or that the Software may be reinstalled without undue delay. The PARCS equipment and Software shall be capable of continuous operation ninety-nine point nine-nine percent (99.99%) of the time, other than for scheduled interruption due to service maintenance and upgrades, such scheduled interruption due to service maintenance and upgrades performed only during non-business hours of _____. Contractor shall ensure the availability of qualified personnel at any and all times, ready to intervene to address any problems or inoperability of the Software, Equipment, documentation, and Documents, should the need arise.
- 3.5.3 Contractor shall not lock, suspend, or disable the Software or the City's local copy or database (if applicable); interfere with, cancel, or restrict the City's (and its end users) access to and continuous use of the Software, or make the City's local copy or database inaccessible to the City and its end users (if applicable).
- 3.5.4 The City may duplicate the Software or any part thereof for the purposes of system backup, testing, maintenance, or recovery. The City may duplicate the Documents and documentation for any use, including but not limited to, internal training.
- 3.5.5 During the Term of this Contract and any subsequent renewals or extensions, if Contractor replaces any of the Software or services named in this Contract or the corresponding Exhibits and offers products performing the same functions, but using improved technology, then the newer product may be substituted upon written request by the Director. These substitutions may also be noted in any subsequent Contract renewal documents without necessitating an additional process, provided, however, that this clause shall not be construed to allow inclusion of any equipment model, product, software, or service that changes the scope of the intent, technical specifications, or applications described in this Contract or the corresponding Exhibits.
- 3.5.6 If adequate funds are available under Section ____ (Limit of Appropriations) and if the Director provides Contractor with specific, written authorization, including but not limited to a LOA, Contractor shall provide additional services ("Additional Service(s)"). Contractor shall work with City to give the City the best pricing, which shall not exceed 80% of list price. The total charges for additions and deletions to this Contract may not exceed 25% of the original Contract amount unless the Additional Services are exempt from competitive bidding or proposal requirements set forth in Chapter 252 of the Local Government Code, or the City acquires the Additional Services from Contractor through competitive bids or proposals.
- 3.5.7 None of the provisions in this Section may limit the requirements, rights or services articulated in the Specifications or other Contract Documents.

3.6 CONTRACTOR CONSTRUCTION PHASE REQUIREMENTS

3.6.1 GENERAL REQUIREMENTS

3.6.1.1 Contractor shall perform all services and any other Contract Documents requirements, as well as those services and any other things reasonably inferable from the Contract Documents, including the Scope/Specifications, General Conditions and Supplementary Conditions.

3.6.1.2 Contractor and subcontractors shall perform all services in a manner that complies with the Contract Documents, including the Scope/Specifications, General Conditions and Supplementary Conditions.

3.6.1.3 For each Construction Phase, Contractor shall designate a representative in writing who is authorized to act on Contractor's behalf regarding the Project and who is also authorized to bind Contractor. Contractor shall not replace such representative without 30 days advance written notice to City Engineer. Contractor, at the City Engineer's request, shall attend public meetings and hearings concerning the development and schedule of the Project.

3.6.1.4 For each Construction Phase, Contractor shall establish and implement procedures for communication and coordination among the Project Team, Subcontractors, separate contractors, and all other entities performing the Work.

3.6.1.4.1 Subcontracts or other contracts shall conform to the applicable payment and other provisions of the Contract Documents, and shall not be awarded on the basis of cost plus a fee without the prior written approval of the City Engineer.

3.6.1.4.2 Except for design subcontracts which do not include any construction work as approved by City Engineer, by appropriate agreement, Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities that Contractor, by these Documents, assumes toward City. Contractor shall make available to each proposed Subcontractor prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Contractor shall provide City with a copy of each subcontract agreement upon request.

3.6.1.4.3 Each subcontract agreement is assigned by Contractor to City effective only after termination of this Contract and effective only for those subcontract contracts that City Engineer accepts by notifying the Subcontractor in writing. Contractor agrees to execute such additional documents as City Engineer may request to confirm such assignments. Contractor shall include a provision in each subcontract Contract recognizing the rights of City pursuant to the

foregoing contingent assignment. Despite such acceptance by City Engineer of any such assignment, City shall not be liable for anything under such subcontract prior to the acceptance by City Engineer of the assignment or for any liability of Contractor to the Subcontractor. Acceptance of any such assignment shall not relieve Contractor or the Subcontractor of their responsibilities and liabilities for any Work performed prior to City Engineer's acceptance of such assignment.

- 3.6.1.4.4 Contractor shall coordinate the activities of all Subcontractors. If the City performs other work on the Project or at the Site with separate contractors under the City's control, the Contractor agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without disruption.
- 3.6.1.4.5 Nothing contained in the Contract Documents shall create any obligations or liabilities owed by City to any Subcontractor or Supplier. City shall have no liability or responsibility for the performance of any Subcontractor or Supplier, even if City Engineer designated, required, identified or approved such Subcontractor or Supplier of any tier.
- 3.6.1.4.6 City Engineer may require Contractor to change any Subcontractor previously approved.
- 3.6.1.5 Contractor is an independent contractor and not an agent of City. Contractor shall be liable to City for acts and omissions of Contractor and Contractor's Subcontractors and Suppliers of any tier, and their agents, employees and parties in privity of contract with any of them and anyone acting on behalf of any of them, and any other persons performing any of the Work directly or indirectly under contract with Contractor, including any design professionals and their Contractors and sub-Contractors of any tier.
- 3.6.1.6 Contractor acknowledges that City will rely upon Contractor for proper performance of this Contract. Contractor and all of its design professionals and their Contractors, the Subcontractors and Suppliers and their agents and employees warrant that the information provided to City about the qualifications, including financial information and past performance, is accurate, has not materially changed, and does not omit information that would materially affect those qualifications and that Contractor is financially sound, fully solvent, and experienced in and fully qualified to perform the type of Work to be performed under this Contract.
- 3.6.1.7 Except for the obligation of City to pay Contractor certain applicable fees, costs, and expenses pursuant to this Contract, City has no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Contract.
- 3.6.1.8 **MWBE and MBE (Construction Phase):**

- 3.6.1.8.1 It is the City's policy to ensure that Minority and Women Business Enterprises ("MWBEs") have the full opportunity to compete for and participate in City contracts. The objectives of Chapter 15, Article V of the City of Houston Code of Ordinances, relating to City-wide Percentage Goals for contracting with MWBEs, are incorporated into this Contract.
- 3.6.1.8.1.1 During the Construction Phase Services, Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 9% of the value of Construction Phase services to MBE firms and 4% of the value of Construction Phase services to WBE firms.
- 3.6.1.8.2 Contractor shall require written subcontracts with all MWBE, MBE and SBE subcontractors and shall ensure the subcontracts contain the following terms:
- 3.6.1.8.2.1 "(MWBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's OBO Director ("the OBO Director")."
- 3.6.1.8.2.2 "(MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations."
- 3.6.1.8.2.3 "Within five business days of execution of this subcontract, Contractor (prime contractor) and (MWBE subcontractor) shall designate in writing to the OBO Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent."

3.6.2 Pre-Existing Conditions and Design Errors and Omissions

- 3.6.2.1 Before proceeding with the Construction Phase Services, Contractor shall review the Drawings, Specifications, and other Construction Documents and notify City Engineer of any errors, omissions, or discrepancies in the Construction Documents of which it is aware. Contractor is responsible for discovering and correcting any defect, error, omission, conflict, inconsistency, failure to comply with the Contract Documents, or lack of clarity in the Construction Documents. Contractor shall be responsible for all costs, including the cost of redoing or remedying the Work, including materials and time delays resulting from any defect, error, omission, conflict, inconsistency, lack of clarity, or failure to comply with the Contract Documents in the Construction Documents.

3.6.3 CONSTRUCTION PHASE SERVICES. The Construction Phase shall be deemed to commence upon the date specified in a Notice to Proceed issued by City Engineer after the City Engineer's approval of the Design Documents and shall continue until Final Completion of all Work. Pre-Construction Phase Services may overlap Construction Phase Services. Contractor shall not incur any costs for construction of the Work prior to issuance by City Engineer of the Notice to Proceed with Construction Phase Services. Contractor shall perform the following Construction Phase Services in addition to the services and responsibilities articulated in the Contract Documents:

3.6.3.1 General Responsibilities:

3.6.3.1.1 Construct the Work in accordance with the Contract Documents and as required by the General Conditions attached hereto as Exhibit "I" and Specifications within the time required by the Project Schedule approved by the City Engineer. No Work shall be allowed to proceed without an approved Project Schedule.

3.6.3.1.2 Designate in writing a representative who is responsible for the day-to-day management of the Construction Phase Services. The designated representative shall be City Engineer's primary contact during the Construction Phase and shall be available as required for the benefit of the Project and City. The designated representative shall be authorized to act on behalf of and bind Contractor in all matters related to Construction Phase Services, including, but not limited to, execution of Change Orders and applications for payment.

3.6.3.1.3 Contractor shall obtain building permits and special permits for permanent improvements as required by law and the Construction Documents. Assist City or Project Architect to obtain all approvals required from authorities having jurisdiction over the Project. Modify design documents as necessary for permitting.

3.6.3.1.4 Contractor shall Coordinate, monitor, and inspect the work of Subcontractors and others to ensure conformance with the Construction Documents.

3.6.3.1.5 City may perform quality assurance testing before approving payment of construction items.

3.6.4 Time

3.6.4.1 Time limits stated in the Contract Documents are of the essence. Contractor is responsible for schedule development, updating and reporting throughout the Project; including Construction Phase Services. Contractor shall comply in all regards with requirements set forth in the Contract Documents.

3.6.4.2 Time of Completion

- 3.6.4.2.1 The Construction Phase shall be deemed to commence on the Date of Commencement of the Work specified in a Notice to Proceed (Construction Phase) issued by City Engineer after approval of the Contract Documents.
- 3.6.4.2.2 Contractor shall achieve Final Completion of the Work on or before the date agreed to in the Contract Documents, subject to time extensions granted by Change Order.
- 3.6.4.2.3 The times set forth for completion of the work in the Notice to Proceed with Construction are an essential element of the Contract. The City Engineer may elect, at his or her option, to stage or "fast-track" portions of the Work. City shall issue a separate Notice to Proceed or Change Order for each stage and each stage shall have a separate substantial completion date and a separate liquidated damages amount.

3.7 GENERAL WARRANTIES

- 3.7.1 Warranties for hardware and software support shall comply with the Specifications and Contract Documents and commence upon Final Completion of the Project.
- 3.7.2 Post-Warranty software support services shall comply with the Specifications and Contract Documents.
- 3.7.3 Post-Warranty Hardware Maintenance Services shall comply with the Specifications and Contract Documents.

3.8 INTELLECTUAL PROPERTY WARRANTIES

- 3.8.1 Contractor warrants that it is the sole owner and/or has all necessary intellectual property rights in the entire right, title, and interests in and to the Services, work products, documentation, and Documents provided by Contractor to City under this Contract. Contractor further warrants that any Services, work products, Documents, and related documentation provided to City does not infringe upon any patent, copyright, trade secret, or any other rightful claim, proprietary or intellectual property right of any third party.
- 3.8.2 Contractor's performance shall conform to the professional standards prevailing in Harris County, Texas with respect to the scope, quality, due diligence, and care of the services and products Contractor provides under this Contract. Upon the Director's request, Contractor shall promptly re-perform and/or provide, at no charge to the City, any Services which fail to reasonably conform to the warranty contained in this section, any statement of work, project plan, or in any LOA. If the Services do not perform as warranted (a "Non-Conformity"), Contractor shall correct the Non-Conformity in accordance with this the specifications and this paragraph within a reasonable period of time not to exceed three (3) days from the date Contractor discovers the Non-Conformity or receives notice from the City of the Non-Conformity, whichever is earlier. Contractor acknowledges that time is of the essence. Contractor shall undertake to correct or repair at no cost to City such Non-Conformity in the Services, or if correction or repair is not reasonably possible and the Director approves, Contractor shall replace, free of charge, the applicable Services. If neither

of the foregoing is commercially practicable, the Director may terminate this Contract and within thirty (30) days of termination, Contractor shall provide the City with a refund of the entire fee paid.

- 3.8.3 (With respect to any parts and goods it furnishes, Contractor warrants:
- (a) that all items are free of defects in title, design, material, and workmanship,
 - (b) that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,
 - (c) that each replacement item is new, in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and
 - (d) that no item or its use infringes any patent, copyright, or proprietary right.
- 3.8.4 All Services shall undergo inspection and Acceptance by the Director (or his/her designee). Acceptance means the act of an authorized representative of the City by which the City assumes for itself, approval of specific services or delivery of specific products, as partial or complete performance of the Contract, project, LOA, work plans, or any other like document. City may submit written notification of defects or Non-Conformities at least up to one year after Acceptance of a specific Services provided.
- 3.8.5 Any Services corrected or re-performed by the Contractor shall be subject to this Section 3.7. (Warranties) to the same extent as Services initially provided. If the Contractor fails to or refuses to correct or re-perform to Director's satisfaction, the City may in its sole discretion, by contract or otherwise, correct or replace with similar services or products and charge to the Contractor the cost to the City for the correction or replacement.
- 3.8.6 None of the provisions in this section shall limit requirements, rights or services articulated in the Specifications or Contract Documents.

3.9 DATA SECURITY AND LIABILITY FOR LOSS OR CORRUPTION OF DATA

- 3.9.1 Contractor shall maintain the security of all City data, including but not limited to, all City-specific data, user data, and any other data that is provided to Contractor by City or by any user, or that Contractor generates, creates, or analyzes for the City. Contractor shall implement and maintain reasonable administrative, technical, and physical controls, safeguards, measures, and procedures to (i) protect and safeguard the privacy, security, integrity, and confidentiality of the City's Information and City data, (ii) prevent, detect, contain, and correct security breaches in, involving, or against the City's Information and City data, and (iii) ensure that the City's Information is not accessed, processed, stored, transmitted, transferred, copied, disposed of, archived, or disclosed contrary to the provisions of this Contract or applicable laws concerning information technology security, network or data security, and privacy laws. Contractor shall be responsible and liable for the acts and omissions of Contractor's personnel, temporary employees, agents, and subcontractors in connection with the provision of the services required under this Contract, as if such acts or omissions were Contractor's acts or omissions. With respect to any of Contractor's personnel, temporary employees, agents, and subcontractors who process, store, transmit, access, dispose of, or have access to the City's Information,

City data, or the Software in so far as it relates to Contractor's performance of this Contract, Contractor shall:

- 3.9.2 Advise these persons of and require that they comply with the provisions of this Contract applicable to each person, including without limitation, the provisions relating to the privacy, security, integrity, and confidentiality of the City's Information and City data;
- 3.9.3 Require these persons to execute and deliver to Contractor written Contracts that are a direct flow-down of, or substantially similar to (or no less restrictive than) the terms of this Contract, including without limitation, with respect to privacy, security, integrity, and confidentiality of the City's Information and City data; and
- 3.9.4 With respect to Contractor's personnel with access to the City's physical property or premises, Contractor shall advise these persons of applicable visitor policies and require that they comply with them and only access authorized areas.
- 3.9.5 Pursuant to this Contract, Contractor shall be responsible for any fraudulent or dishonest acts committed by Contractor's employees, agents, subcontractors, directors, or officers.
- 3.9.6 Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, user information, data, materials, processes, and documents (collectively, the "Information") that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Contractor shall obtain written contracts from its agents, employees, contractors, and subcontractors which bind them to the terms in this Section. The placement of a copyright notice on any Information will not be construed to mean that such information has been published and will not release Contractor from its obligation of confidentiality hereunder. The terms and conditions of this Confidentiality section shall survive the expiration or termination of this Contract for any reason. Upon request by the Director at any time during the Term and upon expiration or termination of this Contract, Contractor shall retain, migrate, or dispose of the City's Information as directed by the Director. Within two (2) days of Contractor's receipt of the Director's written request to retain, migrate, or dispose of the City's Information, Contractor shall notify the Director in writing of the estimated storage size and types of data to be retained, migrated, or disposed of. Within thirty (30) days of Contractor's receipt of the Director's written request to retain, migrate, or dispose of the City's Information, Contractor shall perform the following to the extent applicable unless otherwise directed by the Director:
 - 3.9.6.1 deliver the City's Information (in whole or in part, as directed by the Director) and physical media owned or provided by the City to the Director, in the format and on the media requested by the Director;
 - 3.9.6.2 destroy the City's Information (in whole or in part, as directed by the Director) and provide a notarized statement of destruction to the Director;
 - 3.9.6.3 destroy physical media using secure methods;

- 3.9.6.4 remove the City's Information (in whole or in part, as directed by the Director) from the hosted database, storage device, or other repository or storage means;
- 3.9.6.5 retain the City's Information (in whole or in part, as directed by the Director) and migrate the designated information to a mutually agreed upon, secure location, database, or storage device for storage and retention of City Information.
- 3.9.7 **United States Restriction.** Contractor shall ensure that, at all times, all of the City data shall remain in networks, systems, facilities, data centers, gateways, hosting facilities, and cloud facilities physically located solely in the continental United States. Contractor shall not transmit, disclose, have access to, or process City data outside of the continental United States. At all times, Contractor shall provide support calls from within the boundaries of the continental United States.
- 3.9.8 **SSAE 18 Compliance.** Contractor shall maintain an information security program that provides for the security and protection of the City data, including, but not limited to, processes and procedures to respond to security incidents. Contractor will operate in conformance with the physical, technical, operational and administrative measures and protocols regarding data security as set forth in its then current Standards for Attestation Engagements ("SSAE") No. 18 SOC2 Report (or equivalent report), received from its third party auditors. Contractor will, upon written request, provide City with copies of then-current SSAE No. 18 report issued by its third party independent auditors in relation to the data security policies and procedures designed to meet the requirements set forth in this Contract.
- 3.9.9 **Data Breach.** If Contractor learns that any person (including Contractor personnel and third parties) has gained unauthorized access to City data, or any person has gained unauthorized access to Contractor's network and/or data storage facilities such that any City data is obtained by an outside party, or the City data has otherwise been disclosed to unauthorized parties in connection with this Contract (other than in the proper performance of those services or support therefor), (each an "Incident"), then Contractor shall promptly (within 48 hours) (i) notify the City Attorney and Director in writing of the nature and extent of the Incident; (ii) conduct an investigation to determine when and, if possible, how the Incident occurred, and then (iii) reasonably assist the City in investigating and assessing the extent and nature of the Incident; (iv) use all reasonable endeavors to promptly remedy the Incident and prevent the occurrence of any similar Incident; and (v) inform the City upon request as to the current status of such endeavors. Contractor shall be liable for such data breach or unauthorized access, including but not limited to, any related costs or expense and any notification required by law or regulation.
- 3.9.10 If as a result of Contractor's negligence, any City data is lost or corrupted, Contractor shall restore the data to the previous day's uncorrupted state. Loss or corrupted data means data that is inaccessible, and not merely one that contains inaccurate data due to service defects or other reasons.
- 3.9.11 Contractor shall maintain and implement disaster recovery and avoiding procedures to ensure that the Services provided by Contractor are not interrupted during any disaster and the City's Information or City data (including but not limited to user data) is not lost or destroyed during any disaster. For any of the City's

Information or City data (including but not limited to user data) that is managed, maintained, stored, or hosted by or on behalf of Contractor, Contractor shall execute nightly database or systems backups to a backup server.

3.10 Information, Data, Work Products, and Ownership

- 3.10.1 The City expressly acknowledges that all copies of off-the-shelf software (expressly excluding any customized or custom software or work product) provided by Contractor to the City under this Contract are the sole property of Contractor and/or its suppliers, and that the City shall not have any right, title, or interest to any such software and except as provided, authorized, or acquired in or under this Contract.
- 3.10.2 The City is, will be, and shall remain at all times the owner of all of the City's Information. Contractor expressly acknowledges that the City has all right, title, or other ownership interest in the City's Information and Contractor shall not possess or assert any lien or other right against the City's Information. The City is, will be, and shall remain the owner of all City data, including City-specific data created or generated by either party, pursuant to this Contract. The City may use this City data, including data provided by Contractor, for any purpose. At all times, including during or after the termination or expiration of this Contract or any license Contractor grants to the City, the City retains the right to reveal or extract the City's Information and all City data and City-specific data from the Contractor provided software, hardware, documentation, and Documents, and the right to use the City data, City-specific data, and the City's Information for the City's own use, for use with other non-Contractor software or hardware, or to load elsewhere. Contractor shall provide a data export tool that is requested or approved by the Director that returns City data and City-specific data on demand. Contractor shall not use City data and City-specific data for any other purposes other than what is expressly specified in this Contract.
- 3.10.3 Subject to Section 3.9.(1), Contractor hereby irrevocably transfers, conveys and assigns to the City and its successors, licensees, and assigns, its entire right, title, interest and full ownership worldwide in and to any work, invention, creation, data, discovery, and all documents, and the copyrights, patents, trademarks, trade secrets, service marks, moral rights, all contract and licensing rights, and all claims and causes of action with respect to any of the foregoing, whether now known or hereafter to become known, and any other proprietary rights therein (collectively "Proprietary Rights") that Contractor, its agents, employees, Contractors, and subcontractors (collectively "Authors") develop, write, create, invent, discover, compile, or produce under this Contract or under or in connection with any LOA or Project (collectively "Works").
- 3.10.4 In the event Contractor has any rights in the Works which cannot be assigned, Contractor shall and does hereby waive enforcement worldwide of the rights against City, its successors, licensees, assigns, distributors and customers or, if necessary, to exclusively license the rights, worldwide to City with the right to sublicense. These rights are assignable by the City. The Authors shall not claim or exercise any Proprietary Rights related to the Works unless agreed and specified in the LOA under which the Works are developed. If requested by the Director or the City Attorney, Contractor shall place a conspicuous notation on any Works, which states that the City owns the Proprietary Rights.

- 3.10.5 Contractor shall execute (and cause Authors to execute) all documents and perform all necessary steps required by the Director City Attorney to allow the Director and City Attorney to establish and demonstrate ownership of the Works and to further evidence this assignment and ownership. Contractor shall cooperate with the City in registering, prosecuting, creating, and enforcing Proprietary Rights arising under this Contract. If Contractor's assistance is requested and rendered under this Section, the City shall reimburse Contractor for all out-of-pocket expenses it incurs in rendering assistance, SUBJECT TO THE APPROPRIATION OF FUNDS (Section ____). On termination or expiration of this Contract, or if requested by the Director or the City Attorney, Contractor shall deliver all Works to the Director or the City Attorney at the Contractor's expense. Contractor shall obtain written agreements from the Authors that bind the Authors to the terms in this Section, including without limitation, the assignment of all Works by Contractor (and Authors) to City which are created under, for, or in connection to this Contract, LOA, or Project.
- 3.10.6 The Works, as defined in Section 3.9.3, and all rights are being sold in their entirety to the City and do not constitute a mere license or franchise to the City. On termination of this Contract, and without regard to whether the Works are completed, Contractor shall deliver all Works to the City.
- 3.10.7 All Works developed, written, or produced under this Contract for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, shall be deemed to be "works made for hire" under 17 U.S.C. §§101 and 201, as amended from time to time. Contractor acknowledges and agrees that all Information, Documents, and Works performed under or pursuant to an LOA in connection with this Contract shall be deemed "works made for hire." To the extent that title to the Works or any portion of the Works may not, by operation of law, vest in the City or the Works or any portion of the Works may not be considered "works made for hire", Contractor hereby irrevocably assigns, conveys, and transfers to City and its successors, licensees, and assigns, all rights, title, and interest worldwide in and to the Works and all Proprietary Rights.
- 3.10.8 Contractor shall obtain written contracts from its agents, employees, Contractors, and subcontractors performing work under this Contract which bind them to the terms in this Section unless otherwise already bound automatically as employees of Contractor.
- 3.10.9 Contractor may retain copies of the Works for its archival purposes only. Contractor shall not otherwise use, sell, license, distribute, reproduce, publish, commercialize, or market the Works without the express written permission of the City. If such permission is agreed to by the Director, such express written permission shall be given by the City in a separate Contract between the City and Contractor.

3.11 Ownership and Use of Work Products.

- 3.11.1 Contractor conveys and assigns to the City its entire interest and full ownership worldwide in and to any work, invention, notes, plans, computations, data bases, tabulations, exhibits, reports, underlying data photographs and other work products, and any modifications or improvements to them (collectively "Documents"), and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively "Proprietary Rights") that Contractor, its agents, employees, Contractors, and Subcontractors (collectively "Authors") develop, write, or produce under this Contract (collectively "Works"). The City may duplicate any software or part thereof that is provided by or licensed from the Contractor.
- 3.11.2 The Authors shall not claim or exercise any Proprietary Rights related to the Works as defined in Section 3.10.1. If requested by the Director, Contractor shall place a conspicuous notation on any Works which indicates that the City owns the Proprietary Rights.
- 3.11.3 Contractor shall execute all documents required by the Director to further evidence this assignment and ownership. Contractor shall cooperate with the City in registering, creating, and enforcing Proprietary Rights arising under this Contract. If Contractor's assistance is requested and rendered under this Section, the City shall reimburse Contractor for all out-of-pocket expenses it incurs in rendering assistance, subject to the availability of funds. On termination of this Contract, or if requested by the Director, Contractor shall deliver all Works to the City. Contractor shall obtain written contracts from the Authors which bind them to the terms in this Section.
- 3.11.4 All Works developed, written, or produced under this Contract for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, are "works made for hire."
- 3.11.5 Contractor may retain copies of the Documents for its archives. Contractor shall not otherwise use, sell, license, or market the Documents. The City, however, grants Contractor, and its respective members, a license to use the Documents solely for business development and marketing purposes.

3.12 PAYMENT OF SUBCONTRACTORS

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

3.13 CONTRACTOR'S PERSONNEL

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

3.14 RELEASE

- 3.14.1 **CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS CONTRACT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY. CONTRACTOR HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS CONTRACT.**

3.15 INDEMNIFICATION

3.15.1 INDEMNIFICATION – GENERAL

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

- 3.15.1.1.1 **CONTRACTOR 'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 3.14.1.1.-3.14.1.3., "CONTRACTOR ") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**

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

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

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

3.16 INTELLECTUAL PROPERTY RELEASE AND INDEMNIFICATION

3.16.1 CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONTRACTOR, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS CONTRACT INFRINGES ON A PATENT, COPYRIGHT, SERVICE MARK, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

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

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

3.17 SUBCONTRACTOR'S INDEMNITY

3.17.1 CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY

THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

3.18 INDEMNIFICATION PROCEDURES

3.18.1. Notice of Claims

3.18.1.1. If the City or Contractor receives notice of any claim or circumstances, which could give rise to an indemnified loss, the receiving Party shall give written notice to the other Party within 10 days. The notice must include the following:

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

3.18.1.1.2 the basis on which indemnification may be due, and

3.18.1.1.3 the anticipated amount of the indemnified loss.

3.18.1.2. This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10-day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay. If Contractor does not provide this notice within the 10-day period, it does not waive any right to indemnification except to the extent that City is prejudiced, suffers loss or incurs expenses because of the delay.

3.18.2. Defense of Claims

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

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

3.19 INSURANCE

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

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

3.19.2. *Insurance Coverage.* At all times during the term of this Contract and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the Contract requirements. Prior to beginning performance under the Contract, at any time upon the Director's request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Contractor shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Contractor waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Contractor shall also require all subcontractors or Contractor s to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

3.19.3. *Form of Insurance.* The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (a) excuse noncompliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Contract. The policy issuer shall (i) have a Certificate of Authority to transact insurance business in Texas, or (ii) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide.

3.19.4. *Required Coverage.* The City shall be an Additional Insured under this Contract, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other Contract provisions. Contactor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also

contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Contract. If professional liability coverage is written on a "claims made" basis, Contractor shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Contract with a duration of two years after substantial completion.

- 3.19.5. *Notice.* **CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the 30-day period, Contractor shall provide other suitable policies in order to maintain the required coverage. If Contractor does not comply with this requirement, the Director, at his sole discretion, may immediately suspend Contractor from any further performance under this Contract and begin procedures to terminate for default.

3.20 PROFESSIONAL STANDARDS

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

3.21 ACCEPTANCE AND REJECTION

- 3.21.1 Contractor shall not be entitled to payment and the City shall have no duty to pay Contractor unless the Director or his designee has Accepted the Services and other Deliverables as set forth in **Exhibit "A"** and the Contract Documents.
- 3.21.2 Contractor shall provide written notice to the Director upon completion and/or delivery of the Services and other Deliverables as set forth in **Exhibits "A"**. The Director shall Accept in writing such Services and other Deliverables on or before the 20th Business Day after the date of receipt of such notice by the Director unless, prior to such 20th Business Day, the Director sends written notice to Contractor stating the reason(s) why any Services and other Deliverables have been rejected and not Accepted.
- 3.21.3 Notwithstanding anything to the contrary in Exhibit A or elsewhere, the Director may, in his sole discretion, approve in writing a partial Acceptance of the Services and other Deliverables set forth in **Exhibits "A"**.
- 3.21.4 If the Director rejects any Services or other Deliverables, Contractor shall have 10 Business Days after the Director sends written notice of rejection to correct or otherwise replace such Services or other Deliverables as necessary to conform to this Contract, at no additional cost to the City. Contractor shall provide written notice to the Director upon completion of any such correction(s) or replacement(s) after the receipt of which the Director shall continue to either Accept or reject (as provided under this Section) and Contractor shall continue to make any necessary correction(s) or

replacement(s) (as provided under this Section) until the Director Accepts in writing all previously rejected Services or other Deliverables.

3.21.5 Notwithstanding anything to the contrary herein or elsewhere, if the Director does not Accept any Services or other Deliverables after one or more attempted correction(s) or replacement(s) of such Services or other Deliverables by Contractor, the Director may, in his sole discretion, issue a final rejection notice to Contractor for all Services and other Deliverables (whether or not previously Accepted), the City shall return all Equipment and Software to Contractor at no cost to the City, the City shall have no obligation to pay any amount whatsoever under this Contract, Contractor shall immediately refund any and all amounts paid by City under this Contract, and this Contract shall immediately terminate.

3.21.6 The City reserves all other available rights and remedies at law or in equity, including without limitation all rights and remedies and rights under Article 2 of the Texas Business and Commercial Code.

3.22 AIRPORT CUSTOMS SECURITY BOND

3.22.1 If applicable, in accordance with Title 19 of the Code of Federal Regulations, Part 113, the Contractor shall obtain an Airport Customs Security Bond in order to have access to the Federal Inspection Station (FIS), and One Stop Cargo and Fumigation Facility at George Bush Intercontinental Airport (IAH) and William P. Hobby Airport (HOU).

3.23 CONFIDENTIALITY

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

3.24 SENSITIVE SECURITY INFORMATION

3.24.1 Contractor shall take all appropriate measures in accordance with 49 C.F.R. 1520 and other applicable laws to protect all proprietary, privileged, confidential, or otherwise Sensitive Security Information ("SSI") that may come into Contractor's possession as a result of this Contract.

3.25 LICENSES AND PERMITS

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

3.26 COMPLIANCE WITH LAWS

3.26.1 Contractor and its Subcontractors shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances in their performance under this Contract including, but not limited to the City's Wage Theft Ordinance set out in Section 15-61 et seq. of the City Code of Ordinances.

3.27 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE

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

3.28 TITLE VI ASSURANCES

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

3.29 MWBE COMPLIANCE

3.29.1. In its performance under this Contract, Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply contracts in at least 0% of the value of this Contract to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunities ("OBO") and will comply with them.

3.29.2. Contractor shall maintain records showing:

3.29.2.1. Subcontracts and supply contracts with Minority Business Enterprises,

3.29.2.2. Subcontracts and supply contracts with Women's Business Enterprises, and

3.29.2.3. Specific efforts to identify and award subcontracts and supply contracts to MWBEs.

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

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

3.30 DRUG ABUSE DETECTION AND DETERRENCE

3.30.1. It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs

or alcohol by Contractor while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Contract and is on file in the City Secretary's Office.

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

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

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

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

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

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

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

3.31 ADDITIONS AND DELETIONS

3.31.1. Subject to the allocation of funds, the Director or CPO may add similar supplies, services, or locations, within the scope of this Contract, to the list of supplies, services, or locations to be performed or provided by giving written notification to Contractor. For purposes of this Section, the "Effective Date" means the date specified in the notification from the Director or CPO. As of the Effective Date, each item added is subject to this Contract, as if it had originally been a part, but the charge for each item starts to accrue only on the Effective Date.

3.31.2. If a deliverable or service that is subject to this Contract is deleted, lost, stolen, destroyed, damaged, sold, replaced, or otherwise disposed of, the Director or CPO may exclude it from the operation of this Contract by notifying Contractor in writing. The notice takes effect immediately on its receipt by Contractor. More

than one notice may be given. When a notice is received, Contractor shall delete the charge for the excluded deliverable or service from the sum(s) otherwise due under this Contract.

3.32 PAY OR PLAY

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

3.33 ANTI-BOYCOTT OF ISRAEL

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

3.34 ZERO TOLERANCE FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES

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

3.35 USE OF PRODUCTS

3.35.1 In the performance of this Contract, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (i) competitively within a timeframe providing for compliance with the contract performance schedule; (ii) meeting contract performance requirements; or (iii) at a reasonable price.

3.35.2 Contractor shall abide by the list of EPA-designated items available on EPA’s Comprehensive Procurement Guidelines web site: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

3.36 AIRPORT BADGING AND SECURITY

3.36.1 Each employee of Contractor and its subcontractors must wear a badge issued by the Houston Airport System at all times while on airport property. Contractor shall be responsible for the cost of the initial badges and any replacements thereof.

3.36.2 The Transportation Security Administration may assess fines and/or penalties for Contractor’s non-compliance with the provisions of 49 CFR Part 1542 entitled “Airport Security,” as amended from time to time, or by agencies for noncompliance

with laws or regulations applicable to Contractor's operations. Within 10 days after receiving written notice from the Director stating the amount of any fine or penalty, Contractor shall reimburse the City for any fine or penalty assessed against the City because of Contractor's non-compliance with 49 CFR Part 1542 or other applicable laws or regulations.

3.37 AIRPORT SYMBOL

3.37.1 Contractor shall have no right to use the trademarks, symbols, trade names or name of the City, either directly or indirectly, in connection with any production, promotion service or publication without the prior written discretionary consent of the Director.

3.38 CONFLICTS OF INTEREST

3.38.1 If an actual or potential conflict arises between the City's interests and the interests of other client(s) Contractor represents, Contractor shall immediately notify the Director in writing. The City Controller shall issue a letter of consent or non-consent to Contractor's representation, potential or otherwise, of the other client(s) within 10 Business Days after receipt of Contractor's notice. If the City Controller issues a non-consent letter, Contractor shall immediately terminate its representation, potential or otherwise, of the other client(s) whose interests are or may be in conflict with those of the City.

3.39 PERFORMANCE BOND

Contractor shall furnish a performance bond for [\$-----] conditioned on Contractor's full and timely performance of the Contract. The bond must be in a form as **Exhibit K** and approved by the City Attorney and issued by a corporate surety authorized and admitted to write surety bonds in Texas. If the amount of the bond exceeds \$100,000, the surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability in excess of \$100,000 by a reinsurer listed on the U.S. Treasury list.

ARTICLE 4. DUTIES OF CITY

4.1 PAYMENT TERMS

4.1.1. The City shall pay Contractor for its services as set forth in **Exhibit "B"**, which must only be paid from Allocated Funds, as provided below.

4.2 TAXES

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

4.3 METHOD OF PAYMENT

4.3.1 *Generally*

4.3.1.1 The City shall pay on the basis of monthly invoices submitted by Contractor and approved by the HAS Director. All invoices shall be provided for the prior month's services.

4.3.1.2 The City shall pay fees to Contractor as specified herein for all products and services provided and rendered by Contractor in accordance with the terms and conditions of this Contract and the prices and fee schedule as set out in Exhibit "B" (Pricing and Fee Schedule). SUCH PAYMENT SHALL ONLY BE MADE FROM ALLOCATED FUNDS, as provided below. The City shall pay invoices submitted by Contractor and approved by the Director or his or her designee, showing the services performed and the attendant fee, if applicable. The City shall pay Contractor within 30 days of an approved invoice.

4.3.1.3 Contractor shall perform or provide Additional Services in response to an LOA signed by Contractor and the Director. The method of payment will be specified in each LOA and may be a Fixed Lump Sum with a Not To Exceed amount. The amount of partial payment due for services performed during the period covered by the invoice may be either: (a) a percentage of the Fixed Lump Sum fee equal to the percentage of services performed on each LOA or (b) milestone or deliverables based payment amounts as set forth in a payment schedule attached to or incorporated in the individual LOA. Prior to Contractor commencing any work, performing any services, or providing products under any LOA, the Director and Contractor shall mutually agree, in writing, upon a payment method, partial payment amounts, if any, and a payment schedule.

4.3.1.3.1 Fixed Lump Sum Services.

The City shall make partial payment of the Fixed Lump Sum fees for lump sum services on the basis of monthly invoices submitted by Contractor and approved by the Director. The invoices based on Fixed Lump Sum fees for lump sum services must include all of the following:

- a. The purchase order and purchase requisition number for the applicable City department to whom the invoice is submitted;
- b. The percentage of the total services completed for each LOA in the preceding month;
- c. A summary of the services performed, deliverables provided, and milestones reached for each LOA during the period covered by the invoice;
- d. The amount due for the services;
- e. The amount of any applicable credits or refunds; and
- f. Any other information or supporting documentation required by the Director.

4.3.2 *Prompt Payment*

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

Payment Time	
Days	Percentage Discount
10	2%
20	1%

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

4.3.3 *Invoicing*

4.3.3.1 The Director will certify the correctness of each invoice and arrange payment. The invoice must be identified by the Contract name and Contract number. Certification and payment does not preclude the Director from subsequently indicating that a particular certification or payment is incorrect. In addition, it does not preclude the City from recovering excess payments. The HAS invoices shall be delivered or mailed to the following location:

City of Houston
 Houston Airport System
 Finance Division/Accounts Payable
 Post Office Box 60106
 Houston, TX 77205-0106

4.3.3.2 Contractor may submit invoices electronically provided they are submitted in accordance with the following requirements and support information. Each invoice shall be in PDF or TIFF format. Multiple invoices can be submitted in a single email with one invoice per file. Requirements are as follows:

- Submit invoices in "PDF or "TIFF" format
- Submit to has.accountspayable@houstontx.gov

4.3.3.3 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this section, the Contractor shall promptly comply with such demand. The City shall have

no duty to third parties to withhold payment to the Contractor and shall incur no liability for a failure to withhold funds.

4.3.4 *Disputes*

4.3.4.1 If the Director disputes an invoice Contractor submits for any reason, including lack of supporting documentation (as may be required by the Director in his sole discretion), the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only. The amount withheld shall not be subject to payment of interest by City.

4.4 LIMIT OF APPROPRIATION

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

4.4.2. In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated \$_____ to pay money due under this Contract (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Contract, but they are not obligated to do so. Therefore, the Parties have agreed to the following procedures and remedies:

4.4.2.1. The City has not allocated supplemental funds or made a Supplemental Application for this Contract unless the City has issued to the Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS
By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Contract out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.
\$ _____

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

4.5 ACCESS TO SITE

- 4.5.1 Contractor may enter and leave the premises at all reasonable times without charge. Contractor and its employees may use the common areas and roadways of the premises where it is to perform the services together with all facilities, equipment, improvements, and services provided in connection with the premises for common use. This excludes parking for Contractor's personnel. Contractor shall repair any damage caused by it or its employees as a result of its use of the common areas

4.6 CHANGES

- 4.6.1. At any time during the Contract Term, the Director may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Contract.

Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Contract plus any special provisions, specifications, or special instructions issued to execute the extra work. Any Change to the scope of activities identified in **Exhibit "A"** shall be mutually agreed to prior to the issuance of a Change Order.

4.7 ACCESS TO DATA

- 4.7.1. The City shall, to the extent permitted by law, allow Contractor to access and make copies of documents (including electronically stored information) in the possession or control of the City or available to it that are reasonably necessary for Contractor to perform under this Contract.
- 4.7.2. The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for Contractor's use.
- 4.7.3. For any raw data created, assembled, used, maintained, collected, or stored by the Contractor for or on behalf of the City, Contractor shall provide the City either live data connections to the raw data or technical solutions and steps to extract the raw data in a format mutually agreed upon by both parties at no additional cost to the City.

4.8 NO QUANTITY GUARANTEE

- 4.8.1. This Contract does not create an exclusive right in Contractor to perform all services concerning the subject of this Contract. The City may procure and execute contracts with other consulting firms for the same, similar, or additional services as those set forth in this Contract or any Scope of Services or Change Order.
- 4.8.2. The City makes no express or implied representations, warranties, or guarantees whatsoever, that any particular quantity, type, task area, or dollar amount of

services will be procured or purchased from Contractor through this Contract or any Scope of Services or Change Order; nor does the City make any express or implied representations, warranties, or guarantees, whatsoever for the amount or value of revenue that Contractor may ultimately derive from or through this Contract or any Scope of Services or Change Order.

ARTICLE 5. TERM AND TERMINATION

5.1 TERM

5.1.1. This Contract is effective on the date of the Effective Date and expires _____ (__) years thereafter, unless sooner terminated in accordance with the terms and conditions of this Contract.

5.2 RENEWALS

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

5.3 TERMINATION FOR CONVENIENCE BY THE CITY

5.3.1 The Director may terminate this Contract at any time by giving 30 days written notice to Contractor, with a copy of the notice to the CPO. The City's right to terminate this Contract for convenience is cumulative of all rights and remedies which exist now or in the future.

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

5.3.3 TERMINATION OF THIS CONTRACT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED, IF ANY, ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS CONTRACT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

5.4 TERMINATION FOR CAUSE BY THE CITY

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

- 5.4.1.1 Contractor fails to perform any of its material duties under this Contract;
 - 5.4.1.2 Contractor becomes insolvent;
 - 5.4.1.3 All or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
 - 5.4.1.4 A receiver or trustee is appointed for Contractor.
- 5.4.2. If a default occurs, the Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The Director, at his sole option, may extend the termination date to a later date. If the Director allows Contractor to cure the default and Contractor does so to the Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate this Contract on the termination date and pay Contractor for all Services performed, if any, through such date.
- 5.4.3 To effect final termination, the Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all Services under this Contract, and promptly cancel all orders or subcontracts chargeable to this Contract.

5.5 REMOVAL OF CONTRACTOR-OWNED EQUIPMENT AND MATERIALS

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

ARTICLE 6. MISCELLANEOUS

6.1 INDEPENDENT CONTRACTOR

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

6.2 FORCE MAJEURE

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

other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to any reimbursement of expenses or any other payment whatsoever.

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

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

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

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

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

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

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

6.3 SEVERABILITY

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

6.4 ENTIRE CONTRACT

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

6.5 WRITTEN AMENDMENT

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

6.6 APPLICABLE LAWS

- 6.6.1. This Contract is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.
- 6.6.2. Venue for any litigation relating to this Contract is Harris County, Texas.

6.7 NOTICES

- 6.7.1. Unless otherwise stated in this Contract, all notices to either Party to the Contract must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the Party to whom the notice is given at its address set out in Section 1.1. of this Contract or other address, the receiving Party has designated previously by proper notice to the sending Party. Postage or delivery charges must be paid by the Party giving the notice.
- 6.7.2. Any notice, demand for payment or communication required or permitted to be given to Contractor by the City under the provisions of this Contract with respect to correctable and non-correctable contract conditions, violations of this Contract and assessment(s) of liquidated damages in accordance with **Exhibit "A"** of this Contract shall be deemed to have been effectively delivered or given to Contractor and received by Contractor on the date emailed, faxed or mailed to Contractor's Project Manager.

6.8 CAPTIONS

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

6.9 NON-WAIVER

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

6.10 INSPECTIONS AND AUDITS

- 6.10.1 City representatives may perform, or have performed, (i) audits of Contractor's books and records, and (ii) inspections of all places where work is undertaken in connection with this Contract. Contractor shall keep its books and records

available for this purpose for at least four years after this Contract terminates. This provision does not affect the applicable statute of limitations.

6.11 ENFORCEMENT

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

6.12 AMBIGUITIES

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

6.13 SURVIVAL

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

6.14 PUBLICITY

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

6.15 RISK OF LOSS

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

6.16 PARTIES IN INTEREST

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

6.17 SUCCESSORS AND ASSIGNS

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

6.18 BUSINESS STRUCTURE AND ASSIGNMENTS

6.18.1. Contractor shall not assign this Contract at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall

immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

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

6.19 DISPUTE RESOLUTION

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

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

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

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

6.20 REMEDIES CUMULATIVE

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

6.21 CONTRACTOR DEBT

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

FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS Contract.

6.22 ENVIRONMENTAL LAWS

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

6.23 PRESERVATION OF CONTRACTING INFORMATION

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

6.23.2 If Contractor fails to comply with any one or more of the requirements of this Section, Preservation of Contracting Information, or Subchapter J, Chapter 552, Texas Government Code, then, in accordance with and pursuant to the processes and procedures set forth in Sections 552.373 and 552.374 of the Texas Government Code, the Director shall provide notice to the Contractor and may terminate this Contract. To effect final termination, the Director must notify Contractor in writing with a copy of the notice to the CPO. After receiving the

notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Contract, and promptly cancel all orders or subcontracts chargeable to this Contract.

SAMPLE

EXHIBIT A
SCOPE OF SERVICES/SPECIFICATIONS

SAMPLE

**EXHIBIT B
COST PROPOSAL**

SAMPLE

**EXHIBIT C
KEY PERSONNEL**

SAMPLE

EXHIBIT D
TITLE VI: NON-DISCRIMINATION

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

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

EXHIBIT "E"

DRUG POLICY COMPLIANCE AGREEMENT

I, _____ as an owner or officer of
 (Name)(Print/Type) (Title)
 _____ (Contractor)
 (Name of Company)

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

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

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

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

Date

Contractor Name

Signature

Title

EXHIBIT "F"

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

I, _____, _____, (Contractor)
(Name) (Title)

as an owner or officer of _____
(Name of Company)

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

in performing _____.
(Project)

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

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "G"

DRUG POLICY COMPLIANCE DECLARATION

I, _____, as an owner or officer of
(Name)(Print/Type) (Title) _____(Contractor)

(Name of Company)

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

This reporting period covers the preceding 6 months from _____ to _____, 20____.

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

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

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

Initials From _____ to _____ the following tests have occurred:
(Start Date) (End Date)

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

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

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

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

Date

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "H"
FEDERAL MANDATORY CONTRACT CLAUSES

I. ACCESS TO RECORDS AND REPORTS

Contractor must maintain an acceptable cost accounting system. Contractor agrees to provide the City, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives, access to any books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

II. GENERAL CIVIL RIGHTS PROVISIONS

Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the Contractor and subtier Contractors/~~consultant~~Contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

III. e CONSERVATION REQUIREMENTS

Contractor and subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq.*).

IV. FEDERAL FAIR LABOR STANDARDS ACT

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

Contractor has full responsibility to monitor compliance to the referenced statute or regulation. Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor — Wage and Hour Division.

V. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor — Occupational Safety and Health Administration.

VI. TRADE RESTRICTION CERTIFICATION

Contractor by entering into the Contract certifies that:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (U.S.T.R.);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R.; and
- c. has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

Contractor must provide immediate written notice to the City if the Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. Contractor must require subcontractors provide immediate written notice to Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to Contractor or subcontractor:

- (1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R., or
- (2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list, or
- (3) who incorporates in the public works project any product of a foreign country on such U.S.T.R. list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Contractor agrees that it will incorporate this provision for certification without modification in all lower tier subcontracts. Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by U.S.T.R., unless Contractor has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the City cancellation of the contract or subcontract for default at no cost to the City or the FAA.

VII. VETERAN'S PREFERENCE

In the employment of labor (excluding executive, administrative, and supervisory positions), Contractor and all sub-tier Contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

VIII. TEXTING WHEN DRIVING

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

In support of this initiative, City encourages Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

IX. CERTIFICATION OF CONTRACTOR REGARDING DEBARMENT

By entering into this Contract Contractor certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

X. CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

Contractor, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", shall verify each lower tier participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. Contractor will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>
2. Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract

If the FAA later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

XI. CERTIFICATION REGARDING LOBBYING

Contractor certifies by signing this Contract, to the best of his or her knowledge and belief, that:

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

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

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq.*).

GENERAL CONDITIONS

EXHIBIT J
SUPPLEMENTARY CONDITIONS

EXHIBIT J
PROJECT SCHEDULE