

AGREEMENT FOR JOB ORDER CONTRACTING

THIS AGREEMENT FOR JOB ORDER CONTRACTING (“Agreement”) for the minor construction, repair, rehabilitation, and alteration of Houston Airport System Facilities is made on the date countersigned by the City Controller (“Effective Date”) by and between the **CITY OF HOUSTON, TEXAS** (“City”), a municipal corporation, and _____ (“Contractor”), a _____ authorized to do business in Texas.

The City and Contractor agree as follows:

ARTICLE 1. PARTIES

1.1 ADDRESSES

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:

City

Director or Designee
Houston Airport System
City of Houston
P. O. Box 1562
Houston, Texas 77251

Contractor

Attention: _____

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1.2.1 This Agreement consists of the following articles and exhibits:

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EXHIBITS	
A	PERFORMANCE/STATEMENT OF WORK
B	FEES
C	CONTRACT DOCUMENTS
D	TITLE VI NON-DISCRIMINATION
E	DRUG POLICY COMPLIANCE AGREEMENT
F	CERTIFICATION OF NO SAFETY IMPACT POSITIONS
G	DRUG POLICY COMPLIANCE DECLARATION
H	FEDERAL PROVISIONS
I	PERFORMANCE BOND

1.3 PARTS INCORPORATED

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

1.4 CONTROLLING PARTS

- 1.4.1 The articles, exhibits, and Documents are intended to be complementary and what is set forth in one document is as binding as if set forth in each document. In some cases they each may address similar terms and requirements. If a conflict among the articles, exhibits, and Documents arises, the following order of priority controls:

- 1.4.1.1 Articles
- 1.4.1.2 Exhibits
- 1.4.1.3 Documents

- 1.4.1 A Work Order and any amendments thereto may not alter the terms and conditions set forth in the articles, exhibits, and Documents.

[SIGNATURE PAGE FOLLOWS]

1.5 SIGNATURES

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

CONTRACTOR:

By: _____
Name:
Position:
Email:

CITY OF HOUSTON:

By: _____
Mayor

APPROVED:

Director, Houston Airport System

APPROVED AS TO FORM:

Senior Assistant City Attorney
L.D. File No.

ATTEST/SEAL:

City Secretary

COUNTERSIGNED BY:

City Controller

DATE COUNTERSIGNED:

("Effective Date")

ARTICLE 2. DEFINITIONS

2.1. As used in this Contract, the following terms have the meanings given below:

- 2.1.1. “*Agreement*” means this contract between the City and Contractor, including all exhibits, and Documents, and written amendments authorized by City Council and Contractor.
- 2.1.2. “*Airport(s)*” mean George Bush Intercontinental Airport/Houston (“IAH”), William P. Hobby Airport (“HOU”), and Ellington Airport (“EFD”).
- 2.1.3. “*AOA*” means the Air Operations Area and includes, but is not limited to, runways, ramps, taxiways, and aprons.
- 2.1.4. “*Bonds*” mean Performance Bond, Payment Bond, Maintenance Bond, Custom Bond, and other instruments of Surety. When in singular form it refers to the individual instrument.
- 2.1.5. “*City*” is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.1.6. “*City Attorney*” means the City Attorney of the City or any person designated by the City Attorney to perform one or more of the duties of the City Attorney under this Agreement.
- 2.1.7. “*City Engineer*” means the licensed technical representative who has been designated, in writing, by the Director.
- 2.1.8. “*City Holiday*” means any official City of Houston holiday as determined each year by the City Council.
- 2.1.9. “*Contract Administrator*” means the Infrastructure representative who has been designated by the Director with responsibility for the overall contract administration of this Agreement.
- 2.1.10. “*Contract Price*” means the amount stated in each Work Order.
- 2.1.11. “*Contract Time*” means the number of calendar days to substantially complete the Work as stated in each Work Order.
- 2.1.12. “*Contractor*” is defined in the preamble of this Agreement and includes its successors and assigns and its authorized representative.
- 2.1.13. “*Countersignature Date*” means the date shown as the date countersigned on the signature page of this Agreement.

- 2.1.14. “*Date of Commencement of the Work*” means the date established in the Work Order on which the Contract Time will commence. This date will not be changed by failure of Contractor, or persons for whom Contractor is responsible for, to act.
- 2.1.15. “*Date of Substantial Completion*” means the date that construction, or portion thereof designated by the Director, is certified by the Director to be substantially complete.
- 2.1.16. “*Design Consultant*” means the person or firm under contract with the City to provide professional services during construction. Design Consultant means Design Consultant or its authorized representative. If a Design Consultant is not employed for services during construction, the City will perform the duties and responsibilities of the Design Consultant designated in the Agreement.
- 2.1.17. “*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 Agreement.
- 2.1.18. “*Documents*” means the Contract Documents identified in **Exhibit “C”**, as they may be amended from time to time, as well as the Bonds, the Drawings and Specifications approved by the Director, appropriate addenda, and any other documents as they are specifically enumerated in this Agreement, plus approved airport customs
- 2.1.19. , all of which are incorporated herein by reference for all purposes.
- 2.1.19.1. The word “documents” also includes, but is not limited to, the following: agendas, analyses, audio or video recordings, bulletins, charts, circulars, communications (including any interoffice, social media, and other communications), computations, computer programs, copies, correspondence, data, databases, data compilations, data prototypes, designs, diagrams, diskettes, documents, drafts, drawings, electronic mail (email), electronically stored information, exhibits, facsimiles, forms, graphs, guides, images, information, inventions, items, letters, logs, manuals, maps, materials, memoranda, metadata, microfilm, minutes or meeting minutes, models, notes, notations, notebooks, operating manuals, original tracings of all drawings and plans, other graphic matter (however produced or reproduced), pamphlets, photographs (including any digital or film photographs), plans, printouts, policies, procedures, records, recordings (including any audio, video, digital, film, tape, and other recordings), reports, social media communications, software, specifications, tabulations, telegrams, underlying data, works, worksheets, work products, writings, and any other writings or recordings of any type or nature (and any revisions, modifications, or improvements to them).

- 2.1.20. “*Drawings*” means graphic and pictorial portions of the Agreement that define the character and scope of the Work.
- 2.1.21. “*Effective Date*” means the date the City Controller countersigns the signature page of this Agreement and the Agreement becomes effective and binding.
- 2.1.22. “*Facility*” is defined in Section 2269.001(3) of the Texas Government code, as amended from time to time.
- 2.1.23. “*General Conditions*” means Document 00700 of the City’s Standard City Construction Documents which have been specifically modified for purposes of this Agreement and are attached hereto.
- 2.1.24. “*General Manager*” means an individual who shall directly manage and direct the Work under this Agreement and who has authority to act for the Contractor.
- 2.1.25. “*General Requirements*” means the sections of Division 01 Specifications that specify administrative and procedural requirements and temporary facilities required for the Work.
- 2.1.26. “*Governmental Authority*” means any federal, state, local or municipal governmental body or agency or subdivision thereof, including, but not limited to, any legislative or judicial body, having appropriate jurisdiction to exercise authority or control over the City, or any part or all of the Work to be performed under this Agreement.
- 2.1.27. “*HAS Facility*” means a Facility owned and operated by the City’s department of aviation.
- 2.1.28. “*Houston Airport System*” or “*HAS*” means the City of Houston’s department of aviation which is responsible for the operation of IAH, HOU, and EFD.
- 2.1.29. “*Infrastructure Division*” means the Houston Airport System’s Infrastructure Division located at 16930 John F. Kennedy Boulevard at George Bush Intercontinental Airport/Houston or its successor division.
- 2.1.30. “*Notice to Proceed*” means a written notice by the Director to Contractor establishing a Date of Commencement of the Work. For purposes of this Agreement, each executed Work Order serves as the Notice to Proceed.
- 2.1.31. “*Notice of Noncompliance*” means a written notice by Director to Contractor regarding defective or nonconforming work that does not meet the requirements of the Agreement, and that establishes a time by which Contractor shall correct the defective or nonconforming work.

- 2.1.32. “*Party*” or “*Parties*” mean all the City and Contractor who are bound by this Agreement, individually or collectively as indicated in the context by which is appears.
- 2.1.33. “*Product*” means materials, equipment, or systems incorporated into the Work.
- 2.1.34. “*Project Manager*” means the representative designated by the Director as having the responsibility for overall coordination of the Work.
- 2.1.35. “*Proposal Development Software*” means the software program provided and used by the Contractor for estimating and managing the Work and Work Orders. The Proposal Development Software may also include applications for cost estimating, program management, and document management.
- 2.1.36. “*Specifications*” means Divisions 01 through 16 of the documents that are incorporated into this Agreement, consisting of written General Requirements and requirements for Products, standards, and workmanship for the Work and performance of related services.
- 2.1.37. “*Subcontract*” means any agreement entered into between the Contractor and a Subcontractor which is necessary and reasonable for services, labor, equipment, and/or materials required for performance under this Agreement, including any changes.
- 2.1.38. “*Subcontractor*” means any individual, partnership, firm, corporation or joint venture who contracts with the Contractor to furnish services, labor, equipment, and/or materials under this Agreement.
- 2.1.39. “*Supplier*” means a manufacturer, distributor, materialman, or vendor having a direct agreement with Contractor or Subcontractor for Products or services and its authorized representatives.
- 2.1.40. “*Surety*” is the person authorized and admitted to write surety bond in Texas, and who does so for Contractor under **Section 3.20**.
- 2.1.41. “*Term*” means the Initial Term and any Renewal Terms, collectively, during which this Agreement is in effect.
- 2.1.42. “*Unit Price Book*” or “*UPB*” means the “Total Including Overhead and Profit” column in the latest quarterly edition of the R. S. MEANS Facilities Construction Cost Data, with certain exceptions that are outlined in **Exhibit “B”**. The Houston, Texas City Cost Index “total weighted average” as of the date of each Work Order will be applied to the R.S. MEANS prices.
- 2.1.43. “*Work*” means all construction required by the Agreement, **Exhibit “A”**, Work Order, and Documents, including all labor, materials, tools, supplies, equipment,

transportation, mobilization, insurance, Bonds, subcontracts, supervision, management, reports, incidentals, and quality control provided by Contractor to fulfill Contractor's obligations.

- 2.1.44. "*Work Order*" means a written document which defines the Work to be accomplished for a particular task in accordance with this Agreement. Upon written approval by the Director, the Work Order serves as a notice to proceed with the Work.
- 2.2. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular include the plural.
- 2.3. The word "*shall*" is always mandatory and not merely permissive.

ARTICLE 3. DUTIES OF CONTRACTOR

3.1. SCOPE OF SERVICES

- 3.1.1 In consideration of the payment specified in each Work Order under this Agreement, Contractor shall provide all labor, materials, tools, instruments, supplies, equipment, transportation, mobilization, insurance, subcontracts, Bonds, supervision, management, reports, incidentals, and quality control necessary and reasonably inferable to perform construction management and construction work for the minor construction, repair, rehabilitation and alteration of HAS Facilities as defined in this Agreement, **Exhibit "A"**, and the applicable Work Order.

3.2. DUTY TO INSPECT

- 3.2.1. Upon issuance of a Work Order, Contractor shall coordinate performance and acknowledge that it has taken all steps necessary to ascertain the nature and location of the Work at the HAS Facilities, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work, its cost, or performance time, including, but not limited to:
- 3.2.1.1. Conditions bearing upon transportation, disposal, handling, and storage of materials;
 - 3.2.1.2. The availability of labor, water, electric power, and roads;
 - 3.2.1.3. Uncertainties of weather, river stages, tides, or similar physical conditions at the HAS Facilities;
 - 3.2.1.4. The conformation and conditions of the ground;

- 3.2.1.5. The character of equipment and facilities needed preliminary to and during performance of the Work;
 - 3.2.1.6. The location and/or relocation of existing utility lines, poles, and meters including the necessity for timely coordination with all involved utility owners; and
 - 3.2.1.7. The requirements for obtaining City, County, State, or Federal permits and licenses necessitated by project right-of-way alignments and boundaries.
- 3.2.2. The Contractor also shall acknowledge that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the City, as well as from the Drawings and Specifications made a part of this Agreement.

3.3. INVOICING

- 3.3.1. Contractor shall submit its invoices on forms approved in advance by the Director, accompanied by support documents as may be requested by the Director. Each invoice Contractor submits must be in duplicate and each copy must include required support documents. Each invoice must be identified by the contract name, Work Order number, and City issued vendor number. All invoices are to be e-mailed to HAS.accounts payable@houstontx.gov or delivered or mailed to the following location:

Houston Airport System
Accounts Payable
P.O. Box 60106
Houston, Texas 77205-0106

- 3.3.1 The City shall pay on the basis of monthly invoices submitted by Contractor and approved by the Director showing the services performed and the attendant fee. The City shall make payment to Contractor within 30 days of the receipt and approval by the City of such invoices. If the City disputes any item in an invoice Contractor submits for any reason, including lack of supporting documentation, 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 any 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

3.4. DRAWINGS

- 3.4.1. Figure dimensions on Drawings shall govern over scale dimensions and detailed Drawings shall govern over general Drawings.

- 3.4.2. The City assumes no responsibility for errors or omissions caused by failure of Contractor or any of its Subcontractors to inspect and familiarize themselves with the Work and Agreement.

3.5. PERSONNEL OF CONTRACTOR

- 3.5.1. Contractor shall provide sufficient, fully qualified personnel to meet the performance requirements set forth in this Agreement. Contractor shall replace any of its personnel or Subcontractors whose work product is deemed unsatisfactory by the Director. Contractor shall promptly inform the Director of all significant events relating to the performance of this Agreement. Additionally, Contractor shall retain the following persons for the following areas of responsibility throughout performance of this Agreement:

Name	Area of Responsibility

- 3.5.2. Contractor acknowledges that City is materially relying upon Contractor's promises to use these persons in the performance of this Agreement. Contractor shall not remove or replace these persons from these areas of responsibility without the written consent of Director, which shall not be unreasonably withheld. Upon removal, any such persons shall be immediately replaced. Any replacement shall be with a person who has work experience and qualities equal to or greater than the person is being replaced and who is acceptable to Director.

3.6. PAYMENT OF SUBCONTRACTORS

- 3.6.1 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 Agreement.

- 3.6.2 **IN ACCORDANCE WITH THE TEXAS PROMPT PAYMENT ACT, CONTRACTOR SHALL MAKE TIMELY PAYMENTS TO ALL PERSONS AND ENTITIES THAT CONTRACTOR HAS HIRED TO SUPPLY LABOR, MATERIALS, OR EQUIPMENT FOR THE PERFORMANCE OF THIS AGREEMENT. CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS REGARDLESS OF WHETHER THE FAILURE TO PAY IS CAUSED BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, THE NEGLIGENCE**

(WHETHER SOLE, JOINT OR CONCURRENT), OR GROSS NEGLIGENCE, (WHETHER SOLE, JOINT OR CONCURRENT), STRICT LIABILITY, INTENTIONAL ACTS, OR OTHER CONDUCT OR LIABILITY OF THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES.

- 3.6.3 Failure of Contractor to pay its employees as required by law shall constitute a default under this Agreement, for which Contractor and its surety shall be liable on Contractor's performance bond if Contractor fails to cure the default as provided under this Agreement.

3.7. RELEASE

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

3.8. INDEMNIFICATION

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

- 3.8.1.1. **CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED**

PARAGRAPHS 3.8.1.1. – 3.8.1.3, “CONTRACTOR”) ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

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

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

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

3.9. SUBCONTRACTOR’S INDEMNIFICATION

3.9.1. 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.

3.10. INDEMNIFICATION PROCEDURES

3.10.1. *Notice of Indemnification Claims:*

3.10.1.1. 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:

3.10.1.1.1. a description of the indemnification event in reasonable detail,

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

3.10.1.1.3. the anticipated amount of the indemnified loss.

3.10.1.2. 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.

- 3.10.1.3. If the City does not provide this notice within the 30-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.

3.10.2. *Defense of Indemnification Claims*

- 3.10.2.1. Assumption of Defense: Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City Attorney. Contractor shall then control the defense and any negotiations to settle the claim, subject to the City Attorney's consent or agreement to the settlement, which consent or agreement shall not be unreasonable withheld. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City Attorney 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 indemnified loss.
- 3.10.2.2. Continued Participation: If Contractor elects to defend the claim, the City Attorney may, at its own expense, retain separate counsel to participate in, but not control, the defense and to participate in, but not control, any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it:
- 3.10.2.2.1. would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City;
 - 3.10.2.2.2. would require the City to pay amounts that Contractor does not fund in full, or
 - 3.10.2.2.3. would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

3.11. RELEASE AND INDEMNIFICATION - (PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT)

- 3.11.1. **CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONTRACTOR, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, SERVICE**

MARK, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

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

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

3.12. INSURANCE

3.12.1. With no intent to limit Contractor's liability under the indemnification provisions set forth herein, the Contractor shall, at a minimum, provide and maintain certain insurance in full force and effect at all times during the Term of this Agreement. Such insurance is described as follows:

<u>Coverage</u>	<u>Limit of Liability</u>
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	Bodily Injury by Accident \$1,000,000 (each accident) Bodily Injury by Disease \$1,000,000 (policy limit) Bodily Injury by Disease \$1,000,000 (each employee)
Owner's and Contractor's Protective Liability	\$1,000,000 combined single limit
Installation Floater (unless alternate coverage is approved by the City Attorney)	Value of stored equipment or material, listed on Certificates of Payment, but not incorporated into the Work
Commercial General Liability: Including Contractor's Protective, Broad Form Property Damage, Contractual Liability, Bodily and Personal Injury, Property Damage, Products and Completed Operations Coverage (for one year following completion of the Work under	Combined single limit of \$500,000 (each occurrence), aggregate of \$1,000,000;

this Agreement)	
Automobile Liability (for vehicles Contractor uses in performing under this Agreement, including Employer's Non-Ownership and Hired Auto Coverage)	\$1,000,000 combined single limit each occurrence for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos \$10,000,000 for any auto driven in the Airfield Operations Area (AOA)
Excess	\$1,000,000 each occurrence/combined aggregate in excess of limits specified for Employer's Liability, Commercial General Liability, and Automobile Liability
Defense costs are excluded from the face amount of the policy. Aggregate Limits are per 12-month policy period unless otherwise indicated.	

3.12.1.1. If any of the following insurance is written as "claims made" coverage and the City is required to be carried as an additional insured, then Contractor's insurance shall include a two-year extended discovery period after the last date that Contractor provides any work under this Agreement.

3.12.1.2. "Aggregate" amounts of coverage, for purposes of this Agreement, are agreed to be the amounts of coverage available during a fixed 12 month policy period.

3.12.1.3. If Limit of Liability for Excess Coverage is \$2,000,000 or more, Limit of Liability for Employer's Liability may be reduced to \$500,000.

3.12.2. *Insurance Coverage.* At all times during the Term of this Agreement which includes any extensions and renewals, Contractor shall provide and maintain insurance coverage that meets the requirements of the Agreement. Prior to beginning performance under the Agreement, 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 (i) all premiums and (ii) 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 and Suppliers to obtain Commercial General Liability, Workers' Compensation, Employer's Liability, and Automobile Liability coverage that meets 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. Contractor shall require all Subcontractors and Suppliers with whom it contracts directly, whose subcontract value under a work order exceeds \$100,000, to provide proof of Commercial General Liability and Automobile Liability insurance coverage meeting the above requirements. Contractor shall also comply with all requirements set out under **Article 10** of the General Conditions as

to Workers' Compensation Insurance for all Subcontractors and Suppliers.

3.12.3. *Form of insurance.* The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (i) excuse non-compliance with the terms of this Section, or (ii) waive or estop the City from asserting its rights to terminate this Contract. The policy issuer shall (a) have a Certificate of Authority to transact insurance business in Texas, or (b) 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. Each insurer is subject to approval by Director in his sole discretion as to conformance with these requirements.

3.12.4. *Required Coverage:* The City shall be an Additional Insured under this Contract, and all policies, except Worker's Compensation, must name the City as an Additional Insured. 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, 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 Agreement. All certificates of insurance submitted by Contractor shall be accompanied by endorsements for: (i) Additional Insured coverage in favor of the City for Commercial General Liability and Automobile Liability policies; and (ii) Waivers of Subrogation in favor of the City for Commercial General Liability, Automobile Liability and Workers' Compensation/Employers' Liability policies. The Director will consider all other forms on a case-by-case basis.

3.12.5. *Notice.*

3.12.5.1. CONTRACTOR SHALL GIVE 30 DAYS' WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS POLICIES WILL BE CANCELED OR NOT RENEWED. Within the 30-day period Contractor shall provide other suitable policies in lieu of those about to be cancelled not renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, in their sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default. Contractor shall give written notice to the Director within five days of the date upon which total claims by any party against Contractor reduce the aggregate amount of coverage below the amounts required by this Agreement.

3.12.5.2. Contractor shall give written notice to the Director within five days of the date upon which total claims by any party against Contractor reduce the aggregate amount of coverage below the amounts required by this Agreement.

3.13 WARRANTIES

- 3.13.1 Contractor warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.
- 3.13.2 With respect to any parts and goods it furnishes, Contractor warrants:
- 3.13.2.1 that all items are free of defects in title, design, material, and workmanship and new unless otherwise provided by this Agreement;
 - 3.13.2.2 that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed;
 - 3.13.2.3 that each replacement item is new, in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces; and
 - 3.13.2.4 that no item or its use infringes any patent, copyright, or proprietary right.
- 3.13.3 Contractor further warrants that the Work will be free of concentrations of polychlorinated biphenyl ("PCB"), and other substances, defined as hazardous by the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") or any other applicable law or regulation.
- 3.13.4 Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered non-conforming work. Contractor's warranty excludes remedy for damage or defect cause by abuse by person or persons other than those for whom Contractor is responsible, improper or insufficient maintenance by the City, improper operation, or normal wear and tear under normal usage, and excludes claims that hazardous material was incorporated into the Work, if that material was specified in this Agreement. If required by the Director, Contractor shall furnish satisfactory evidence as to kind, quality, title of Products and that Products conform to the requirements of the Agreement.
- 3.13.5 In the event of a defect in a specified Product, either during construction or warranty period, Contractor shall take appropriate measures with the manufacturer of the Product to assure correction or replacement of the defective Product with minimum delay.
- 3.13.6 Contractor warrants that title to all work covered by Contractor's invoice will pass to the City upon incorporation in the Work or upon Contractor's receipt of payment, whichever occurs first. Such title shall be free of all liens, claims, security interests or other interests ("Encumbrances") and if not, upon written demand from the Director, Contractor shall immediately take legal action necessary to remove

Encumbrances.

- 3.13.7 Warranty period shall be one year from substantial completion of the Work. Substantial completion means all Work, including punchlist items, has been completed and accepted by HAS or beneficial occupancy by HAS, whichever occurs first.

3.14 CONFIDENTIALITY

3.14.1 City Use

3.14.1.1 The City may use all notes, plans, computations, databases, tabulations, exhibits, photographs, reports, underlying data and other work products (collectively, the “Documents”) that Contractor prepares or obtains under this Agreement.

3.14.2 Contractor Confidentiality.

3.14.2.1 Contractor and its agents, employees, contractors, and subcontractors shall hold all City information, data, and documents (collectively, “Information”) that they receive, prepare, 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 establish procedures to ensure confidentiality of the Information and to prevent its unauthorized use and disclosure. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors who perform work under this Agreement, which bind them to the terms in this Section.

3.14.3 Sensitive Security Information

3.14.3.1 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 Agreement.

3.15 CONFLICTS OF INTEREST

- 3.15.1 If an actual or potential conflict arises between the City’s interests and the interests of other clients Contractor represents, Contractor shall immediately notify the Director by fax transmission, e-mail, or telephone. If the Director consents to Contractor's continued representation of the other clients, he shall notify Contractor in writing. If the Director does not issue written consent within three business days after receipt of Contractor's notice, Contractor shall immediately terminate its representation of the other client whose interests are or may be in conflict with those of the City.

3.16 OWNERSHIP AND USE OF CONTRACT DOCUMENTS

- 3.16.1 Drawings, Specifications, and other Documents prepared by the City or its Design Consultant are instruments of service through which the Work, to be executed by Contractor, is described. Contractor may retain one contract record set.
- 3.16.2 Neither Contractor nor Subcontractor shall own or claim a copyright to Documents contained in the Agreement or any part thereof.
- 3.16.3 The City may use all Documents that Contractor prepares or obtains under this Agreement. In addition, Contractor shall provide the Director with supporting schedules, flow charts or other analysis necessary to understand the reported findings and recommendations. Generally, this information is attached as exhibits to the final report; however, if requested by the Director, Contractor shall provide this information from its work paper files.
- 3.16.4 Documents contained in the Agreement, prepared by the City or by its Design Consultant, and copies furnished to Contractor, are for use solely with respect to the Work. They shall not be used by Contractor or Subcontractor on other projects or for additions to the Work outside the scope of the Work without the specific written consent of the Director, and Design Consultant, when applicable.
- 3.16.5 Contractor, Subcontractors, and Suppliers are granted a limited license to use and reproduce applicable portions of the Agreement appropriate to and for use in execution of their work under the Agreement.

3.17 PERMITS, FEES, AND NOTICES

- 3.17.1 Unless otherwise provided in the Agreement, Contractor shall secure and pay for all construction permits, licenses, and inspections necessary for proper execution and completion of the Work. Such costs must be included in the Coefficient set out in **Exhibit "B"**.
- 3.17.2 If Contractor observes that portions of the Work authorized under a Work Order are at variance the requirements of a construction permit, license, or inspection for the proper execution and completion of the Work, Contractor shall promptly notify the Director in writing, and necessary changes shall be accomplished by appropriate modification authorized under the General Conditions.
- 3.17.3 Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation for the performance under this Agreement. Contractor shall immediately notify the Director of any suspension, revocation, or other detrimental action against its license.

3.18 COMPLIANCE WITH LAWS

3.18.1 Contractor shall comply with all applicable local, state, and federal laws and regulations, the City Charter and Code of Ordinances, and HAS' Airport rules and regulations.

3.19 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE

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

3.20 NON-DISCRIMINATION

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

3.21 MINORITY AND WOMEN BUSINESS ENTERPRISES

3.21.1 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 and the applicable Office of Business Opportunity's ("OBO") Policies and Procedures. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least **23%** of the value of this Agreement to MWBEs ("Stated MWBE goal"). If the Contractor is a certified MBE or WBE, Contractor may count toward goals the work that it commits to perform with its own work force, capped at 50% of the total advertised goal. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with OBO and will comply with them.

3.21.2 For purposes of this paragraph, "Contract Year" means a twelve (12) month period during the term of the contract commencing on the Effective Date of this Agreement and each anniversary thereof. If the term of this Agreement exceeds one Contract Year and Contractor's MWBE participation level in a Contract Year is less than the Stated MWBE goal, then within 30 calendar days of the end of each Contract Year Contractor must provide a written explanation to both the Director and Office of Business Opportunity Director ("OBO Director") of the following: (1) the discrepancy between Contractor's MWBE participation level and the Stated MWBE goal, (2) the reason for the discrepancy, and (3) Contractor's good faith efforts (in accordance with the City's policy) towards achieving the Stated MWBE goal. As part of the good faith efforts assessment, the OBO Director may consider Contractor's failure to timely submit the notice or explanation required by this provision and the OBO Director may impose sanctions or other penalties on Contractor for said failures in accordance with Chapter 15 of the Code of

Ordinances, OBO's policies and procedures, and the City's good faith efforts policy.

3.21.3 The OBO Director, in consultation with the Director may review, at any time during the Term of this Agreement, Contractor's progress toward attainment of the stated MWBE goal(s), by reviewing the percentage of work to MWBE subcontractors and the payments Contractor has made to such MWBE subcontractors. If the OBO Director, in cooperation with the Director determines that Contractor is not in compliance with this Section of this Agreement, Chapter 15 of the Code of Ordinances, OBO's policies and procedures and the City 's good faiths efforts policy, the OBO Director after consultation with the Director and the Chief Procurement Officer may determine whether anyone or more of the following actions should be taken and notify Contractor of such determination:

3.21.3.1 Enter an agreement with Contractor allowing Contractor to cure the noncompliance matter;

3.21.3.2 Suspend Contractor from engaging in any contract with the City for a period up to, but not to exceed, five years;

3.21.3.3 Withhold payment or reimbursement under this Agreement;

3.21.3.4 Make a finding that Contractor is in default or has breached this Agreement;

3.21.3.5 Terminate for cause this Agreement; or

3.21.3.6 Take any other appropriate remedy.

3.21.4 The determination of the OBO Director is final.

3.21.5 Contractor shall maintain records showing:

3.21.5.1 Subcontracts and supply agreements with Minority Business Enterprises;

3.21.5.2 Subcontracts and supply agreements with Women Business Enterprises; Subcontracts and supply agreements with Small Business Enterprises (if any);

3.21.5.3 Written confirmation from MWBE subcontractors and suppliers that they are participants on the contract; and

3.21.5.4 efforts to identify and award subcontracts and supply agreements to MWBEs. Contractor shall submit periodic reports of its efforts under this Section to the OBO Director in the form and at the times he or she prescribes

3.21.6 Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:

- 3.21.6.1 _____ (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 Director").
- 3.21.6.2 _____ (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (i) audits of the books and records of the subcontractor, and (ii) 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 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.
- 3.21.6.3 Within five business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the 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.
- 3.21.6.4 Any controversy between the parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract may be submitted to the Director. The Director may prescribe procedures to provide dispute resolution by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

3.22 BONDS

- 3.22.1 Performance and Payment Bonds. Each year during the term of this Agreement, Contractor shall furnish a Performance Bond and Payment Bond **[in an amount that approximates one year performance]** conditioned on Contractor's full and timely performance of the Agreement and payment of Subcontractors. Prior to Work Orders in excess of the penal sum of the performance and payment bonds being issued, Contractor shall provide additional performance and payment bonds equal to or greater than the additional amounts. Contractor shall also furnish a Maintenance Bond to secure the warranty in **Section 13.13**, inclusive of all sections therein. The Bond(s) must be in a form approved by the City Attorney and issued by a corporate surety authorized and admitted to write surety bonds in Texas ("Surety"). 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. Each Bond must state that it may not be

canceled, materially modified, or non-renewed unless the Surety gives the Director 30 days' advance written notice. In such event, Contractor must provide an equivalent replacement Bond before cancellation, modification or nonrenewal of the original Bond.

3.22.1.1 Performance Bonds. Contractor shall furnish and maintain throughout the Agreement term a Performance Bond in the amount of 100% of the annual applicable Agreement year. Contractor shall renew this bond for each renewal year of this Agreement in an amount equal to the Agreement amount for the applicable renewal term. The bond shall be conditioned upon Contractor's full and timely performance of this Agreement and must be issued by a corporate surety authorized to write surety bonds in the State of Texas.

3.22.1.1.1 The Performance Bond shall be in the same form as that distributed by the City, all duly executed by this bidder (as "Principal") and by a corporate surety company licensed to do business in the State of Texas. The surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department.

3.22.2 Airport Customs Security Bond. 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 DRUG ABUSE DETECTION AND DETERRENCE

3.23.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

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

3.23.2.1 a copy of its drug-free workplace policy;

3.23.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in **Exhibit "F"** together with a written designation of all safety

impact positions; and,

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

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

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

3.23.5 Failure of Contractor to comply with requirements will be a material breach of the Agreement entitling the City to terminate in accordance with **Section 5.4**.

3.24 ENVIRONMENTAL LAWS

3.24.1 Contractor shall comply with all federal, state, and local statutes, ordinances, regulations, rules, policies, codes, or guidelines now or hereafter in effect, as they may be amended from time to time, that govern Hazardous Materials or relate to the protection of human health, safety, or the environment, including, but not be limited to, the following:

3.24.1.1 the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq.;

3.24.1.2 the Safe Drinking Water Act, 44 U.S.C. Section 300(f) et seq.;

3.24.1.3 the Oil Pollution Control Act of 1990, 33 U.S.C. Section 270 et seq.;

3.24.1.4 the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Section 9601 et seq., and as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. Law No. 99-499, 100 Stat. 1613;

- 3.24.1.5 the Toxic Substances Control Act, 15 U.S.C., Section 2601 et seq.;
 - 3.24.1.6 the Clean Air Act as amended, 42 U.S.C. 7401 et seq.;
 - 3.24.1.7 the Clean Water Act, 33 U.S.C., Section 1251, et seq.;
 - 3.24.1.8 the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801 et seq.;
 - 3.24.1.9 the Resources Conservation and Recovery Act, 42 U.S.C., Section 6901 et seq.;
 - 3.24.1.10 and those substances defined as hazardous waste or as hazardous substances under the laws of Texas and/or the United States or in regulations promulgated under these laws (collectively, "Environmental Laws"). In addition, Contractor shall comply with all safety precautions set forth in the Documents relating to Hazardous Substances and Safety of the Environment, Persons, and Property.
- 3.24.2 Within 10 days of receipt of an invoice, Contractor shall reimburse the City for any fines or penalties that may be levied against the City by the Environmental Protection Agency, the Texas Commission on Environmental Quality, or any other governmental agency for Contractor's (or its agents' and employees') failure to comply with the Environmental Laws.
- 3.24.3 Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to or from the HAS Facilities, or any other areas or facilities subject to this Agreement, except in strict compliance with the Environmental Laws. "Hazardous Materials" include, but are not limited to, the following,:
- 3.24.3.1 all substances, materials, wastes, pollutants, oils, or governmentally regulated substances or contaminants defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws,
 - 3.24.3.2 asbestos and asbestos-containing materials, petroleum products including crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste, or;
 - 3.24.3.3 any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged,

distributed, disposed of, or released.

- 3.24.4 Contractor shall be responsible for handling and abating any and all hazardous materials that are part of the services provided for under this Agreement. The RSM means estimate program shall be used to determine the cost to HAS when these services are required.
- 3.24.5 HAS Facilities are subject to the National Pollution Discharge Elimination System Program (NPDES), and the regulations, 40 CFR Part 122, relating to stormwater discharges, for operations at the Airport. Contractor is familiar with these NPDES stormwater regulations, and shall conduct operations in accordance with 40 CFR Part 122, as amended from time to time. Contractor understands that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations.
- 3.24.6 Close cooperation is necessary to ensure compliance with any NPDES stormwater discharge permit terms and conditions, as well as to ensure safety and to minimize costs. Contractor shall implement Best Management Practices as defined in 40 CFR, Part 122.2, as amended from time to time, if necessary to minimize the exposure of stormwater to significant materials generated, stored, handled, or otherwise used by Contractor as defined in the federal stormwater regulations.
- 3.24.7 The City's NPDES stormwater discharge permit and any subsequent amendments, extensions, or renewals are incorporated into this Agreement. Contractor shall be bound by all applicable portions of the permit.
- 3.24.8 Contractor shall implement the NPDES requirements at its sole expense, unless otherwise agreed to in writing between the City and Contractor. Contractor shall meet all deadlines that may be imposed or agreed to by the City and Contractor. Time is of the essence.
- 3.24.9 Contractor shall include the City on all correspondence to and information submitted to a government entity(ies) under applicable NPDES stormwater regulations that affect the Airports.
- 3.24.10 If either party asks, the other party shall provide any non-privileged information submitted to a government entity(ies) under applicable NPDES stormwater regulations.
- 3.24.11 Contractor appoints the City as its agent to negotiate with the appropriate governmental entity(ies) any modifications to the City's permit.
- 3.24.12 Contractor shall participate in any City organized task force or other work group established to coordinate stormwater activities at the Airport.

- 3.24.13 The City may enter upon Contractor's premises at any time for purposes of inspection to ensure that Contractor is complying with this Section and any other provisions in this Agreement without committing a trespass.
- 3.24.14 The City's remedies with regard to Environmental Requirements are cumulative and survive termination of this Agreement.
- 3.24.15 WITH NO INTENT TO LIMIT CONTRACTOR'S INDEMNIFICATION TO THE CITY SET FORTH IN SECTION 2.07, CONTRACTOR SHALL PROTECT, DEFEND AND INDEMNIFY THE CITY AND ITS OFFICERS, AGENTS, AND EMPLOYEES AGAINST ANY LOSS, COST, CLAIM, DEMAND, PENALTY, FINE, SETTLEMENT, LIABILITY, OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEYS' AND CONSULTANTS' FEES, COURT COSTS, AND LITIGATION EXPENSES) RELATED TO THE FOLLOWING:
- 3.24.15.1 ANY INVESTIGATION, MONITORING, CLEANUP, CONTAINMENT, REMOVAL, STORAGE, OR RESTORATION WORK PERFORMED BY THE CITY OR A THIRD PARTY DUE TO CONTRACTOR'S ITS EMPLOYEES', SUBCONTRACTORS', JOINT VENTURE PARTNERS' OR AGENTS' USE OR PLACEMENT OF HAZARDOUS MATERIALS (OF WHATEVER KIND OR NATURE, KNOWN OR UNKNOWN) ON THE AIRPORTS PREMISES, OR ANY OTHER AREAS IMPACTED BY THIS AGREEMENT;
 - 3.24.15.2 ANY ACTUAL, THREATENED, OR ALLEGED HAZARDOUS MATERIALS CONTAMINATION OF THE AIRPORTS PREMISES BY CONTRACTOR'S, ITS EMPLOYEES, OR AGENTS;
 - 3.24.15.3 THE DISPOSAL, RELEASE, OR THREATENED RELEASE OF HAZARDOUS MATERIALS BY CONTRACTOR, ITS EMPLOYEES, OR AGENTS AT THE AIRPORTS THAT AFFECTS THE SOIL, AIR, WATER, VEGETATION, BUILDINGS, PERSONAL PROPERTY, OR PERSONS;
 - 3.24.15.4 ANY PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO HAZARDOUS MATERIALS USE BY CONTRACTOR, ITS EMPLOYEES, OR AGENTS AT THE AIRPORTS; OR
 - 3.24.15.5 ANY VIOLATION BY CONTRACTOR, ITS EMPLOYEES, AGENTS, OR JOINT VENTURE PARTNERS OF ANY ENVIRONMENTAL LAWS.
- 3.24.16 THIS INDEMNITY IS NOT APPLICABLE TO LOSSES, CLAIMS, PENALTIES, FINES, SETTLEMENTS, LIABILITIES, AND EXPENSES THAT

RESULT FROM CONDITIONS EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT.

3.25 AIRPORT SECURITY

- 3.25.1 Contractor shall comply with all HAS, Transportation Security Administration, and Federal Aviation Administration security directives, rules, and regulations. The FAA and/or the TSA may assess fines and/or penalties for Contractor's non-compliance with the provisions of 49 CFR 1520, 1540 and 1542, 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 1520, 1540 and 1542 or other applicable laws or regulations.
- 3.25.2 All on-site personnel of Contractor, including subcontractors, who perform services under the Agreement are required to undergo a fingerprint-based criminal history records check. Fingerprints are collected at the Airport badging office and submitted electronically for investigation. Costs for the fingerprint-based criminal history records check are reflected in the cost of the badge. Contractor shall also provide at its sole cost any special clearances that may be required by the FAA or TSA.
- 3.25.3 Contractor shall obtain HAS security badges for its personnel performing services on-site, including subcontractors. On-site personnel shall wear identification badges at all times while on Airport property. The cost of such badges, which is subject to change without notice, is the responsibility of Contractor, including replacements thereof. Contractor personnel losing badges will be charged for replacement badges at the then current rate.

3.26 PAY OR PLAY

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

3.27 COMPLIANCE WITH CERTAIN STATE LAW REQUIREMENTS

- 3.27.1 *Anti-Boycott of Israel.* Contractor certifies that Contractor is not currently engaged in and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.
- 3.27.2 *Anti-Boycott of Energy Companies.* Contractor certifies that Contractor is not currently engaged in and agrees for the duration of this Agreement not to engage

in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.

3.27.3 *Anti-Boycott of Firearm Entities or Firearm Trade Associations.* Contractor certifies that Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.

3.27.4 *Certification of No Business with Foreign Terrorist Organizations.* For purposes of Section 2252.152 of the Texas Government Code, Contractor certifies that, at the time of this Agreement neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code as a company known to have contracts with or provide supplies to a foreign terrorist organization.

3.28 **ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES**

3.28.1 The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of the Countersignature Date. Contractor shall notify the CPO, City Attorney, and the Director of any information regarding possible violation by Contractor or its subcontractors providing services or goods under this Agreement within 7 days of Contractor becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

3.29 **PRESERVATION OF CONTRACTING INFORMATION**

3.29.1 The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that this Agreement 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 Agreement, then for the duration of this Agreement (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 Agreement 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 Agreement that is in the custody or possession of Contractor. Upon the expiration or termination of this

Agreement, Contractor shall, at the Director's election, either (a) provide, at no cost to the City, all Contracting Information related to this Agreement that is in the custody or possession of Contractor, or (b) preserve the Contracting Information related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or City policy.

3.29.2 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 Agreement. 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 Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

3.30 Contractor's Performance

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

3.30.2 Contractor shall manage, control and be responsible for all the work performed by its subcontractors/agents. A complete list of all subcontractors shall be submitted to the Director and/or designee for approval prior to Subcontractor/Agent commencing work. Contractor shall replace any of its personnel or subcontractors whose work product is deemed **unsatisfactory by the Director**.

ARTICLE 4. DUTIES OF CITY

4.1. PAYMENTS AND COMPLETION

4.1.1. *Estimates for Payment*

4.1.1.1. The City shall pay and Contractor shall accept fees as provided in **Exhibit "B"**. The fees must only be paid from Allocated Funds, as provided in **Section 4.3.** below.

4.1.1.2. For Work Orders not completed within 45 days, the City will prepare a Certificate for Payment for the preceding monthly period based on the line

items completed and the extension of their unit prices multiplied by the estimated quantities utilized. For Work Orders completed within 45 days, Contractor shall be paid within 30 days after receipt of an invoice and issuance of a Certificate of Final Completion and a final Certificate of Payment.

4.1.2. *Certificates for Payment*

- 4.1.2.1. Within 10 days after the end of the month, the City will prepare a Certificate for Payment for Work based on an amount which the Director determines is properly due, with a copy to the Contractor.
- 4.1.2.2. Unless otherwise provided in the Agreement or Work Order, payments for completed work, if approved in advance by the Director for properly stored Products is conditioned upon compliance with procedures satisfactory to the City to protect the City's interests. Procedures will include applicable insurance, storage, and transportation to the site for materials and equipment stored off site. Contractor is responsible for maintaining materials and equipment until Substantial Completion of the Work.
- 4.1.2.3. Contractor shall document its use of Low Sulfur Diesel Fuel by providing invoices and receipts evidencing Contractor's use.

4.1.3. *Computations of Certificates for Payment*

- 4.1.3.1. Subject to provisions of the Agreement, Work Orders, and the Documents, the amount of each Certificate of Payment shall be calculated as follows:
 - 4.1.3.1.1. that portion of the Contract Price allocable to completed Work based on the line items completed and the extension of their unit prices (as calculated in **Exhibit "B"**) multiplied by the quantities incorporated into the Work;
 - 4.1.3.1.2. plus progress payments for completed Work that has been properly authorized by Work Change Directives or amended Work Orders;
 - 4.1.3.1.3. less retainage of five percent;
 - 4.1.3.1.4. plus actual costs, properly substantiated by certified copies of invoices and freight bills, of non-perishable materials and equipment delivered and properly stored, if approved in advance by the Director, less retainage of 15 percent;

4.1.3.1.5. less any previous payments made by the City.

4.1.4. *Decisions to Withhold Certification*

4.1.4.1. The Director may decline to certify payment and may withhold payment in whole or in part to the extent reasonably necessary to protect the City, if in the Director's opinion there is reason to believe that:

4.1.4.1.1. non-conforming work has not been remedied;

4.1.4.1.2. the Work cannot be completed for the unpaid balance of the Contract Price;

4.1.4.1.3. there is damage to the City or another contractor;

4.1.4.1.4. the Work will not be completed within the Contract Time and the unpaid balance would not be adequate to cover actual and liquidated damages;

4.1.4.1.5. probable evidence that third party claims will be filed in court, in arbitration, or otherwise;

4.1.4.1.6. Contractor has failed to make payments to Subcontractors for labor, materials, or equipment; or

4.1.4.1.7. Contractor has persistently failed to carry out the Work in accordance with the Agreement, Work Order, and Documents.

4.1.4.2. When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

4.1.4.3. The Director may decline to certify payment and may withhold a request for payment in whole or in part upon failure of the Contractor to submit the initial construction schedule or monthly schedule updates as required by the Work Order and this Agreement.

4.1.5. *Progress Payments*

4.1.5.1. Subject to the approval of the Director, the City will pay the amount certified by the Director within 30 days after issuance of a Certificate for Payment; provided, however, for Work Orders completed within 45 days, Contractor will not be paid until 30 days after the City's receipt of Contractor's invoice and issuance of a Certificate of Final Completion and a final Certificate of Payment.

- 4.1.5.2. The City has no obligation to pay or to facilitate the payment to a Subcontractor, except as may otherwise be required by law. Contractor will comply with the prompt payment requirements of Chapter 2251 of the Government Code. State law requires payment of Subcontractors by Contractor within 10 days of Contractor's receipt of payment from the City.
- 4.1.5.3. The City may, on request and at the discretion of the Director, furnish to Subcontractor information regarding the percentages of completion or the amounts applied for by the Contractor, and the action taken thereon by the City because of Work done by the Subcontractor.
- 4.1.5.4. Contractor shall prepare and submit to the Director, on the City's form, a Certification of Payment to Subcontractors and suppliers to be attached to each monthly estimate for payment.
- 4.1.5.5. A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Work by the City, does not constitute acceptance of work which is not in accordance with the Agreement, the Work Order, and the Documents.

4.1.6. *Date of Substantial Completion*

- 4.1.6.1. When the Contractor considers Work, or a portion thereof designated by the Director, to be substantially complete for a Work Order, the Contractor shall prepare and submit to the Director, a comprehensive punch list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct the items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to comply with the Work Order, the Documents, and this Agreement.
- 4.1.6.2. By submitting the list to the Director, Contractor represents that work on the list shall be completed within seven days.
- 4.1.6.3. Upon receipt of the Contractor's punch list, the City will inspect the Work or designated portion thereof, to verify that the punch list contains all items needing completion or correction. If City's inspection discloses items not on the Contractor's punch list, the items must be added to the punch list of items to be completed or corrected. If City's inspection reveals that Contractor is not yet substantially complete, Contractor shall complete or correct the deficiencies and request another inspection. The City may recover the costs of re-inspection from Contractor.
- 4.1.6.4. Prior to the Director issuing a Certificate of Substantial Completion, Contractor shall also provide:

- 4.1.6.4.1. A Certificate of Occupancy for new construction or Certificate of Compliance for remodeled work, as applicable, and
- 4.1.6.4.2. Compliance with Texas Accessibility Standards through State inspection of the Work, if required. If Contractor calls for inspection in a timely manner and the inspection is delayed through no fault of Contractor, and the City so confirms, the Director may, upon request by Contractor, add the inspection to the punch list in **Section 4.1.6.3.** and issue a Certificate of Substantial Completion.
- 4.1.6.5. When the Work or designated portion thereof is determined by the City to be sufficiently complete, in accordance with the Work Order, the Documents, and this Agreement so the City can occupy or utilize the Work, or designated portion thereof, for the purpose for which it is intended, the City may prepare a Certificate of Substantial Completion which incorporates the list in **Section 4.1.6.3.** and establishes (i) the Date of Substantial Completion, (ii) responsibilities of the Parties for security, maintenance, heating, ventilating and air conditioning, utilities, damage to the Work, and insurance, and (iii) fixed time within which the Contractor shall complete all items on the list of items to be corrected accompanying the certificate.
- 4.1.6.6. Warranties required by the Work Order, Documents, and Agreement shall commence on the Date of Substantial or Final Completion of the Work, whichever occurs first unless otherwise provided in the Certificate of Substantial Completion. Warranties may not commence on items not completed.
- 4.1.6.7. Contractor shall complete or correct the items in **Section 4.1.6.3.** above within the time period set out in the Certificate of Substantial Completion. If Contractor fails to do so, the City may issue a Notice of Noncompliance and proceed according to **Section 2.5** of the General Conditions.
- 4.1.7. *Partial Occupancy or Use*
 - 4.1.7.1. The City may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to by the Contractor and Contractor's insurer and authorized by public authorities having jurisdiction over the Work. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld.
 - 4.1.7.2. Immediately prior to such partial occupancy or use, the Director and Contractor shall jointly inspect the area to be occupied or the portion of the Work to be used in order to determine and record the condition of the Work.

4.1.7.3. Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of work not complying with requirements of the Work Order, the Documents, and this Agreement.

4.1.8. *Final Completion and Final Payment*

4.1.8.1. Contractor shall review the Work Order and inspect the Work prior to Contractor notification to the Director that the Work is complete and ready for final inspection, Contractor shall submit an affidavit that the Work has been inspected, that Work is complete in accordance with requirements of the Work Order, the Documents, and this Agreement.

4.1.8.2. Within five business days after receipt of Contractor's written notice that the Work is ready for final inspection and acceptance under a Work Order, the Director will make final inspection. When the Director finds the Work completed in accordance with the Work Order, the Documents, and this Agreement, the Director will, within three business days, issue a Certificate of Final Completion stating that to the best of Director's knowledge, information, and belief, the Work has been completed in accordance with terms and conditions of the Work Order, the Documents, and this Agreement. Upon acceptance, the Director may approve a final Certificate for Payment.

4.1.8.3. Should Work be found not in compliance with requirements of the Work Order, the Documents, and this Agreement, Director will notify Contractor in writing of items of non-compliance. Upon inspection and acceptance of the corrections by the Director, compliance with all procedures in **Section 4.1.8.2.**, and Contractor's submission of the items set out in **Section 4.1.8.4.**, the Director will issue a Certificate of Final Completion as provided in **Section 4.1.8.2.**

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

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

4.1.8.1.4.2. Maintenance Bond and other required Bonds, copies of record documents, maintenance manuals, tests, inspections, and approvals.

- 4.1.8.5. Upon the Director's issuance of a Certificate of Final Completion, Contractor may request an increase in payment to 100 percent of the Contract Price less accrued liquidated damages.
- 4.1.8.6. If final completion is materially delayed through no fault of the Contractor, or by issuance of an amended Work Order affecting final completion, and the Director so confirms, the City may, upon application by the Contractor and certification by the Director, and without terminating the Work Order and Agreement, make payment of the balance due for that portion of the Work fully completed and accepted.
- 4.1.8.7. If the remaining balance due for Work not fully completed or corrected is less than the retainage stipulated in the Work Order, the Documents, and this Agreement, Contractor shall submit to the Director written consent of Surety to payment of the balance due for that portion of the Work fully completed and accepted, prior to certification of the payment. The payment is made under terms governing final payment, except that it shall not constitute a waiver of Claims.
- 4.1.8.8. The City will make final payment to the Contractor within 30 days after acceptance, subject to limitations, if any, as stated in the Work Order. For Work Orders completed within 45 days, the City shall pay Contractor within 30 days after receipt of Contractor's invoice and issuance of a Certificate of Final Completion and a final Certificate of Payment.
- 4.1.8.9. Acceptance of final payment by Contractor shall constitute a waiver of Claims, whether known or unknown, by Contractor, except those previously made in writing and identified by Contractor as unsettled as the time of final Application for Payment.

4.1.9. *Liquidated Damages*

- 4.1.9.1. The Contractor, the Surety, and the City agree that failure to complete the Work under a Work Order within the Contract Time will cause damages to the City and that actual damages from the harm are difficult to estimate accurately. Therefore, the Contractor, the Surety, and the City agree that the Contractor and the Surety will be liable for and shall pay to the City the amount stipulated in the Work Order as liquidated damages and that the amount of damages fixed therein is a reasonable forecast of just compensation for the harm to the City resulting from failure to complete the work within Contract Time. The amount specified by the City in each Work Order will be paid for each day of delay beyond the time for completion until the Date of Substantial Completion, not to exceed \$200 per day.
- 4.1.9.2. The amount of liquidated damages, payable by Contractor or Contractor's Surety, if applicable, is for each and every day of delay beyond the Contract

Time in the Work Order until the Work is accepted by the City Engineer or Director as substantially complete.

4.1.9.3. Contractor shall pay to the City an amount equal to \$1,200 per diesel operating vehicle or pieces of motorized equipment per incident of high sulfur diesel fuel usage.

4.2. TAXES

- 4.2.1. Contractor shall pay all sales, consumer, use, and similar taxes for the Work, or portions thereof, provided by Contractor that it is legally required to pay, whether or not in effect on the Effective Date of this Agreement.
- 4.2.2. Contractor shall obtain, and require Subcontractors to obtain, all necessary permits from the State and from local taxing authorities to perform contractual obligations under the Agreement, including sales tax permits.
- 4.2.3. The City is exempt from the Federal Transportation and Excise Tax. Contractor shall comply with federal regulations governing such exemptions.
- 4.2.4. Materials incorporated into the Work are exempt from state sales tax according to provisions of the Texas Tax Code, Chapter 151, Subsection H.

4.3. LIMIT OF APPROPRIATION

- 4.3.1 The City's duty to pay money to Contractor for any purpose under this Agreement is limited in entirety to the provisions of this Section 4.3.
- 4.3.2 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 Council has appropriated and allocated the sum of \$----- (the "Original Allocation") to pay money due under - job order contracts, of which this Agreement is one. The executive and legislative officers of the City, in their discretion, may appropriate additional funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures:
 - 4.3.2.1 The City makes a supplemental allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the supplemental allocation shall be approved by motion or ordinance by 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 Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation. \$ _____

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

4.3.3 The maximum contract amount referenced in the approving ordinance is available for distribution among four contracts, of which this is one. The City is not obligated to issue the entire maximum contract amount referenced in the approving ordinance or the *prorata* estimated amount of compensation to any of the contracts. The Contractor will not be entitled to recalculate the prices in the UPB or the coefficient because of the amount of the Work issued under this Agreement.

4.4 ACCESS TO SITE

4.4.1 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.

4.5 ACCESS TO DATA

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

4.5.2 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.

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

ARTICLE 5. TERM AND TERMINATION

5.1. CONTRACT TERM

- 5.1.1. This Agreement continues for two consecutive years from the Effective Date (“Initial Term”), unless sooner terminated under this Agreement.
- 5.1.2. Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two successive 1-year terms on the same terms and conditions. If the Director chooses not to renew this Agreement, he or she shall notify Contractor and the CPO of non-renewal at least 30 days before the expiration of the then-current term.
- 5.1.3. Work Orders issued prior to and in effect at the time of the expiration of the is Agreement shall continue to be in effect and performed by the Contractor until such time as all requirements have been met and a written acceptance has been made by the Director, but no later than 6 months after the Agreement expiration.
- 5.1.4. Director in their sole discretion may renew with a single or multiple agreements approved for job order contracting.

5.2 TIME IS OF THE ESSENCE

- 5.2.1 The City and Contractor mutually agree that time is of the essence with respect to the commencement and completion dates and times set forth in each Work Order.
- 5.2.2 Contractor shall proceed expeditiously and without interruption, with adequate forces, and shall achieve the Date of Substantial Completion within the Contract Time.
- 5.2.3 Should progress of the Work fall behind construction schedule, except for reasons stated in **Section 6.2**, Contractor shall promptly submit, at the request of Project Manager, an updated construction schedule to the Director for approval. Contractor’s failure to submit an updated construction schedule may, at the Director’s discretion, constitute a material breach of this Agreement. Contractor shall take action necessary to restore progress by working the hours, including night shifts and lawful overtime operations as necessary, to achieve Date of Substantial Completion within the Contract Time.
- 5.2.4 In computing any period of time prescribed or allowed by the Agreement, the day of the act, event, or default after which designated period of time begins to run is not to be included. Last day of the period so computed is to be included, unless it is a Saturday, Sunday, or City Holiday, in which event the period runs until end of next day which is not a Saturday, Sunday, or Legal Holiday. Sundays and City Holidays are considered to be days and are to be included in all other time computations relative to Contract Time.

5.3 TERMINATION BY CITY FOR CONVENIENCE

- 5.3.1 The Director may, without cause, and without prejudice to other rights or remedies of the City, give Contractor and Surety a Notice of Termination by seven days written notice (“Notice of Termination”). The City’s right to terminate this Agreement for convenience is cumulative of all rights and remedies, which exist now or in the future.
- 5.3.2 After receipt of a Notice of Termination, and except as otherwise approved by the Director, Contractor shall conform to the requirements of **Section 5.5.3**.
- 5.3.3 After receipt of such a Notice of Termination, Contractor shall submit to the City its termination Claims, in the forms required by the Director. Such Claim shall be submitted to the City promptly, but no later than six months from the effective date of termination, unless one or more extensions are granted by the Director in writing. If Contractor fails to submit its termination Claim within the time allowed, in accordance with **Section 5.3.4.**, the Director will determine, on the basis of available information, the amount, if any, due to the Contractor because of the termination, and such determination will be final and binding on the Parties. The City will then pay to the Contractor the amount so determined.
- 5.3.4 The Director will determine, on the basis of information available to the Director, the amount due, if any, to Contractor by reason of the termination as follows:
- 5.3.4.1 Contract Price for all Work performed in accordance with a Work Order and/or the entire Agreement up to the date of termination determined in the manner prescribed for payments in **Section 4.1.**, except no retainage shall be withheld by the City either for payment determined by percentage of completion or for materials and equipment delivered to the site, in storage, or in transit.
- 5.3.4.2 Reasonable termination expenses, including costs for settling and paying Subcontractor and supplier claims arising out of termination of the Work, reasonable cost of preservation and protection of the City’s property after termination, if required, and the cost of claim preparation. Termination expenses do not include field or central office overhead, salaries of employees of Contractor or litigation costs including attorney fees. No amount will be allowed for anticipated profit or central office overhead on uncompleted Work, or any cost or lost profit for other business of Contractor alleged to be damaged by the termination.
- 5.3.5 Contractor shall promptly remove from the site construction equipment, tools, and temporary facilities, except such temporary facilities which the Director may wish to purchase and retain.
- 5.3.6 Contractor shall cooperate with the City during the transition period.

- 5.3.7 The City will take possession of the Work and materials delivered to the site, in storage, or in transit as of the date, or dates, specified in the Notice of Termination and will be responsible for maintenance, utilities, security, and insurance, as stated in the Notice of Termination.
- 5.3.8 TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

5.4 SUSPENSION BY CITY FOR CONVENIENCE

- 5.4.1 The City may, without cause, after giving Contractor and Surety 24 hour prior written notice, order Contractor to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Director may determine.
- 5.4.2 An adjustment shall be made in Contract Time equivalent to the length of time of suspension.
- 5.4.3 Adjustment will be made to Contract Price for increases in the cost of performance of the Work, including profit on increased cost of performance caused by suspension, delay, or interruption of the Work in accordance with **Exhibit "A"**. No adjustment will be made to the extent that: (i) performance was, or would have been, suspended, delayed, or interrupted by another cause for which Contractor is responsible; or (ii) adjustment is made or denied under another provision of this Agreement.

5.5 TERMINATION BY CITY FOR CAUSE

- 5.5.1 Each of the following acts or omissions of Contractor or occurrences shall constitute an "Event of Default" under the Agreement:
- 5.5.1.1 Contractor refuses or fails to supply enough properly skilled workers or proper Products;
 - 5.5.1.2 Contractor disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;
 - 5.5.1.3 Contractor is guilty of material breach of any duty or obligation of Contractor under the Agreement, including but not limited to, failure to submit certified payrolls electronically;

- 5.5.1.4 Contractor has had any other contract with the City terminated for cause at any time subsequent to the Effective Date of this Agreement; or
- 5.5.1.5 Contractor fails to utilize Low Sulfur Diesel Fuel as provided set forth in the General Conditions.
- 5.5.2 If an Events of Default occurs, the Director may, at his option and without prejudice to any other rights or remedies which the City may have, deliver a written notice to Contractor and Surety describing the Event of Default and giving the Contractor 10 days in which to cure the Event of Default. If after the cure period, Contractor has failed and/or refused to cure said Event of Default, then the Director may deliver a second written notice to Contractor giving notice of the termination of the Agreement or of the termination of the Contractor's performance under the Agreement ("Notice of Termination"). If Director issue a Notice of Termination, then Director may, subject to any prior rights of Surety:
 - 5.5.2.1 Request that Surety complete the Work; or
 - 5.5.2.2 Take possession of the site and all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor; and
 - 5.5.2.3 Finish the Work by whatever reasonable method Director may deem expedient.
- 5.5.3 After Contractor's receipt of a Notice of Termination, and except as otherwise directed in writing by the Director, Contractor shall:
 - 5.5.3.1 Stop the Work on the date and to the extent specified in the Notice of Termination;
 - 5.5.3.2 Place no further orders or subcontracts for materials, equipment, or services;
 - 5.5.3.3 Terminate all orders and subcontracts to the extent that they relate to performance of the Work terminated;
 - 5.5.3.4 Assign to the City, in the manner, at the times, and to the extent directed by the Director, all rights, title, and interest of Contractor, under the supply orders and subcontracts. The City may settle or pay any or all claims arising out of termination of the orders and Subcontracts;
 - 5.5.3.5 Settle all outstanding liabilities and all claims arising out of the termination of supply orders and subcontracts with approval of Director;
 - 5.5.3.6 Take such action as may be necessary, or as Director may direct, for protection and preservation of property related to the Work that is in

possession of Contractor, and in which the City has or may acquire an interest; and

- 5.5.3.7 Secure the Work in a safe state before leaving the site, providing any necessary safety measures, shoring, or other devices.
- 5.5.4 If the City terminates the entire Agreement or terminates Contractor's performance under the Agreement for any one or more of the reasons stated in **Section 5.4.1.**, Contractor may not receive any further payment until the Work is complete, subject to provisions of **Section 5.4.5.**
- 5.5.5 If the unpaid balance of the Contract Price exceeds the costs of finishing the Work, including liquidated damages and other amounts due under the Agreement, the balance will be paid to Contractor. If the costs of finishing the Work exceed the unpaid balance, Contractor shall, within 10 days of receipt of written notice setting out the amount of the excess costs, pay the difference to the City. The amount to be paid to Contractor or the City, will be certified by Director in writing, and this obligation for payment shall survive termination of the Agreement or termination of Contractor's performance under the Agreement. Termination of the Contractor for cause shall not relieve the Surety from its obligation to complete the project.

5.6 TERMINATION FOR CAUSE BY CONTRACTOR

- 5.6.1 Contractor may terminate the Agreement only if (i) the Work authorized under a Work Order is stopped for a period of 30 days through no act or fault of the Contractor, Subcontractor, Supplier, or their agents or employees, or other persons performing portions of the Work under contract with Contractor, and (ii) for any of the following reasons:
 - 5.6.1.1 Issuance of an order of a court or other public authority having jurisdiction;
 - 5.6.1.2 Act of government, such as a declaration of national emergency, making material unavailable; or
 - 5.6.1.3 If repeated suspensions, delays, or interruptions by the City constitute in the aggregate more than 100 percent of the total number of days scheduled for completion of the Work Order.
- 5.6.2 No termination will be effective for the above reasons unless Contractor delivers written notice to the Director describing the reason for termination of a Work Order, giving the proposed termination date, and granting the City a reasonable opportunity to respond and cure any City default before the termination is effective.
- 5.6.3 If the Agreement is terminated pursuant to this provision, Contractor shall comply with the requirements of **Section 5.4.3.**

5. 7. REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS

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

ARTICLE 6. MISCELLANEOUS

6.1. INDEPENDENT CONTRACTOR

6.1.1. Contractor is an independent contractor and shall perform the services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Contractors' performance under this Agreement. All personnel Contractor uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all worker's compensation benefits coverage.

6.2. SEVERABILITY

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

6.3. ENTIRE AGREEMENT

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

6.4. WRITTEN AMENDMENT

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

6.5. APPLICABLE LAWS

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

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

6.6. NOTICES

6.6.1. All notices required or permitted by this Agreement must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (i) deposit in a United States Postal Service post office or receptacle; (ii) with proper postage (certified mail, return receipt requested); and (iii) addressed to the other party at the address set out in **Section 1.1.** or at such other address as the receiving party designates by proper notice to the sending party.

6.7. CAPTIONS

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

6.8. NON-WAIVER

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

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

6.9. INSPECTIONS AND AUDITS

6.9.1. Representatives of the City have the right to perform, or to have performed, (i) audits of Contractor's books and records, and (ii) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least seven years after this Agreement terminates. If the books and records are located outside of Harris County, Texas, Contractor agrees to make them available in Harris County, Texas. This provision does not affect the applicable statute of limitations.

6.10. ENFORCEMENT

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

6.11. AMBIGUITIES

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

6.12. SURVIVAL

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

6.13. PUBLICITY

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

6.14. PARTIES IN INTEREST

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

6.15. SUCCESSORS AND ASSIGNS

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

6.16. BUSINESS STRUCTURE AND ASSIGNMENTS

6.16.1. Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §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.

6.16.2. Contractor shall not delegate any portion of its performance under this Agreement without the Director's prior written consent.

6.17. REMEDIES CUMULATIVE

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

6.18. CONTRACTOR DEBT

6.18.1. IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FOR 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 AGREEMENT.

6.19. TITLE VI ASSURANCES

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

6.20 AIRPORT SYMBOLS

6.20.1 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.

6.21 AIRPORT SECURITY AND BADGING

- 6.21.1 Contractor shall comply with all Houston Airport System (HAS), Transportation Security Administration (TSA), Federal Aviation Administration (FAA) and any other governmental agency security directives, rules and regulations. The FAA and/or the TSA may assess fines and/or penalties for the Contractor's non-compliance with the provisions of Title 49 Code of Federal Regulations, Parts 1540 and 1542, as amended from time to time, or by other agencies for non-compliance with laws or regulations applicable to the Contractor's operations. Within 10 days of notification in writing, Contractor shall reimburse the City for any fine or penalty assessed against the City because of Contractor's non-compliance with 49 CFR 1540 and 1542 or other applicable laws or regulations.
- 6.21.2 Contractor shall be responsible for any requirements (and costs associated therewith) of the Federal Aviation Administration, Department of Homeland Security, and the Houston Airport System (as applicable) regarding employee background checks and badging.

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EXHIBIT “A”

PERFORMANCE/WORK STATEMENT

Capitalized terms have the same meaning set forth in **Article 2** of the Agreement and **Article 1** of the General Conditions, unless otherwise defined herein.

1. General Information

- 1.1 This Agreement is for the minor construction, repair, rehabilitation, or alteration of HAS Facilities for work of a recurring, or emergency nature where the delivery times and quantities are indefinite, and Work Orders are issued on the basis of pre-described and pre-priced tasks.

1.2 Services

- 1.2.1 In consideration of the payment specified in this Agreement and in each Work Order, Contractor shall furnish all labor, materials, tools, supplies, equipment, transportation, insurance, Bonds, subcontracts, supervision, management, reports, incidentals, and quality control, and shall perform all operations necessary and required for construction management and construction work, which will be defined in each Work Order. Contractor shall perform the Work in accordance with the requirements set forth in this Agreement.

1.3 Project Description

- 1.3.1 Contractor shall work under the direction of the Director. The Director will issue Work Orders on an as-needed basis setting forth the specific work requirements.
- 1.3.2 Contractors are expected to implement services in the following phases: Work Order (WO) Phase, Construction Phase, Commissioning and Activation Phase, and Contract Closeout Phase.

- 1.3.3 The work will be done in a wide variety of skills, capabilities, and trades including, but not limited to: carpentry, masonry, concrete, paving, roofing, excavation, steam fitting, plumbing, sheet metal, painting, demolition, welding, HVAC, electrical, mechanical, asbestos abatement, mold remediation, hazardous material handling, carpeting, flooring, drywall finishing, hardware, doors, glazing, landscaping, and telecommunications cabling services.

2. Pricing Documents

The following documents will be used to determine pre-described and pre-priced tasks under the Work Order and this Agreement:

- 2.1 Contractor shall provide, at its own cost, access to the necessary capabilities of the Proposal Development Software product.
- 2.2 The Unit Price Book for this Agreement will be the latest quarterly edition of the R. S. MEANS Facilities Construction Cost Data. The Houston, Texas City Cost Index “total weighted average” as of the date of each Work Order will be applied to the R.S. MEANS prices listed in O&P column.
- 2.5 The following HAS Public Safety & Technology (PS&T) Standards set forth the specifications applicable to the HAS Telecom Cabling and Supporting Infrastructure Price List items:

Document No.	3. Description
270553	Identification and Labeling of Communication Infrastructure
271100	Communications Cabinets and Equipment Rooms
271300	Backbone and Riser Media Infrastructure
271500	Horizontal Media Infrastructure
270528	Interior Communication Pathway
270543	Exterior Communication Pathway
270526	Telecommunications Grounding and Bonding
272100	Data communication Network Equipment
272200	PC, Laptop and Server Equipment
27828	Multi User Information Display System Fabrication
28130	Access Control
28200	CCTV Systems

- 2.6 HAS Technology Standards are on file in the Contract Administrator's Office and are updated periodically. Contractor will be responsible to confirm that they have the current specification prior to supplying a cost estimate and are expected to comply with the most current published HAS PS&T IT Specifications of Division 27 and 28 Standards.

3. Work Orders

- 3.1 Contractor shall perform the Work under this Agreement only upon the issuance of a written Work Order signed by the Director. Work Orders shall be issued in accordance with the requirements specified in this Agreement.
- 3.2 Work Orders issued prior to and in effect at the time of the expiration of this Agreement shall continue to be in effect and performed by the Contractor until such time as all requirements have been met and a written acceptance of the Work performed has been made by the Director.
- 3.3 Work Orders must set forth the following:
 - 3.3.1 Contract Number and the Contractor's name, address, and telephone number;
 - 3.3.2 Work Order number and the date of issuance;
 - 3.3.3 The Contract Time including period of performance and schedule of work requirements;
 - 3.3.4 The place of performance, as applicable to each Work Order;
 - 3.3.5 The work to be performed described in detail;
 - 3.3.6 The Contract Price including total amount and pricing data;
 - 3.3.7 Amount of/formula for liquidated damages;
 - 3.3.8 Identity of Contractor's key personnel;
 - 3.3.9 Funding code(s) applicable to each Work Order;
 - 3.3.10 Balance of funds remaining on the Agreement; and
 - 3.3.11 Such other information as directed by the Director.
- 3.4 Work Orders may be amended by the Director in the same manner as they are issued. A Work Order may not be amended to exceed the maximum amount allowable for a Work Order as stated in **Section 1.3** of **Exhibit "A"** unless City Council approval is given.
- 3.5 Work Change Directives
 - 3.5.1 A Work Change Directive cannot change Contract Price or Contract Time, but is evidence that the Parties agree that a change, ordered by directive, will be incorporated in a subsequently issued amended Work Order as to its effect, if any, on Contract Price or Contract Time.
 - 3.5.2 Failure by Contractor to commence work identified in a Work Change Directive within the time specified by Director, or to complete the work in a reasonable period of time, may be determined by Director to be a material breach of the Agreement.
 - 3.5.3 A Work Change Directive is used in the absence of total agreement of the terms of an amended Work Order.

- 3.5.4 If Contractor signs a Work Change Directive, then Contractor agrees to its terms including adjustment in Contract Price and Contract Time or method for determining them. Agreement by the Parties to adjustments in Contract Price and Contract Time are immediately recorded as an amended Work Order.
- 3.5.5 Director, by Work Change Directive, may direct Contractor to take measures as necessary to expedite construction to achieve Date of Substantial Completion on or before expiration of Contract Time. When the Work is expedited solely for convenience of the City and not due to Contractor's failure to prosecute timely completion of the Work, then Contractor is entitled to an adjustment in Contract Price equal to actual costs determined in accordance with **Section 3.6 of Exhibit "A"**.
- 3.5.6 Whenever Contractor receives a Work Change Directive or amended Work Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described by the Work Change Directive or amended Work Order, as applicable. Contractor shall complete the Work within the time prescribed. If no time is prescribed, Contractor shall complete the Work within a reasonable time. If the Work described by any amended Work Order causes an unavoidable delay in any other Work Contractor is required to perform under this Agreement, Contractor may require a time extension for the completion of the Work. The Director's decision regarding time is final.
- 3.5.7 A product or service provided under a Work Change Directive or amended Work Order is subject to inspection, acceptance, or rejection the same manner as the Work described in the Agreement and is subject to the terms of the Agreement as if it had been originally included in the Agreement.
- 3.5.8 A Work Change Directive and amended Work Order is subject to **Section 4.3** of the Agreement and cannot exceed the maximum amount allowable for a Work Order as stated in **Section 1.3 of Exhibit "A"** unless City Council approval is given.
- 3.6 Adjustments in Contract Time and Contract Price
- 3.6.1 Contractor may request an extension of Contract Time for delay only if:
- 3.6.1.1 delay is caused by failure of Subcontractor or Supplier to perform or make progress; and
- 3.6.1.2 cause of failure is beyond control of both Contractor and Subcontractor or Supplier.

3.6.2 Adjustments in Contract Price by amending the Work Order shall be based on one of the following methods:

3.6.2.1 Items listed as pre-priced in the Unit Price Book shall be priced in accordance with the unit prices in the Unit Price Book; or

3.6.2.2 For non-pre-priced items, the cost to be determined in accordance with **Section 2 of Exhibit “B”**.

3.6.3 If Contractor does not indicate agreement with change in Contract Price or Contract Time given in the Work Order within seven days from date of the Work Change Directive, or Contractor disagrees with the method for adjustment in Contract Price, method and adjustment shall be determined by the Director. If the Contractor disagrees with Director's determination they then may file a Claim in accordance with **Section 4.4** of the General Conditions.

3.6.4 If the Director determines the method and adjustment in Contract Price under **Section 3.6.2 of Exhibit “A”**, Contractor shall provide, in such form as the Director may prescribe, appropriate supporting data for items submitted. Failure to submit such data within seven days of request for such data by the Director shall constitute waiver of such Claim.

3.6.5 Amount of credit to be allowed by Contractor to the City for deletion or change (which deletion or change results in a net decrease in Work Order Price) shall be determined in accordance with this **Section 3.6 of Exhibit “A”**.

3.6.6 When Contractor agrees with the determination made by the Director concerning adjustments in Contract Price and Contract Time, or the Parties otherwise reach agreement upon the adjustments, such agreement will be immediately recorded by preparation and execution of an appropriate amended Work Order.

3.7 Minor Change in the Work

3.7.1 A Minor Change in Work is binding on the Parties. Contractor shall acknowledge, in a written form acceptable to Director, that there is no change in Contract Time or Contract Price and shall carry out the written orders promptly.

3.8 Work Order Issuance

3.8.1 For any work required under this Agreement, the Director shall issue a written Work Order as follows

- 3.8.1.1 As the need exists for performance under the terms of this Agreement, the Director will notify the Contractor of an existing requirement. On receiving the notification, the Contractor shall respond within 5 (five) business days, or as otherwise instructed by the Director:
- 3.8.1.2 Visiting the proposed site with the Director; or
- 3.8.1.3 Establish contact with the Director to further define the scope of the requirement.
- 3.8.1.4 Establish/submit the scope of work within five (5) working days of site for review prior to a proposal submission.
- 3.8.2 After joint definition of the scope of the individual requirement, the Contractor shall prepare a proposal, using the Proposal Development Software, for accomplishment of the task. The Unit Price Book serves as the basis for establishing the value of the work to be performed. The Contractor shall submit its proposal within four (4) business days after joint definition of the scope of the requirement, or as mutually agreed with the Director. If the Contractor cannot submit its proposal within four (4) business days due to any subcontractor or supplies limitations, it is the Contractor's responsibility to inform the Director in writing prior to the expiration of the four (4) business day period. In case of an emergency and/or under a Work Change Directive, Contractor should be ready to mobilize at the work site within two hours or as soon as practicable.
- 3.9 After receiving the Contractor's proposal, the Director will compare the proposal with his estimate, prepared using RS Means software, and will reach agreement with the Contractor on pricing, schedule, MWBE participation and all other terms, before issuance of a Work Order.
- 3.10 The Director shall review the proposal for completeness and, if it is approved by the Director, the Director will issue a Work Order.
- 3.11 If the Director does not issue a Work Order after receipt of Contractor's proposal, the City is not obligated to reimburse the Contractor for any costs incurred in the preparation of the proposal.

4. Scheduling and Completion of Work

- 4.1 Each executed Work Order constitutes a Notice to Proceed, which specifies when work is to begin. Any preliminary work started, or materials ordered or purchased before receipt of the executed Work Order are at the risk and expense of Contractor. Contractor shall diligently perform the Work to completion within the time set forth in the Work Order. The period of performance includes allowance for mobilization, holidays,

weekend days, inclement weather, and cleanup; therefore, claims for delay based on these elements are not allowed. Each task shall be completed within 180 days upon receipt of a Work Order, unless otherwise approved by the Director or set forth in a Work Order.

- 4.1.1 Contractor shall deliver materials and equipment without interfering with HAS operations and personnel.
- 4.1.2 Excluding IT Equipment Contractor shall move portable furniture up to 150 Linear Feet as specified in a work order and replace the portable furniture in the original location upon completion of the Work, at no cost to the City. Exclusively if the relocation extends beyond 150 Linear Feet the contractor is expected to include any incurred costs in the work order proposal.
- 4.1.3 The Contractor and its Subcontractors shall take all precautions to ensure that no damage to private or public property results from its operations. Contractor must repair or replace items damaged by it at no cost to the City.
- 4.1.4 If a formal Traffic Control Plan is specified or not, and, if applicable, Contractor shall provide all necessary traffic control, such as barricades and traffic cones, as required for each WO at no additional cost to HAS. Contractor shall submit proposed traffic control methods compatible with HAS Operations, Texas Department of Transportation (TxDOT), and Manual on Uniform Traffic Control Devices (MUTCD) standards to the PM for final approval.
- 4.2 Once a Work Order is issued, the Contractor shall provide all materials, labor, tools, supplies, equipment, transportation, insurance, Bonds, subcontracts, supervision, management, reports, incidentals, and quality control to successfully complete the Work in the required time frame. Unless otherwise specifically provided in a Work Order, all installed equipment, materials, and supplies furnished by Contractor must be new and the most suitable grade for the purpose intended.
- 4.3 The Contractor shall enter and submit a schedule showing the actual progress every 30 calendar days, or as directed by the Director. If, in the opinion of the Director, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Director, without additional cost to the City. In this circumstance, the Director may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction planned, and to submit for approval any supplementary schedule or schedules in chart form as the Director deems necessary to demonstrate how the approved rate of progress will be regained.
- 4.4 Failure of the Contractor to comply with the requirements of the Director shall be grounds for a determination by the Director that the Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Work Order. Upon making this determination, the Director may terminate the Contractor's right to proceed with the Work, or any separable part of it, in accordance with the default terms of this Agreement.

5. Final Completion and Payment

- 5.1 When Contractor considers the Work under a Work Order to be complete and ready for its intended use, Contractor shall review the Work Order and inspect the Work. Prior to Contractor's notification to the Director that the Work is complete and ready for final inspection, Contractor shall submit an affidavit that the Work has been inspected, and that the Work is complete in accordance with requirements of this Agreement.
- 5.2 Prior to the Director issuing a Certificate of Final Completion, Contractor shall provide a Certificate of Occupancy for new construction or a Certificate of Compliance for remodeled work and compliance with Texas Accessibility Standards through State Inspection of the Work, if required.
- 5.3 Within five days after receipt of Contractor's written notice that the Work is ready for final inspection and acceptance under a Work Order, the Director will make such inspection. When the Director finds the Work in accordance with this Agreement, the Director will, within three business days, issue or cause to be issued a Certificate of Final Completion stating that to the best of Director's knowledge, information, and belief, the Work has been completed in accordance with terms and conditions of the Work Order, Documents, and Agreement and recommends acceptance of the Work under the Work Order. Upon acceptance, the Director will issue a Certificate for Payment.
- 5.4 Should Work be found not in compliance with requirements of this Agreement, Director will notify Contractor in writing of items of non-compliance. Upon correction of such non-complying items, the City shall issue a Certificate of Final Completion to Contractor as provided in **Section 6.3 of Exhibit "A"**.
- 5.5 Contractor shall submit the following items to the Director before he or she will issue a Certificate of Final Completion:
- 5.5.1 Affidavit that payrolls, invoices for materials and equipment and other indebtedness of Contractor connected with the Work (less amounts withheld by the City) have been paid or otherwise satisfied; and, if required by the Director, submits further proof including waiver or release of lien or claims from laborers or Suppliers of material or equipment;
 - 5.5.2 Certificate evidencing that insurance required by the Agreement is to remain in force after final payment is currently in effect and will not be canceled, or materially changed, until at least 30 days written notice has been given to the Director;

- 5.5.3 Written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the correction and warranty period required by the Agreement;
- 5.5.4 consent of Surety to final payment, if applicable; and
- 5.5.5 Maintenance Bond and other required Bonds, copies of record documents, maintenance manuals, tests, inspections, and approvals.

6. Partial Occupancy or Use

- 6.1 The City may occupy or use any completed portion of the Work at any stage, provided such occupancy or use is consented to by the Contractor and Contractor's insurer and authorized by public authorities having jurisdiction over the Work. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld.
- 6.2 Immediately prior to such partial occupancy or use, the Director and Contractor shall jointly inspect the area to be occupied or the portion of the Work to be used in order to determine and record the condition of the Work.
- 6.3 Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of work not complying with requirements of the Agreement.

7. Quality Assurance/Quality Control Program

- 7.1 Contractor shall submit to the Director, for approval, a Quality Assurance/Quality Control ("QA/QC") Plan within 15 calendar days after the Effective Date of this Agreement. The QA/QC Plan should address all aspects of quality control including responsibility for monitoring work, documentation, trend analysis, corrective action and interface with HAS inspectors. In some cases, Contractor's Quality Control personnel may be required to have professional or discipline- specific certifications.

8. Contractor Representative

- 8.1 At all times during performance and until the Work is completed and accepted, the Contractor shall manage, supervise, and direct the Work under the Agreement and have on the work site a competent General Manager or other designated official who is satisfactory to the Director and has authority to act for the Contractor. The Contractor's General Manager or other designated official must be knowledgeable in multiple disciplines, including architectural, structural electrical, mechanical, HVAC, paving, landscaping, painting, roofing, and plumbing.

- 8.2 The General Manager or other designated official shall be the communications contact with the Director and shall be exclusively assigned to this Agreement. The General Manager or other designated official shall not be reassigned from the work required under this Agreement without prior approval of the Director. The General Manager or other designated official shall not be reassigned and/or be replaced from this Agreement without prior written approval of the Director.
- 8.3 Prior to the start of the Agreement performance, the Contractor shall advise the Director in writing of the Contractor's General Manager or other designated official and alternate representative's contact phone numbers. The Contractor's General Manager or other designated official will have management responsibility for the total contract effort to receive and act on technical matters and resolve problems of a contractual nature.
- 8.4 Prior to substituting another individual for the Contractor's General Manager or other designated official, the Contractor shall notify the Director reasonably in advance and shall submit justification in sufficient detail to permit evaluation of the impact on the Work. No such substitution shall be made by the Contractor without first securing the Director's written approval.

9. **Cabling Service Requirements**

- 9.1 Any cabling services that may be required shall comply with the following:
- 9.1.1 Contractor shall adhere to the latest HAS Technology Standards. Technology Standards are subject to change by HAS periodically to maintain current technology standards. Contractor is required to comply with revisions to Cable Infrastructure Standards within 30 days of receiving the revision.
- 9.1.2 Contractor shall provide the certified Avaya Systimax warranty certificates for all new inside plant cabling installations, and all outside plant fiber optic cabling installations.
- 9.1.3 Contractor must provide a certified and currently registered Authorized Avaya Reseller capable of providing a numbered Registration Certificate from Avaya for the entire structured cabling system. The Work must be supervised on-site for quality control purposes by a BICSI RCDD, and must be performed by a contractor that demonstrates knowledge and complies with all BICSI, TIA/EIA, UL, and NEC standards and codes. All members of the installation team must be certified by the manufacturer as having completed the necessary training to complete their part of the installation. Resumes of the entire team should be provided for approval along with documentation of completed training courses.

10. City Furnished Utilities

10.1 The City shall provide free of charge to Contractor utilities that are available at each site for work performed under this Agreement.

10.2 Water

10.2.1 The City shall furnish to Contractor from existing HAS Facilities and without cost to Contractor, a supply of water necessary to perform work under the Agreement. The City will not furnish or install any required supply connections and piping for the purpose of implementing the availability of the water supply. Contractor shall determine the extent to which existing City water supply source is adequate for the needs of this Agreement.

10.2.2 All taps, connections, and accessory equipment required in making the water supply source available will be accomplished by and at the expense of Contractor. All related work must be coordinated, scheduled, and performed as directed and approved by the Director. Taps, connections, and accessory equipment must be maintained by Contractor in a workmanlike manner in accordance with the rules and regulations of the City and the Airports. Upon completion of the Work for each specific Work Order, Contractor shall remove all taps, connections and accessories at its expense so as to leave the water supply source and facility in its original condition. Such removal is subject to the Director's approval.

10.3 Electricity

10.3.1 The City shall furnish to Contractor from existing HAS Facilities and without cost to Contractor, electricity necessary for the performance of work under the Agreement. The City will in no case furnish or install any electrical facility or accessory for the purpose of this Agreement. Contractor shall determine the extent to which existing City electrical facilities are adequate for the needs of this Agreement.

10.3.2 All taps, connections, and necessary equipment required in making the electrical power available will be accomplished by and at the expense of Contractor. All related work must be coordinated, scheduled, and performed as directed and approved by the HAS Director. Contractor must maintain taps, connections, and accessory equipment in a workmanlike manner in accordance with the rules and regulations of the City and the Airports. Upon completion of the Work for each specific Work Order, Contractor shall remove all taps, connections and accessories at its expense so as to leave the electrical power source and facility in its original condition. Such removal is subject to the Director's approval.

11. Work by the City

- 11.1 The City reserves the right to undertake or award contracts for the performance of the same or similar type work as contemplated herein, and to do so will not breach or otherwise violate the Agreement.

12. Architectural and Engineering Services

- 12.1 The Work may require architectural and/or engineering services that constitute the practice of architecture or engineering under Texas law. Such services are not included within the scope of the Agreement and will be provided by the City or its designee.

13. Safety

- 14.1 Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Agreement and shall abide by all Airport rules, regulations, and programs with regard to safety. Contractor shall submit a safety program to the Director prior to mobilization for the Work, and shall be solely responsible for the safety, efficiency, and adequacy of the ways, means, and methods and for damage which might result from failure or improper construction, maintenance, or operation performed by Contractor.
- 14.2 Contractor and/or Subcontractor(s) shall be responsible for compliance with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970 and subsequent amendments along with those of the Airports, all applicable federal, state, and local laws, ordinances and regulations, and the Agreement during the performance of this Work. The Contractor shall adhere, to applicable OSHA Standards, Part 1926 – Safety and Health Regulations for Construction, Part 1910 – Occupational Safety and Health Standards, the Texas Hazard Communication Standard and the Texas Underground Facility Damage Prevention and Safety Act along with any other applicable standards and/or requirements. The Contractor shall apply and/or adopt Parts 1910 and 1926 along with applicable Subparts as the safety standards for the performance of Work. **THE CONTRACTOR SHALL INDEMNIFY THE CITY FOR FINES, PENALTIES, AND CORRECTIVE MEASURES THAT RESULT FROM THE ACTS OF COMMISSION OR OMISSION OF THE CONTRACTOR, ITS SUBCONTRACTORS, AGENTS, EMPLOYEES, AND ASSIGNS FOR THEIR FAILURE TO COMPLY WITH SUCH SAFETY RULES AND REGULATIONS.**

14. Prevailing Wage Rates

- 15.1 Contractor shall comply with governing statutes providing for labor classification of wage scales for each craft or type of laborer, worker, or mechanic, as amended from time to time.

15.2 The prevailing wage rates in effect at the time a Work Order is issued applicable to the Work may be any one or a combination of the following as specifically identified: (a) City Prevailing Building Construction Wage Rates and/or (b) Engineering Construction Rates

15.3 Each week Contractor shall submit to the City's Office of Business Opportunities, certified copies of payrolls showing classification and wages paid by the Contractor and all Subcontractors for each employee under the Agreement, for any day included in the applicable Work Orders.

15. Access Requirements for Persons with Disabilities

16.1 Contractor agrees to comply with, and assure that it and any subcontractor or any other third party contractor under this Agreement complies with all applicable requirements regarding Access for Individuals with Disabilities contained in the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49 U.S.C. § 5301(d); and any other applicable Federal, State and City regulations, including any amendments thereto.

EXHIBIT “B”

FEES

1. UNIT PRICE BOOK PRE-PRICED ITEMS

- 1.1 Payment for work performed during standard working hours shall be based on the coefficient factor of $\frac{1}{2}$ multiplied times the sum of applicable unit prices in the Unit Price book.
- 1.2 Payment for work performed during non-standard working hours shall be based on the coefficient factor of $\frac{1}{2}$ multiplied times the sum of applicable unit prices in the Unit Price Book.
- 1.3 Standard hours of work will be from 8:00 AM to 5:00 PM, CST, Monday through Friday, unless alternate standard hours are agreed to for an individual Work Order. Hours worked before 8:00 AM and after 5:00 PM, Monday through Friday, and all hours worked on Saturdays, Sundays and City holidays will be considered non-standard hours. The Contractor will be required to notify the Director, in writing, a minimum of 24 hours in advance when planning to work non-standard work hours, which must be approved in advance by the Director. Any work necessary during non-standard hours to maintain project schedules, due to Contractor delay, shall be performed without additional cost to the City. Other work to be performed during non-standard hours that is directed by the Director shall be at the coefficient for non-standard working hours.
- 1.4 The coefficient factor shall be “net” (e.g. 1.0) or a percentage decrease from (e.g. .95) or increase to (e.g. 1.2) the unit prices in the Unit Price Book.
- 1.5 The actual pricing will be based on the unit rates contained in the Unit Price Book, including applicable coefficient factor set forth above and the quantities agreed to by the Contractor and the Director.

2. NON PRE-PRICED ITEMS

- 2.1 Payment for work performed during standard working hours shall be based on the Coefficient factor of $\frac{1}{2}$ multiplied times the sum of the cost of non-pre-priced items not contained in the Unit Price Book.
- 2.2 Payment for work performed during non-standard working hours shall be based on the Coefficient factor of $\frac{1}{2}$ multiplied times the sum of the cost of non-pre-priced items not contained in the Unit Price Book.
- 2.3 For work requiring an expenditure of \$75,000 or less where pricing cannot be determined by the Unit Price Book, the Contractor shall furnish, unless otherwise directed, a breakdown in sufficient detail to permit an analysis of all material, labor, equipment, and subcontract costs. Any amount claimed for subcontractors

or material suppliers shall require price quotations from at least three sources and be supported by a similar cost breakdown, which shall show subcontractors/suppliers by prime, and others. All costs claimed are subject to negotiation.

2.4 Payment for work that is not contained in the Unit Price Book performed during standard work hours is based on the applicable year, non pre-priced coefficient factor bid for work performed during standard working hours multiplied by the sum of the cost of the non-pre-priced items.

2.5 Payment for work that is not contained in the Unit Price Book performed during non-standard hours shall be based on the applicable year, non pre-priced coefficient factor bid for work performed during non-standard working hours, multiplied by the sum of the cost of the non pre-priced items.

3. COEFFICIENT

3.1. The Contractor's price coefficient factor must include all costs, which shall include, but not limited to:

3.1.1. Overhead;

3.1.2. Profit (prime and Subcontractors);

3.1.3. Insurance

3.1.4. Compliance with all laws, including, but not limited to, environmental laws, protection, and safety;

3.1.5. Tax laws

3.1.6. Protection or moving of City property; within designated work area, excluding movement of preexisting IT equipment, in accordance to Section 4.1.2.

3.1.7. Administrative Work;

3.1.8. Submittals;

3.1.9. Price quotations;

3.1.10. Contractor adjustments to the City's Unit Prices;

3.1.11. At the Owner's discretion depending on the scope and magnitude of daily removal of demolished materials, clean-up, and job site covering;

3.1.12. All waste and excess materials;

3.1.13. Permits, licenses, badges, and fees;

3.1.13.1. The Contractor's Project Manager shall apply to receive Custom's Clearance badge and airport badges within 30 days of the Effective Date.

3.1.14. Mobilization and close-out for total contract and each Work Order;

3.1.15. Signs and barriers;

3.1.16. Project management and supervision;

3.1.17. Quality Control;

3.1.18. Office supplies, equipment, hardware, software and staffing;

3.1.19. Costs of Performance, Payment, and Maintenance Bonds;

3.1.20. Interest associated with funding of equipment and payroll;

3.1.21. Depreciation of mobile offices, if applicable;

3.1.22. Employee wages, payroll taxes, insurance and fringe benefits;

3.1.23. Risk of lower than expected contract dollar volume;

3.1.24. Risk of high inflation costs;

3.1.25. Risk of poor subcontractor performance and re-performance;

3.1.26. Other risks of doing business;

3.1.27. Business taxes, contributions, memberships, corporate Headquarters support (legal, financial, etc.);

3.1.28. The cost of final clean-up and removal and hauling of trash, debris and rubbish;

3.1.28.1. The City will not pay nor accept line items for final clean-up or rubbish hauling, etc., on Work Orders, unless it is explicitly excluded by the line items in the Unit Price Book (UPB).

3.1.29. Any and all Subcontractor costs.

3.2. Where prices are listed as minimum, average, and maximum for the same work, the average prices shall be used. Where prices are listed for minimum and

maximum for the same work, items whose daily output indicates one crew day or more of work shall use minimum prices. Items whose daily output indicates less than one crew day shall use maximum prices.

4. Unit Price Book

- 4.1. All prices in the Unit Price Book are for completed-in-place construction. The coefficient factor is firm for the year of the Contract in which the Work Order is submitted by Contractor. The Unit Price Book prices shall remain constant for the duration of the Agreement.
- 4.2. Houston City Cost Index will be applied to estimates.
- 4.3. Costs for temporary construction controls such as form work, shoring, scaffolding, bracing, etc., are incidental costs which are included in the coefficient factor and will not be paid separately unless explicitly excluded in the Unit Price Book line item.
- 4.4. Costs for expendable supplies, lubricants, wear and tear on tools are incidental to the Unit Price Book cost of construction and will not be paid separately.
- 4.5. Costs for survey and layout, other than legal property boundaries, are included in the coefficient and will not be paid separately.
- 4.6. Costs for preparation of reports, correspondence and documentation required by law or this Agreement shall be included in the coefficient factor. The coefficient shall also include costs described as costs to provide submittals, interface with City representatives, and coordination with occupants.
- 4.7. Except for cabling related Work, line item descriptions which list material or equipment to be brand name or manufacturer "Type" will be considered as "Or Equal," but will contain all the essential salient characteristics of the brand name or manufacturer's material or equipment.
- 4.8. UPB Exclusions
 - 4.8.1. The following R.S. MEANS divisions are excluded from the UPB:
 - 4.8.1.1. Division 01100, 01200, 01300 and 01400: Does not apply because these costs are to be included in the Contractor's coefficient with one exception. Overtime of a maximum of 10% of the applicable project labor costs will be allowed for projects with a City Requested Overtime Requirement.

- 4.8.1.2. Division 01400, “Administrative Requirements”: Does not apply because these costs are to be included in the Contractor’s coefficient with one exception. Building permit costs will be treated as a Non-Pre-priced Item per **Section 2 of Exhibit “B”** and added to each individual Work Order when appropriate. Building permit costs will be paid at actual cost plus profit.
- 4.8.1.3. Division 01590, “Equipment Rental”: General-purpose vehicles and tools of the trade are to be included in Contractor’s coefficient. Other equipment costs are already included in the line-item prices. Exceptions will be treated as Non-Prepriced Items per Paragraph 2 above of this document. For purposes of this Agreement, all costs of equipment, which routinely are regularly used as part of carrying out any aspect of a trade or business is considered to be included in the Contractor’s coefficient and is not treated as an excluded item.
- 4.8.1.4. Division 01740, “Cleaning”: Does not apply because these costs are to be included in the Contractor’s Coefficient. Special cleaning requirements will either be priced or treated as Non- Prepriced Items.
- 4.8.1.5. No contingency is to be included, because R.S. MEANS Cost Data and the Contractor’s coefficient factors represent the actual cost for all work performed.

EXHIBIT “C”

DOCUMENTS

With the exception of the General Conditions, the Documents identified below, as amended from time to time, are incorporated into this Agreement by reference for all purposes. The Documents in effect at the time a Work Order is issued shall govern. The General Conditions have been specifically modified for the HAS JOC program and are attached to this Agreement as **Exhibit “C-1”**.

1. JOB ORDER CONTRACT DOCUMENTS

- 1.1. The Unit Price Book, R.S. MEANS Facilities Construction Cost Data, latest quarterly edition in effect at the time a Work Order is issued, which uses the CSI numbering structure and pricing customized and localized for the Houston area and HAS.
- 1.2. Job Order Contract Technical Specifications available on a thumb drive and numbered and organized by the latest edition of the Construction Specification Institute’s (CSI) Master Format.
- 1.3. Technical Specifications Cross Reference Guide, providing a cross reference to the Unit Price Book. This cross reference listing contains the basic categories of the Unit Price Book and, for each basic category, indicates the technical specification files that apply to that basic category.
- 1.4. HAS 16740 Voice and Data Cabling Infrastructure Standard sets forth the specifications applicable to the HAS Telecom Cabling Price List items.
- 1.5. HAS PS&T IT Specification of Division 27 and 28 Standard sets forth the specifications applicable to the HAS Telecom Cabling Price List items.
- 1.6. All HAS Building and Technical standards and specifications as they exist at the time a Work Order is issued.

2. STANDARD CITY CONSTRUCTION DOCUMENTS

28. Document Number	29. Document Title
500	Form of Business
501	Resolution of Corporation
600	List of Proposed Subcontractors & Suppliers (<i>Scope of Work and Contract Price to be supplied per Work Order</i>)
601	Drug Policy Compliance Agreement

602	Contractor's Drug Free Workplace Policy
604	History of OSHA Actions
605	List of Safety Impact Positions
610	Performance Bond
611	Statutory Payment Bond
612	One-Year Maintenance Bond
613	One-Year Surface Correction Bond
620	Affidavit of Insurance (certificates attached)
624	Affidavit of Compliance with MWBE Program
700	General Conditions
805	Equal Employment Opportunity Program Requirements
808	Requirements for the City of Houston Program for Minority, Women, and Small Business Enterprises (MWSBE) and Persons with Disabilities (PDBE)
820	Wage Scale for Engineering Construction
821	Wage Scale for Building Construction

3. PUBLIC SAFETY AND TECHNOLOGY STANDARDS

Document Number	70. Document Title
27110	Communications Cabinets and Equipment Rooms
27120	Backbone and Riser Media Infrastructure
27125	Horizontal Media Infrastructure
27130	Interior Communications Pathways
27140	Exterior Communications Pathways
27165	Telecommunication Grounding and Bonding
27210	Data Communication Network Equipment
27220	PC, Laptop, and Server
27828	Multi User Information Display System Fabrication
28130	Access Control
28200	CCTV Systems

4. DOCUMENTS SPECIFIC TO WORK ORDERS

93. Document Number	94. Document Title
600	List Proposed Subcontractors and Suppliers (to include Scope of Work and Agreed Price)

Document 00700

GENERAL CONDITIONS

AUGUST 7, 2023 EDITION

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ARTICLE1
GENERAL PROVISIONS

1.1 DEFINITIONS.

- 1.1.1 Agreement:** Document signed by the Parties and binding the Parties, containing the name of Contractor, title and location of the Project, Original Contract Time, Original Contract Price, enumeration of documents included in the Contract, and other provisions.
- 1.1.2 Bonds:** Performance Bond, Payment Bond, Maintenance Bond, and other Surety instruments executed by Surety. When in singular form, refers to individual instrument.
- 1.1.3 Business Enterprise:** Any business entity registered in a program authorized by 49 C.F.R. § 26 (where applicable) or City Code of Ordinances, Chapter 15, Article II, relating to Equal Opportunity Employment and taking affirmative action to ensure that applicants are employed and employees are treated without regard to race, religion, color, sex, national origin, or age. The term "Business Enterprise" may include any Disadvantaged Business Enterprise ("DBE"), Minority Business Enterprise ("MBE"), Woman Business Enterprise ("WBE"), Small Business Enterprise ("SBE"), Person with Disability Enterprise ("PDBE"), and any Historically Underutilized Business ("HUB").
- 1.1.4 Business Enterprise Policy:** Contract documents and applicable policies relating to Business Enterprises and authorized under 49 C.F.R. § 26 or City Code of Ordinances, Chapter 15, Article V.
- 1.1.5 Cash Allowance:** An estimated sum of money to be used only for a limited class of expenditures such as utility relocation costs, fees for special licenses or permits, or other "pass-through" costs that would be the same for any contractor. Cash Allowances may not be used to purchase goods or services that are not specified in the Contract. The unspecified items must be purchased according to the terms of Article 7.
- 1.1.6 Change Order:** Written instrument prepared by the City and signed by City Engineer and Contractor, specifying the following:
1.1.6.1 a change in the Work;
1.1.6.2 a change in Contract Price, if any; and
1.1.6.3 a change in Contract Time, if any.
The value of a Change Order is the net amount after offsetting all deductions against all additions effected by the Change Order.
- 1.1.7 City:** The City of Houston, a home rule municipality located principally within Harris County, Texas, including its successors and its authorized representatives.
- 1.1.8 City Engineer:** The City Engineer, or the City employee representing the City Engineer, designated in the Agreement and authorized to represent the City, or successors.
- 1.1.9 Claim:** Written demand or written assertion by one Party seeking adjustment of the Contract, payment of money, extension of time, or other relief under the Contract and includes, but is not limited to, claims for materials, labor, equipment, delay, changes, adjustments, substitutions, fees and third party claims. The Party making the Claim has the responsibility to substantiate the Claim.
- 1.1.10 Conditions of the Contract:** General Conditions and Supplementary Conditions.

- 1.1.11 *Construction Manager:* Person or firm under contract with the City as its authorized representative to oversee and administer construction of the Work, and who may perform the role of Project Manager and Inspector, as designated by City Engineer in writing.
- 1.1.12 *Contract:* The Agreement; documents enumerated in and incorporated into the Agreement, Modifications, and amendments.
- 1.1.13 *Contract Price:* The monetary amount stated in the Agreement adjusted by Change Order, and increases or decreases in Unit Price Quantities, if any.
- 1.1.14 *Contract Time:* The number of days stated in the Agreement to substantially complete the Work, plus days authorized by Change Order.
- 1.1.15 *Contractor:* Person or firm identified as such in the Agreement including its successors and its authorized representatives.
- 1.1.16 *Date of Commencement of the Work:* Date established in Notice to Proceed on which Contract Time will commence. This date will not be changed by failure of Contractor, or persons or entities for whom Contractor is responsible, to act.
- 1.1.17 *Date of Substantial Completion:* Date that construction, or portion thereof designated by City Engineer, is certified by City Engineer to be substantially complete.
- 1.1.18 *Design Consultant:* Person or firm, under contract with the City, to provide professional services during construction and its authorized representatives. If a Design Consultant is not employed for services during construction, Project Manager will perform duties of Design Consultant designated in the Contract in addition to usual duties of Project Manager.
- 1.1.19 *Drawings:* Graphic and pictorial portions of the Contract that define the character and scope of the Work.
- 1.1.20 *Extra Unit Price:* Unit Prices, which may be required for completion of the Work. These Unit Prices and Unit Price Quantities are in the Contract and are included in Original Contract Price.
- 1.1.21 *Furnish:* To supply, pay for, deliver to the site, and unload.
- 1.1.22 *General Requirements:* The sections of Division 01 Specifications that specify administrative and procedural requirements and temporary facilities required for the Work.
- 1.1.23 *Inspector:* City's employee or agent authorized to assist with inspection of the Work.
- 1.1.24 *Install:* Unpack, assemble, erect, place, anchor, apply, work to dimension, finish, cure, clean, protect, and similar operations.
- 1.1.25 *Legal Holiday:* Day established by the City Council as a holiday.
- 1.1.26 *Major Unit Price Work:* An individual Unit Price item,
1.1.26.1 whose value is greater than five percent of Original Contract Price,
1.1.26.2 whose value becomes greater than five percent of Original Contract Price as the result of an increase in quantity, or
1.1.26.3 whose value is \$100,000, whichever is least.

- 1.1.27 *Mayor's Office of Business Opportunity*: any reference to, or use of, the "Office of Affirmative Action" shall mean the Mayor's Office of Business Opportunity, or any such future name to which it is changed.
- 1.1.28 *Minor Change in the Work*: A written change in the Work, ordered by City Engineer, that does not change Contract Price or Contract Time, and that is consistent with the general scope of the Contract.
- 1.1.29 *Modification*: Change Order, Work Change Directive, or Minor Change in the Work.
- 1.1.30 *Notice of Noncompliance*: A written notice by City Engineer to Contractor regarding defective or nonconforming work that does not meet the Contract requirements, and that establishes a time by which Contractor shall correct the defective or nonconforming work.
- 1.1.31 *Notice to Proceed*: A written notice by City Engineer to Contractor establishing Date of Commencement of the Work.
- 1.1.32 *Original Contract Price*: The monetary amount originally stated in the Agreement.
- 1.1.33 *Parties*: Contractor and the City. When in singular form, refers to Contractor or the City.
- 1.1.34 *Pollutant*: Any materials subject to the Texas Solid Waste Disposal Act.
- 1.1.35 *Pollutant Facility*: Any facility regulated by the State of Texas to protect the health and environment from contamination by Pollutants, including without limitation, landfills, oil and gas production and storage facilities, wastewater facilities, waste injection wells, and storage tanks (including drums).
- 1.1.36 *Product*: Materials, equipment, or systems incorporated into the Work or to be incorporated into the Work.
- 1.1.37 *Product Data*: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Contractor to illustrate a Product.
- 1.1.38 *Project*: Total construction, of which the Work performed under the Contract may be the whole or a part, and which may include construction by the City or by separate contractors.
- 1.1.39 *Project Manager*: City Engineer's authorized representative for administration of the Work. Titles used within the City's departments may be different than those used in this definition.
- 1.1.40 *Provide*: Furnish and Install, complete, ready for intended use.
- 1.1.41 *Samples*: Physical examples that illustrate Products, or workmanship, and establish standards by which the Work is judged.
- 1.1.42 *Shop Drawings*: Drawings, diagrams, schedules, and other data specially prepared for the Work by Contractor, Subcontractor or Supplier, to illustrate a portion of the Work.
- 1.1.43 *Specifications*: Divisions 01 through 16 of the documents that are incorporated into the Agreement, consisting of written General Requirements and requirements for Products, standards, and workmanship for the Work, and performance of related services.

- 1.1.44 *Stipulated Price*: Single lump sum amount stated in the Contract for completion of the Work, or for designated portion of the Work.
- 1.1.45 *Subcontractor*: Person or firm that has direct or indirect contract with Contractor or with another Subcontractor to perform a portion of the Work and its authorized representatives.
- 1.1.46 *Superintendent*: Employee of Contractor having authority and responsibility to act for and represent Contractor.
- 1.1.47 *Supplementary Conditions*: Part of Conditions of the Contract that amends or supplements General Conditions.
- 1.1.48 *Supplier*: Manufacturer, distributor, materialman, or vendor having a direct agreement with Contractor or Subcontractor for Products, or services and its authorized representatives.
- 1.1.49 *Surety*: Corporate entity that is bound by one or more Bonds, and is responsible for completion of the Work, including the correction period, and for payment of debts incurred in fulfilling the Contract. Surety shall include co-surety or reinsurer, as applicable.
- 1.1.50 *Underground Facilities*: Pipes, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments and encasements containing such facilities that exist below ground level.
- 1.1.51 *Unit Price*: An amount stated in the Contract for an individual, measurable item of work, which, when multiplied by actual quantity incorporated into the Work, amounts to full compensation for completion of the item, including work incidental to it.
- 1.1.52 *Unit Price Quantities*: Quantities indicated in the Contract that are approximations made by the City for contracting purposes.
- 1.1.53 *Work*: Entire construction required by the Contract, including all labor, Products, and services provided by Contractor to fulfill Contractor's obligations. The Work may constitute the whole or a portion of the Project.
- 1.1.54 *Work Change Directive*: A written change in the Work, ordered by City Engineer, that is within the general scope of the Contract and consisting of additions, deletions, or other revisions. A Work Change Directive will state proposed basis for adjustment, if any, in Contract Price or Contract Time, or both.

1.2 **EXECUTION, CORRELATION, AND INTENT.**

- 1.2.1 Execution of the Contract by Contractor is conclusive that Contractor has visited the Work site, become familiar with local conditions under which the Work will be performed, and fully informed itself as to conditions and matters which can affect the Work or costs. Contractor further agrees that it has carefully correlated personal observations with requirements of the Contract.
- 1.2.2 The Contract and Modifications have been read and carefully considered by Contractor, who understands and agrees to their sufficiency for the Work. The Contract may not be more strongly construed against the City than against Contractor and Surety.
- 1.2.3 Contractor shall include all items necessary for proper execution and completion of the Work.

- 1.2.4 Reference to standard specifications, manuals, or codes of a technical society, organization, or association, or to laws or regulations of a governmental authority, whether specific or implied, mean the latest edition in effect as of date of receipt of bids, except as may be otherwise specifically stated in the Contract.
- 1.2.5 No provision of any referenced standard, specification, or manual changes the duties and responsibilities of the City, City Engineer, Contractor, or Design Consultant from those set forth in the Contract. Nor do these provisions assign to Design Consultant any duty or authority to supervise or direct performance of the Work or any duty or authority to undertake any actions contrary to provisions of the Contract.
- 1.2.6 Organization of Specifications into divisions, sections, and articles and arrangement of Drawings does not control Contractor in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.
- 1.2.7 Unless otherwise defined in the Contract, words which have well-known construction industry technical meanings are used in the Contract in accordance with these recognized meanings.
- 1.3 **OWNERSHIP AND USE OF DOCUMENTS.**
- 1.3.1 Drawings, Specifications, and other documents prepared by the City or by Design Consultant are instruments of service through which the Work to be executed by Contractor is described. Contractor may retain one Contract record set.
- 1.3.2 Neither Contractor, Subcontractor, nor Supplier will own or claim a copyright to documents contained in the Contract or any part of the Contract.
- 1.3.3 Documents contained in the Contract, prepared by the City or by Design Consultant, and copies furnished to Contractor, are for use solely with respect to the Work. They may not be used by Contractor, Subcontractor or Supplier on other projects or for additions to the Work, outside the scope of the Work, without the specific written consent of City Engineer, and Design Consultant, when applicable.
- 1.3.4 Contractor, Subcontractors, and Suppliers are granted a limited license to use and reproduce applicable portions of the Contract appropriate to and for use in execution of their work under the Contract.
- 1.4 **INTERPRETATION.**
- 1.4.1 Specifications are written in an imperative streamlined form and are directed to Contractor, unless noted otherwise. When written in this form, words "shall be" are included by inference where a colon (:) is used within sentences or phrases.
- 1.4.2 In the interest of brevity, the Contract frequently omits modifying words such as "all" and "any" and articles such as "the" and "an", but an absent modifier or article is not intended to affect interpretation of a statement.

ARTICLE 2

THE CITY

- 2.1 **LIMITATIONS OF THE CITY'S OFFICERS AND EMPLOYEES.** No officer or employee of the City may authorize Contractor to perform an act or work contrary to the Contract, except as otherwise provided in the Contract.
- 2.2 **DUTIES OF THE CITY.**

- 2.2.1 If a building permit is required, the City will process an application for, and Contractor shall purchase the building permit before Date of Commencement of the Work.
- 2.2.2 The City will make available to Contractor a reproducible set of Drawings. Additional copies will be furnished, on Contractor's request, at the cost of reproduction.
- 2.2.3 When necessary for performance of the Work, the City will provide surveys describing physical characteristics, legal limitations, legal description of site, and horizontal and vertical control adequate to lay out the Work.
- 2.2.4 Information or services that the City is required to provide under the Contract will be provided by the City with reasonable promptness to avoid delay in orderly progress of the Work.
- 2.2.5 The Contract imposes no implied duty on the City. The City does not warrant any plans or specifications associated with the Contract.
- 2.2.6 Except as expressly stated in this Article, the City owes no duty to the Contractor or any subcontractor.
- 2.3 **AVAILABILITY OF LAND AND USE OF SITE.**
- 2.3.1 The City will furnish, as indicated in the Contract, rights-of-way, land on which the Work is to be performed, and other land designated in the Contract for use by Contractor unless otherwise provided in the Contract.
- 2.3.2 Contractor shall confine operations at site to those areas permitted by law, ordinances, permits, and the Contract, and may not unreasonably encumber site with materials or equipment.
- 2.3.3 In addition to land provided by the City under Section 2.3, Contractor shall provide all land and access to land that may be required for use by Contractor for temporary construction facilities or for storage of materials and equipment, and shall indemnify the City during its use of the land as stated in Section 3.25.
- 2.4 **THE CITY'S RIGHT TO STOP THE WORK.** If Contractor fails to carry out the Work in accordance with the Contract, or fails to correct work which is not in accordance with requirements of the Contract as required in Sections 12.1 and 12.2, the City may, by Notice of Noncompliance, order Contractor to stop the Work or any portion of the Work until the cause for the order has been eliminated. However, the right of the City to stop the Work will not give rise to a Claim for delay or to a duty on the part of the City to exercise this right for the benefit of Contractor or any other person or entity, except to the extent required by Section 6.2. If Contractor corrects the defective or nonconforming work within the time established in Notice of Noncompliance, City Engineer will give written notice to Contractor to resume performance of the Work.
- 2.5 **THE CITY'S RIGHT TO CARRY OUT WORK.**
- 2.5.1 If Contractor fails to carry out work in accordance with the Contract, and fails within the period established in a Notice of Noncompliance to correct the nonconforming work, the City may, after expiration of the required period, correct the deficiencies without prejudice to other remedies the City may have, including rights of the City under Section 14.1.
- 2.5.1.1 When the City corrects deficiencies, City Engineer will issue an appropriate Change Order and deduct from payments then or thereafter due Contractor the cost of correcting the deficiencies, including compensation for Design Consultant's and Construction Manager's additional services and expenses made necessary by such default, neglect, or failure. This action by the City and amounts charged to

Contractor are both subject to prior approval of City Engineer. If payments, then or thereafter due Contractor, are not sufficient to cover these amounts, Contractor shall pay the difference to the City.

- 2.5.2 Notwithstanding the City's right to carry out work, maintenance and protection of the Work remains Contractor's responsibility, as provided in the Contract.

ARTICLE 3

CONTRACTOR

3.1 ***RESPONSIBILITIES.***

- 3.1.1 Contractor shall maintain office with agent in the greater City of Houston area during the Contractor's performance under the Contract. Contractor shall file its street address with City Engineer.
- 3.1.2 Contractor and Contractor's employees shall not give or lend money or anything of value to an officer or employee of the City. Should this Paragraph 3.1.2 be violated, City Engineer may terminate the Contract under Section 14.1.

3.2 ***REVIEW OF CONTRACT AND FIELD CONDITIONS BY CONTRACTOR.***

- 3.2.1 Contractor shall carefully study and compare documents contained in the Contract with each other and with information furnished by the City pursuant to Section 2.2 and shall immediately report, in writing, any errors, inconsistencies, or omissions to City Engineer. If work is affected, Contractor shall obtain a written interpretation or clarification from City Engineer before proceeding with the affected work. However, Contractor will not be liable to the City for failure to report an error, inconsistency, or omission in the Contract unless Contractor had actual knowledge or should have had knowledge of the error, inconsistency, or omission.
- 3.2.2 Contractor shall take field measurements and verify field conditions, and shall carefully compare the conditions and other information known to Contractor with the Contract, before commencing activities. Contractor shall immediately report, in writing, to City Engineer for interpretation or clarification of discrepancies, inconsistencies, or omissions discovered during this process.
- 3.2.3 Contractor shall make a reasonable attempt to understand the Contract before requesting interpretation from City Engineer.

3.3 ***SUPERVISION AND CONSTRUCTION PROCEDURES.***

- 3.3.1 Contractor shall supervise, direct, and inspect the Work competently and efficiently, devoting the attention and applying the skills and expertise as necessary to perform the Work in accordance with the Contract. Contractor is solely responsible and has control over construction means, methods, techniques, sequences, and procedures of construction; for safety precautions and programs in connection with the Work; and for coordinating all work under the Contract.
- 3.3.2 Regardless of observations or inspections by the City or City's consultants, Contractor shall perform and complete the Work in accordance with the Contract and submittals approved pursuant to Section 3.18. The City is not liable or responsible to Contractor or Surety for work performed by Contractor that is not in accordance with the Contract regardless of whether discovered during construction or after acceptance of the Work.

3.4 ***SUPERINTENDENT.***

- 3.4.1 Contractor shall employ a competent Superintendent and necessary assistants who shall be present at the site during performance of the Work. Communications given to Superintendent are binding on the Contractor.
- 3.4.2 Contractor shall notify City Engineer in writing of its intent to replace the Superintendent. Contractor may not replace the Superintendent if City Engineer makes a reasonable objection in writing.
- 3.5 ***LABOR; MINORITY AND WOMEN BUSINESS ENTERPRISE COMPLIANCE.***
- 3.5.1 Contractor shall provide competent, qualified personnel to survey and lay out the Work and perform construction as required by the Contract. The City may, by written notice, require Contractor to remove from the Work any employee of Contractor or Subcontractors to whom City Engineer makes reasonable objection.
- 3.5.2 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs set out in this Agreement and in the Supplementary Conditions, and as set out in Chapter 15, Article V of the City of Houston Code of Ordinances, and the applicable Office of Business Opportunity's ("OBO") Policies and Procedures. When Original Contract Price is greater than \$1,000,000, Contractor shall make Good Faith Efforts to award subcontracts or supply agreements in at least the percentages set out in the Supplementary Conditions for Business Enterprise Policy ("Stated MWBE goal(s)"). If the Contractor is a certified MBE or WBE, Contractor may count toward goals the work that it commits to perform with its own work force, capped at 50% of the total advertised goal. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with OBO and will comply with them.
- 3.5.2.1 Contractor shall require written subcontracts with Business Enterprises and shall submit all disputes with Business Enterprises to voluntary mediation. Business Enterprise subcontracts complying with City Code of Ordinances Chapter 15, Article II must contain the terms set out in Subparagraph 3.5.3.2. If Contractor is an individual person, as distinguished from a corporation, partnership, or other legal entity, and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.
- 3.5.3 For purposes of this paragraph, "Contract Year" means a 12-month period during the term of the contract commencing on the Countersignature Date of this Agreement and each anniversary thereof. If the term of this Agreement exceeds one Contract Year and Contractor's MWBE participation level in a Contract Year is less than the Stated MWBE goal(s), then within 30 calendar days of the end of each Contract Year Contractor must provide a written explanation to both the Director and Office of Business Opportunity Director ("OBO Director") of the following: (1) the discrepancy between Contractor's MWBE participation level and the Stated MWBE goal(s); (2) the reason for the discrepancy; and (3) Contractor's good faith efforts (in accordance with the City's policy) towards achieving the Stated MWBE goal(s). As part of the good faith efforts assessment, the OBO Director may consider Contractor's failure to timely submit the notice or explanation required by this provision and the OBO Director may impose sanctions or other penalties on Contractor for said failures in accordance with this Section of this Agreement and Chapter 15 of the Code of Ordinances, OBO's policies and procedures, and the City's good faith efforts policy.
- 3.5.4 The OBO Director, in consultation with the Director may review, at any time during the Term of this Agreement, Contractor's progress toward attainment of the Stated MWBE goal(s), by reviewing the percentage of work to MWBE subcontractors and the payments Contractor has made to such MWBE subcontractors. If the OBO Director determines that Contractor is not in compliance with this Section of this Agreement, Chapter 15 of the Code of Ordinances, OBO's policies and procedures, and the City's good faith efforts

policy, the OBO Director may:

- 3.5.4.1 After consultation with the Director and the Chief Procurement Officer, determine whether any of the following actions should be taken and notify Contractor of such determination:
 - 3.5.4.1.1 Enter a written agreement with Contractor allowing Contractor to cure the noncompliance matter;
 - 3.5.4.1.2 Suspend Contractor from engaging in any contract with the City for a period up to, but not to exceed, five years, pursuant to Section 15-86 of the City's Code of Ordinances, as may be amended from time to time; or
 - 3.5.4.1.3 Take any other appropriate remedy.
- 3.5.4.2 The determination of the OBO Director is final. Make a recommendation to the Director and the Chief Procurement Officer, to:
 - 3.5.4.2.1 Withhold payment or reimbursement under this Agreement;
 - 3.5.4.2.2 Make a finding that Contractor is in default or has breached this Agreement;
 - 3.5.4.2.3 Determine not to renew this Agreement;
 - 3.5.4.2.4 Terminate for cause this Agreement; or
 - 3.5.4.2.5 Take any other appropriate remedy.

3.5.5 Contractor shall maintain records showing:

- 3.5.5.1 Subcontracts and supply agreements with Minority Business Enterprises;
- 3.5.5.2 Subcontracts and supply agreements with Women Business Enterprises;
- 3.5.5.3 Subcontracts and supply agreements with Small Business Enterprises (if any);
- 3.5.5.4 Written confirmation from MWBE subcontractors and suppliers that they are participants on the contract; and
- 3.5.5.5 Specific efforts to identify and award subcontracts and supply agreements to MWBEs. Contractor shall submit periodic reports of its efforts under this Section to the OBO Director in the form and at the times he or she prescribes.

3.5.6 Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:

[Name of 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 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.

Within five business days of execution of this subcontract, Contractor [prime contractor] and Subcontractor shall designate, in writing, to the City of Houston's OBO Director ("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, mailing address, phone number, and email address of such agent.

After reasonable attempt(s) to resolve disputes between the parties involving the terms, covenants, or conditions of this subcontract, a request for dispute resolution may be submitted to the OBO Director. The OBO Director may prescribe procedures to provide dispute resolution services in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

- 3.5.7 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 the Contract for all purposes. Contractor has reviewed Executive Order 1-7 and shall comply with its terms and conditions. IF CONTRACTOR DOES NOT PAY IN ACCORDANCE WITH THE PAY OR PLAY PROGRAM WITHIN 30 DAYS OF THE DATE CITY ENGINEER SENDS CONTRACTOR WRITTEN NOTIFICATION, CITY CONTROLLER MAY DEDUCT FUNDS UP TO THE AMOUNT OWED FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS CONTRACT, AND CONTRACTOR WAIVES ANY RECOURSE.
- 3.6 **PREVAILING WAGE RATES.**
- 3.6.1 Contractor shall comply with governing statutes providing for labor classification of wage scales for each craft or type of laborer, worker, or mechanic.
- 3.6.2 Prevailing wage rates applicable to the Work may be one or a combination of the following wage rates identified in Division 00:
- 3.6.2.1 Federal Wage Rate General Decisions
 - 3.6.2.1.1 Highway Rates
 - 3.6.2.1.2 Building Rates
 - 3.6.2.1.3 Heavy Construction Rates
 - 3.6.2.1.4 Residential Rates
 - 3.6.2.2 City Prevailing Wage Rates
 - 3.6.2.2.1 Building Construction Rates
 - 3.6.2.2.2 Engineering Construction Rates
 - 3.6.2.2.3 Asbestos Worker Rates
- 3.6.3 Each week Contractor shall submit to the City's Mayor's Office of Business Opportunity certified copies of payrolls showing classifications and wages paid by Contractor, Subcontractors, and Suppliers for each employee under the Contract, for any day included in the Contract.
- 3.7 **LABOR CONDITIONS.**
- 3.7.1 In the event of labor disputes affecting Contractor or Contractor's employees, Contractor shall utilize all possible means to resolve disputes in order that the Work not be delayed to any extent. These means will include seeking injunctive relief and filing unfair labor practice charges, and any other action available to Contractor.
- 3.7.2 When Contractor has knowledge that any actual or potential labor dispute is delaying or is threatening to delay timely performance of the Work, Contractor shall immediately notify City Engineer in writing. No Claims will be accepted by City Engineer for costs incurred as a result of jurisdictional or labor disputes.
- 3.8 **DRUG DETECTION AND DETERRENCE.**
- 3.8.1 It is the policy of the City to achieve a drug-free work force and to provide a workplace that is free from the use of illegal drugs and alcohol. It is also the policy of the City that manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on the City's premises is prohibited. By executing the

Contract, Contractor represents and certifies that it meets and will comply with all requirements and procedures set forth in the Mayor's Policy on Drug Detection and Deterrence, City Council Motion No. 92-1971 ("Mayor's Policy") and the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31, (Revised) ("Executive Order"). Mayor's Policy is on file in the office of the City Secretary. Copies of Executive Order may be obtained at the location specified in the Advertisement for Bids.

- 3.8.1.1 The Executive Order applies to the City's contracts for labor or services except the following:
 - 3.8.1.1.1 contracts authorized by Emergency Purchase Orders,
 - 3.8.1.1.2 contracts in which imposition of requirements of the Executive Order would exclude all potential bidders or proposers, or would eliminate meaningful competition for the Contract,
 - 3.8.1.1.3 contracts with companies that have fewer than 15 employees during any 20-week period during a calendar year and no safety impact positions,
 - 3.8.1.1.4 contracts with non-profit organizations providing services at no cost or reduced cost to the public, and
 - 3.8.1.1.5 contracts with federal, state, or local governmental entities.
- 3.8.1.2 Prior to execution of the Contract, Contractor shall have filed with the City:
 - 3.8.1.2.1 a Drug Policy Compliance Agreement form (Attachment "A" to the Executive Order), and
 - 3.8.1.2.2 a copy of Contractor's drug free workplace policy, and
 - 3.8.1.2.3 a written designation of all safety impact positions, if applicable, or a Contractor's Certification of a No Safety Impact Positions form (Attachment "C" to the Executive Order).
- 3.8.1.3 Every six months during performance of the Contract and upon completion of the Contract, Contractor shall file a Drug Policy Compliance Declaration form (Attachment "B" to the Executive Order). The Contractor shall submit the Drug Policy Compliance Declaration within 30 days of expiration of each six-month period of performance and within 30 days of completion of the Contract. The first six-month period shall begin on Date of Commencement of the Work.
- 3.8.1.4 Contractor shall have a continuing obligation to file updated designation of safety impact positions when additional safety impact positions are added to Contractor's employee workforce during performance of the Work.
- 3.8.1.5 Contractor shall require its Subcontractors and Suppliers to comply with the Mayor's Policy and Executive Order. Contractor is responsible for securing and maintaining required documents from Subcontractors and Suppliers for the City inspection throughout the term of the Contract.
- 3.8.1.6 Failure of Contractor to comply with requirements will be a material breach of the Contract entitling the City to terminate in accordance with Section 14.1.

3.9 **MATERIALS & EQUIPMENT.**

- 3.9.1 Unless otherwise provided in the Contract, Contractor shall provide and assume full responsibility for Products, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, transportation, temporary facilities, supplies, and other facilities and incidentals necessary for Furnishing, performing, testing, starting-up, and completing the Work.

3.9.1.1 Contractor, Subcontractors, and Suppliers shall use Ultra Low Sulfur Diesel Fuel in all diesel operating vehicles and motorized equipment utilized in performing the Work. Ultra Low Sulfur Diesel Fuel is defined as diesel fuel having 15 ppm or the applicable standard set by state or federal law or rules and regulations of the Texas Commission on Environmental Quality, or the Environmental Protection Agency, whichever is less in sulfur content. Off-road Ultra Low Sulfur Diesel Fuel may be used in lieu of on-road Ultra Low Sulfur Diesel Fuel. Contractor shall provide, upon request by City Engineer, proof that Contractor, Subcontractors, and Suppliers are using Ultra Low Sulfur Diesel Fuel.

3.9.2 Contractor shall provide Products that are:

3.9.2.1 new, unless otherwise required or permitted by the Contract, and

3.9.2.2 of specified quality.

If required by City Engineer, Contractor shall furnish satisfactory evidence, including reports of required tests, as to kind and quality of Products.

3.9.3 Contractor shall store Products in a safe, neat, compact, and protected manner. Contractor shall also store Products delivered during the work, along the right-of-way:

3.9.3.1 so as to cause the least inconvenience to property owners, tenants, and general public; and

3.9.3.2 so as not to block access to, or be closer than, three feet to any fire hydrant.

Contractor shall protect trees, lawns, walks, drives, streets, and other improvements that are to remain, from damage. If private or public property is damaged by Contractor, Contractor shall, at its sole expense, restore the damaged property to at least its original condition.

3.9.3.3 Contractor shall obtain City Engineer's approval for storage areas used for Products for which payment has been requested under Paragraph 9.6.1. Contractor shall provide the City access to the storage areas for inspection purposes. Products, once paid for by the City, become the property of the City and may not be removed from place of storage, without City Engineer's written permission except for a movement to the site. Contractor's Installation Floater, required under Section 11.2, shall cover all perils, including loss or damage to Products during storage, loading, unloading, and transit to the site.

3.10 *PRODUCT OPTIONS AND SUBSTITUTIONS.*

3.10.1 For Products specified by reference standards or by description only, Contractor may provide any Product meeting those standards or description.

3.10.2 For Products specified by naming one or more manufacturers with provision for substitutions or equal, Contractor may submit a request for substitution for any manufacturer not named.

3.10.3 City Engineer will consider requests for substitutions only within the first 15 percent of Contract Time, or first 90 days after date of Notice to Proceed, whichever is less.

3.10.4 Contractor shall document each request for substitution with complete data substantiating compliance of proposed substitution with the Contract.

3.10.5 A request for substitution constitutes a representation that Contractor:

3.10.5.1 has investigated the proposed Product and determined that it meets or exceeds the quality level of the specified Product;

3.10.5.2 shall provide the same warranty for the substitution as for the specified Product;

- 3.10.5.3 shall coordinate installation of the proposed substitution and make changes to other work which may be required for the Work to be completed, with no additional cost or increase in time to the City;
 - 3.10.5.4 confirms that cost data is complete and includes all related costs under the Contract;
 - 3.10.5.5 waives Claim for additional costs or time extensions that may subsequently become apparent; and
 - 3.10.5.6 shall provide review or redesign services by a design consultant with appropriate professional license and shall obtain re-approval and permits from authorities.
- 3.10.6 City Engineer will not consider and will not approve substitutions when:
 - 3.10.6.1 they are indicated or implied on Shop Drawing or Product Data submittals without separate written request; or
 - 3.10.6.2 acceptance will require revision to the Contract.
- 3.10.7 City Engineer may reject requests for substitution, and his decision will be final and binding on the Parties.
- 3.11 **CASH ALLOWANCES.**
 - 3.11.1 Contract Price includes Cash Allowances as identified in the Contract.
 - 3.11.2 The City will pay the actual costs of Cash Allowance item exclusive of profit, overhead or administrative costs. If actual costs exceed the Cash Allowance, City Engineer must approve a Change Order for the additional costs.
- 3.12 **WARRANTY.**
 - 3.12.1 Contractor warrants to the City that Products furnished under the Contract are:
 - 3.12.1.1 free of defects in title;
 - 3.12.1.2 of good quality; and
 - 3.12.1.3 new, unless otherwise required or permitted by the Contract.If required by the City Engineer, Contractor shall furnish satisfactory evidence as to kind, quality and title of Products, and that Products conform to requirements of the Contract.
 - 3.12.2 In the event of a defect in a Product, either during construction or warranty period, Contractor shall take appropriate action with manufacturer of Product to assure correction or replacement of defective Product with minimum delay.
 - 3.12.3 Contractor warrants that the Work is free of defects not inherent in the quality required or permitted, and that the Work does conform with the requirements of the Contract. Contractor further warrants that the Work has been performed in a thorough and workmanlike manner.
 - 3.12.4 Contractor warrants that the Work is free of concentrations on polychlorinated biphenyl (PCB) and other substances defined as hazardous by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or any other applicable law or regulation.
 - 3.12.5 Work not conforming to requirements of Section 3.12, including substitutions not properly approved and authorized, may be considered nonconforming work.
 - 3.12.6 Contractor's warranty excludes remedy for damage or defect caused by:
 - 3.12.6.1 improper or insufficient maintenance by the City;
 - 3.12.6.2 normal wear and tear under normal usage; or
 - 3.12.6.3 claim that hazardous material was incorporated into the Work, if that material was specified in the Contract.

- 3.12.7 Contractor warrants that title to all work covered by Contractor's request for payment passes to the City upon incorporation into the Work or upon Contractor's receipt of payment, whichever occurs first. The Contractor further warrants that the title is free of all liens, claims, security interests or other interests ("Encumbrances"). If not, upon written demand from City Engineer, Contractor shall immediately take legal action necessary to remove Encumbrances.
- 3.13 **TAXES.**
- 3.13.1 Contractor shall pay all sales, consumer, use, and similar taxes, which are in effect or scheduled to go into effect on or before bids are received, related to work provided by Contractor.
- 3.13.2 Contractor shall obtain, and require Subcontractors and Suppliers to obtain, necessary permits from the state and local taxing authorities to perform contractual obligations under the Contract, including sales tax permits.
- 3.13.3 The City is exempt from the Federal Transportation and Excise Tax. Contractor shall comply with federal regulations governing the exemptions.
- 3.13.4 Products incorporated into the Work are exempt from state sales tax according to provisions of the TEX. TAX CODE ANN. CH. 151, Subsection H.
- 3.14 **PERMITS, FEES, AND NOTICES.** Unless otherwise provided in the Contract, Contractor shall secure and pay for all construction permits, licenses, and inspections:
- 3.14.1 necessary for proper execution and completion of the Work; and
- 3.14.2 legally required at time bids are received.
- 3.15 **CONSTRUCTION SCHEDULES.**
- 3.15.1 On receipt of Notice to Proceed, Contractor shall promptly prepare and submit construction schedule for the Work for City Engineer's review. The schedule must reflect the minimum time required to complete the Work not to exceed Contract Time.
- 3.15.2 Contractor shall give 24-hour written notice to City Engineer before commencing work or resuming work where work has been stopped. Contractor shall also give the same notice to inspectors.
- 3.15.3 Contractor shall incorporate milestones specified in Summary of Work Specification into the construction schedule. Contractor's failure to meet a milestone, as determined by City Engineer, may be considered a material breach of the Contract.
- 3.15.4 Each month, Contractor shall submit to City Engineer a copy of an updated construction schedule indicating actual progress, incorporating applicable changes, and indicating courses of action required to assure completion of the Work within Contract Time.
- 3.15.5 Contractor shall keep a current schedule of submittals that coordinates with the construction schedule, and shall submit the initial schedule of submittals to City Engineer for approval.
- 3.16 **DOCUMENTS AND SAMPLES AT THE SITE.**
- 3.16.1 Contractor shall maintain at the site, and make available to City Engineer, one record copy of Drawings, Specifications, and Modifications. Contractor shall maintain the documents in good order and marked currently to record changes and selections made during construction. In addition, Contractor shall maintain at the site, approved Shop Drawings, Product Data, Samples, and similar submittals, which will be delivered to City Engineer prior to final inspection as required in Paragraph 9.11.4.

- 3.16.2 Contractor shall maintain all books, documents, papers, accounting records, and other relevant documentation pursuant to the Work and shall make the books, documents, papers, and accounting records available to representatives of the City for review and audits during the Contract term and for the greater of three years following Date of Substantial Completion or until all litigation or audits are fully resolved.
- 3.16.3 Contractor shall provide to City Attorney all documents and records that City Attorney deems necessary to assist in determining Contractor's compliance with the Contract, with the exception of those documents made confidential by federal or state law or regulation.
- 3.17 **MANUFACTURER'S SPECIFICATIONS.**
- 3.17.1 Contractor shall handle, store, and Install Products and perform all work in the manner required by Product manufacturer. Should the Contract and manufacturer's instructions conflict, Contractor shall report conflict to City Engineer for resolution prior to proceeding with the affected work.
- 3.17.1 References in the Contract to the manufacturer's specifications, directions, or recommendations, mean manufacturer's current published documents in effect as of date of receipt of bids, or in the case of a Modification, as of date of Modification.
- 3.18 **SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES.**
- 3.18.1 Shop Drawings, Product Data, and Samples are not part of the Contract. The purpose of Contractor submittals is to demonstrate, for those portions of the Work for which submittals are required, the way Contractor proposes to conform to information given and design concept expressed in the Contract.
- 3.18.2 Contractor shall submit to Project Manager for review the Shop Drawings, Product Data, and Samples, which are required by the Contract. Review by Project Manager is subject to limitations of Paragraph 4.1.4. Contractor shall transmit the submittals to the Project Manager with reasonable promptness and in a sequence, so as to cause no delay in the Work or in activities of the City or of separate contractors. Contractor shall transmit submittals in time to allow a minimum of 30 days for Project Manager's review prior to date Contractor needs reviewed submittals returned. This time may be shortened for a particular job requirement if approved by Project Manager in advance of submittal.
- 3.18.3 Contractor shall certify that the content of submittals conforms to the Contract without exception by affixing Contractor's approval stamp and signature. By certifying and submitting Shop Drawings, Product Data, and Samples, Contractor represents, and Contractor's stamp of approval shall state, that Contractor has determined and verified materials, quantities, field measurements, and field construction criteria related to the submittal, and has checked and coordinated information contained within the submittals with requirements of the Contract.
- 3.18.4 Contractor may not perform any work requiring submittal and review of Shop Drawings, Product Data, or Samples until the submittal has been returned with appropriate review decision by the Project Manager. Contractor shall perform work in accordance with the review.
- 3.18.5 If Contractor performs any work requiring submittals prior to review and acceptance of the submittals by Project Manager, such work is at Contractor's risk and the City is not obligated to accept work if the submittals are later found to be unacceptable.
- 3.18.6 If, in the opinion of Project Manager, the submittals are incomplete, or demonstrate an inadequate understanding of the Work or lack of review by the Contractor, then submittals may be returned to the Contractor for correction and resubmittal.

- 3.18.7 Contractor shall direct specific attention in writing and on the resubmitted Shop Drawings, Product Data, or Samples to any additional proposed revisions, other than those revisions requested by Project Manager on previous submittals.
- 3.18.8 Contractor is not relieved of responsibility for deviations from requirements of the Contract by Project Manager's review of Shop Drawings, Product Data, or Samples unless Contractor has specifically informed Project Manager in writing of the deviation at the time of the submittal, and Project Manager has given written approval of the deviation.
- 3.18.9 When professional certification of performance criteria of Products is required by the Contract, the City may rely upon accuracy and completeness of the calculations and certifications.
- 3.18.10 For Product colors or textures to be selected by the City, Contractor shall submit all samples together to allow preparation of a complete selection schedule.
- 3.18.11 Contractor shall submit informational submittals, on which Project Manager is not expected to take responsive action, as required by the Contract.
- 3.18.12 Submittals made by Contractor which are not required by the Contract may be returned to Contractor without action.
- 3.19 *CULTURAL RESOURCES AND ENDANGERED SPECIES.*
- 3.19.1 Contractor may not remove or disturb, or cause to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, vestiges, remains, or objects of antiquity. If Contractor discovers one of these items, Contractor shall immediately notify City Engineer and further comply with the requirements of 13 Tex. Admin. Code Chs. 25 and 26 (2002), or successor regulation. Contractor shall protect site and cultural resources from further disturbance until professional examination can be made or until clearance to proceed is authorized in writing by City Engineer.
- 3.19.2 Should either threatened or endangered plant or animal species be encountered, Contractor shall cease work immediately in the area of encounter and notify City Engineer.
- 3.20 *CUTTING AND PATCHING.*
- 3.20.1 Contractor is responsible for necessary cutting, fitting, and patching to accomplish the Work and shall suitably support, anchor, attach, match, and trim or seal materials to work of other contractors. Contractor shall coordinate the Work with work of other contractors to minimize conflicts, as provided in Article 6.
- 3.20.2 Contractor may not endanger work by cutting, digging, or other action, and may not cut or alter work of other contractors except by written consent of City Engineer and affected contractor.
- 3.21 *CLEANING.*
- 3.21.1 Contractor shall perform daily cleanup of all dirt, debris, scrap materials and other disposable items resulting from Contractor's operations, whether on-site or off-site. Unless otherwise authorized in writing by City Engineer, Contractor shall keep all streets, access streets, driveways, areas of public access, walkways, and other designated areas clean and open at all times.
- 3.21.2 Failure of Contractor to maintain a clean site, including access streets, is the basis for City Engineer to issue a Notice of Noncompliance. Should compliance not be attained

within the time period in the Notice of Noncompliance, City Engineer may authorize necessary cleanup to be performed by others and the cost of the cleanup will be deducted from monies due Contractor.

Contractor shall legally dispose off-site, all waste materials and other excess materials resulting from Contractor's operations.

- 3.22 **SANITATION.** Contractor shall provide and maintain sanitary facilities at site for use of all construction forces under the Contract. Newly-constructed or existing sanitary facilities may not be used by Contractor.
- 3.23 **ACCESS TO WORK AND TO INFORMATION.**
- 3.23.1 Contractor shall provide the City, Design Consultant, testing laboratories, and governmental agencies which have jurisdictional interests, access to the Work in preparation and in progress wherever located. Contractor shall provide proper and safe conditions for the access.
- 3.23.2 If required by City Engineer, Contractor shall furnish information concerning character of Products and progress and manner of the Work, including information necessary to determine cost of the Work, such as number of employees, pay of employees, and time employees worked on various classes of the Work.
- 3.24 **TRADE SECRETS.** Contractor will not make any claim of ownership of trade secrets as to products used in the Work, or preparation of any mixture for the Work. City Engineer will at all times have the right to demand and Contractor shall furnish information concerning materials or samples of ingredients of any materials used, or proposed to be used, in preparation of concrete placed or other work to be done. Mixtures, once agreed on, shall not be changed in any manner without knowledge and consent of City Engineer. The City will make its best efforts to protect confidentiality of proprietary information.
- 3.25 **INDEMNIFICATION.**
- 3.25.1 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 THE CONTRACT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:
- 3.25.1.1 CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED SUBPARAGRAPHS .1 through .3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- 3.25.1.2 THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT;
- 3.25.1.3 THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.
- CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THE CONTRACT AND FOR FOUR YEARS AFTER THE CONTRACT TERMINATES. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

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

3.26 *RELEASE AND INDEMNIFICATION – PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT.*

3.26.1 UNLESS OTHERWISE SPECIFICALLY REQUIRED BY THE CONTRACT, CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") 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 THE CONTRACT INFRINGES ON A PATENT, COPYRIGHT, 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.

3.26.2 CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, OR PRODUCT WITHOUT THE CITY ENGINEER'S PRIOR WRITTEN CONSENT.

3.26.3 UNLESS OTHERWISE SPECIFICALLY REQUIRED BY THE CONTRACT, WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER:

3.26.3.1 OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, OR PRODUCT, OR

3.26.3.2 IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS.

IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR PRODUCT, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

3.27 *INDEMNIFICATION PROCEDURES.*

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

3.27.1.1 a description of the indemnification event in reasonable detail,

3.27.1.2 the basis on which indemnification may be due, and

3.27.1.3 the anticipated amount of the indemnified loss.

This notice does not estop 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.

3.27.2 *Defense of Indemnification Claims:*

3.27.2.1 *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. Contractor shall then control the defense and any negotiations to settle the claim. 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 indemnified loss.

- 3.27.2.2 *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. Contractor may settle the claim without the consent or agreement of the City, unless it:
- 3.27.2.2.1 would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City;
 - 3.27.2.2.2 would require the City to pay amounts that Contractor does not fund in full; or
 - 3.27.2.2.3 would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

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

3.29 PRESERVATION OF CONTRACTING INFORMATION.

3.29.1 The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that this Agreement 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 Agreement, then for the duration of this Agreement (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 Agreement 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 Agreement that is in the custody or possession of Contractor. Upon the expiration or termination of this Agreement, Contractor shall, at the Director's election, either (a) provide, at no cost to the City, all Contracting Information related to this Agreement that is in the custody or possession of Contractor, or (b) preserve the Contracting Information related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy.

3.29.2 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 Agreement. 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 Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 CONTRACT ADMINISTRATION.

4.1.1 City Engineer will provide administration of the Contract and City Engineer is authorized to issue Change Orders, Work Change Directives, and Minor Changes in the Work.

4.1.2 City Engineer may act through Project Manager, Design Consultant, or Inspector. When the term "City Engineer" is used in the Contract, action by City Engineer is required unless City Engineer delegates his authority in writing. The City Engineer may not delegate authority to render decisions under Section 4.4.

The City does not have control over or charge of, and is not responsible for, supervision, construction, and safety procedures enumerated in Section 3.3. The City does not have control over or charge of and is not responsible for acts or omissions of Contractor, Subcontractors, or Suppliers.

4.1.3 The City and Design Consultant may attend project meetings and visit the site to observe progress and quality of the Work. The City and Design Consultant are not required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work.

4.1.4 Project Manager will review and approve or take other appropriate action on Contractor's submittals, but only for limited purpose of checking for conformance with information given and design concept expressed in the Contract.

4.1.5 Project Manager's review of the submittals is not conducted for purpose of determining accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of Products, all of which remain the responsibility of Contractor.

4.1.6 Project Manager's review of submittals does not relieve Contractor of its obligations under Sections 3.3, 3.12, and 3.18. Review does not constitute approval of safety precautions or, unless otherwise specifically stated by Project Manager in writing, of construction means, methods, techniques, sequences, or procedures. Project Manager's review of a specific item does not indicate approval of an assembly of which the item is a component.

4.1.7 Based on field observations and evaluations, Project Manager will process Contractor's progress payments, certify amounts due Contractor, and issue Certificates for Payment in the amount certified.

4.1.8 Project Manager will receive and forward to City Engineer for his review and records, written warranties and related documents required by the Contract and assembled by Contractor.

4.1.9 Upon written request by Contractor or Project Manager, City Engineer will resolve matters of interpretation of or performance of the Contract, which are not Claims. City Engineer's decisions are final and binding on the Parties.

4.1.10 City Engineer may reject work which does not conform to the Contract.

- 4.1.11 When City Engineer considers it necessary to implement the intent of the Contract, City Engineer may require additional inspection or testing of work in accordance with Paragraphs 13.6.3 and 13.6.4, whether such work is fabricated, Installed, or completed.
- 4.2 *COMMUNICATIONS IN ADMINISTRATION OF THE CONTRACT.* Except as otherwise provided in the Contract or when authorized by City Engineer in writing, Contractor shall communicate with Project Manager. Contractor shall communicate with Design Consultant, Design Consultant's subconsultants, and separate contractors through Project Manager. The City will communicate with Subcontractors and Suppliers through Contractor.
- 4.3 *CLAIMS AND DISPUTES.*
- 4.3.1 *Documentation by Project Manager:* Contractor shall submit Claims, including those alleging an error or omission by Project Manager or Design Consultant, to Project Manager for documentation and recommendation to City Engineer.
- 4.3.2 *Decision of City Engineer:* Upon submission of Claim by Project Manager or Contractor, City Engineer will resolve Claims in accordance with Section 4.4.
- 4.3.3 *Time Limits on Claims:* Claims by Contractor must be made within 90 days after occurrence of event giving rise to the Claim.
- 4.3.4 *Continuing the Contract Performance:* Pending final resolution of a Claim including referral to non-binding mediation, unless otherwise agreed in writing, Contractor shall proceed diligently with the performance of the Contract and the City will continue to make payments in accordance with the Contract.
- 4.3.4.1 Pending final resolution of a Claim including referral to non-binding mediation, Contractor is responsible for safety and protection of physical properties and conditions at site.
- 4.3.5 *Claims for Concealed or Unknown Conditions:* Concealed or unknown physical conditions include utility lines, other man-made structures, storage facilities, Pollutants and Pollutant Facilities, and the like, but do not include conditions arising from Contractor operations, or failure of Contractor to properly protect and safeguard subsurface facilities. Concealed conditions also include naturally-occurring soil conditions outside the range of soil conditions identified through geotechnical investigations, but do not include conditions arising from groundwater, rain, or flood.
- 4.3.5.1 If conditions are encountered at the site which are Underground Facilities or otherwise concealed or unknown conditions which differ materially from:
- 4.3.5.1.1 those indicated by the Contract; or
- 4.3.5.1.2 conditions which Contractor could have discovered through site inspection, geotechnical testing, or otherwise;
- then Contractor will give written notice to City Engineer no later than five days after Contractor's first observation of the condition and before condition is disturbed. Contractor's failure to provide notice constitutes a waiver of a Claim.
- 4.3.5.2 City Engineer will promptly investigate concealed or unknown conditions. If City Engineer determines that conditions at the site are not materially different and that no change in Contract Price or Contract Time is justified, City Engineer will notify Contractor in writing, stating reasons. If City Engineer determines the conditions differ materially and cause increase or decrease in Contractor's cost or time required for performance of part of the Work, City Engineer will recommend an adjustment in Contract Price or Contract Time, or both, as provided in Article 7. Opposition by a Party to the City Engineer's determination

must be made within 21 days after City Engineer has given notice of the decision. If the Parties cannot agree on adjustment to Contract Price or Contract Time, adjustment is subject to further proceedings pursuant to Section 4.4.

4.3.6 *Claims for Additional Cost:* If Contractor wishes to make a Claim for increase in Contract Price, Contractor shall give written notice before proceeding with work for which Contractor intends to submit a Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

4.3.6.1 Contractor may file a Claim in accordance with Section 4.4 if Contractor believes it has incurred additional costs, for the following reasons:

4.3.6.1.1 written interpretation of City Engineer;

4.3.6.1.2 order by City Engineer to stop the Work when Contractor is not at fault;

4.3.6.1.3 suspension of the Work by City Engineer;

4.3.6.1.4 termination of the Contract by City Engineer; or

4.3.6.1.5 The City's non-compliance with another provision of the Contract.

4.3.6.2 No increase in Contract Price is allowed for delays or hindrances to the Work, except for direct and unavoidable extra costs to Contractor caused by failure of the City to provide information and services, or to make land and materials available, when required of the City under the Contract. Any increase claimed is subject to the provisions of Section 4.4 and Article 7.

4.3.6.3 The City is not liable for Claims for delay when Date of Substantial Completion occurs prior to expiration of Contract Time.

4.3.7 *Claims for Additional Time:* If Contractor wishes to make a Claim for an increase in Contract Time, Contractor shall give written notice as provided in Section 8.2. In case of continuing delay, only one Claim is necessary.

4.4 **RESOLUTION OF CLAIMS AND DISPUTES.**

4.4.1 City Engineer will review Claims and take one or more of the following preliminary actions within 30 days of receipt of Claim:

4.4.1.1 submit a suggested time to meet and discuss the Claim with City Engineer;

4.4.1.2 reject Claim, in whole or in part, stating reasons for rejection;

4.4.1.3 recommend approval of the Claim by the other Party;

4.4.1.4 suggest a compromise; or

4.4.1.5 take other actions as City Engineer deems appropriate to resolve the Claim.

4.4.2 City Engineer may request additional supporting data from claimant. Party making Claim shall, within 10 days after receipt of City Engineer's request, submit additional supporting data requested by City Engineer.

4.4.3 At any time prior to rendering a written decision regarding a Claim, City Engineer may refer Claim to non-binding mediation. If Claim is resolved, City Engineer will prepare and obtain all appropriate documentation. If Claim is not resolved, City Engineer will take receipt of Claim and begin a new review under Section 4.4.

4.4.4 If Claim is not referred to or settled in non-binding mediation, City Engineer may conduct a hearing and will render a written decision, including findings of fact, within 75 days of receipt of Claim, or a time mutually agreed upon by the Parties in writing. City Engineer may notify Surety and request Surety's assistance in resolving Claim. City Engineer's decision is final and binding on the Parties.

- 4.5 ***CONDITION PRECEDENT TO SUIT; WAIVER OF ATTORNEY FEES AND INTEREST.***
- 4.5.1 A final decision by the City Engineer is a condition precedent to file suit in any jurisdiction for a claim made in connection with this Contract.
- 4.5.2 Neither the City nor Contractor may recover attorney fees for any claim brought in connection with this Contract.
- 4.5.3 Neither the City nor the Contractor may recover interest for any damages claim brought in connection with this Contract except as allowed by TEXAS LOCAL GOVERNMENT CODE Chapter 2251.
- 4.6 ***INTERIM PAYMENT WAIVER & RELEASE.***
- 4.6.1 In accordance with section 4.3, the Contractor shall use due diligence in the discovery and submission of any Claim against the City related to the Contractor's work.
- 4.6.2 The Contractor shall submit any Claim to the City not later than the 90th day after the occurrence of the event giving rise to the Claim.
- 4.6.3 Any failure to timely comply with the requirements of section 4.6.2 waives and releases any Claim when the Contractor submits an application for payment after the 90th day.
- 4.6.4 This waiver does not cover any retainage. In case of any conflict of law, this language shall be revised to the minimum extent necessary to avoid legal conflict. This waiver is made specifically for the benefit of the City.

ARTICLE 5

SUBCONTRACTORS AND SUPPLIERS

- 5.1 ***AWARD OF SUBCONTRACTS OTHER CONTRACTS FOR PORTIONS OF THE WORK.***
- 5.1.1 Contractor may not contract with a Subcontractor, Supplier, person, or entity that City Engineer has made a reasonable and timely objection to.
- 5.1.2 If City Engineer has a reasonable objection to person or entity proposed by Contractor, Contractor shall propose another with whom City Engineer has no reasonable objection.
- 5.1.3 Contractor shall execute contracts with approved Subcontractors, Suppliers, persons, or entities before the Subcontractors or Suppliers begin work under the Contract. All such contracts must be executed and sent to the OBO Director and Contracting Department within 30 days after the date of the Notice to Proceed and must include provisions set forth in Articles 3 and 5 of this Document.
- 5.1.4 Contractor shall notify City Engineer in writing of any proposed change of Subcontractor, Supplier, person, or entity previously accepted by the City.
- 5.1.5 Contractor shall make timely payments to Subcontractors and Suppliers for performance of the Contract. Contractor shall protect, defend, and indemnify the City from any claim or liability arising out of Contractor's failure to make the payments. Disputes relating to payment of Business Enterprise Subcontractors or Suppliers will be submitted to arbitration in same manner as other disputes under Business Enterprise subcontracts. Failure of Contractor to comply with decisions of arbitrator may be determined by City Engineer a material breach leading to termination of the Contract.
- 5.2 ***CONTRACTOR RESPONSIBILITY FOR SUBCONTRACTORS.***

- 5.2.1 Contractor is responsible to the City, as may be required by laws and regulations, for all acts and omissions of Subcontractors, Suppliers, and other persons and organizations performing or furnishing any of the Work under direct or indirect contract with Contractor.
- 5.2.2 Contractor shall make available to each proposed Subcontractor, prior to execution of subcontract, copies of the Contract to which Subcontractor is bound by this Section 5.2. Contractor shall notify Subcontractor of any terms of proposed subcontract which may be at variance with the Contract.
- 5.2.3 The City's approval of Subcontractor or Suppliers does not relieve Contractor of its obligation to perform, or to have performed to the full satisfaction of the City, the Work required by the Contract.
- 5.2.4 Unless there is a contractual relationship between Contractor and a Subcontractor or Supplier to the contrary, Contractor shall withhold no more retainage from Subcontractors or Suppliers than City withholds from Contractor under this Agreement. However, once a Subcontractor or Supplier completes performance, Contractor shall release all retainage to that Subcontractor or Supplier regardless if City continues to retain under this Agreement.
- 5.2.5 Prior to a Subcontractor or Supplier commencing performance for Contractor, Contractor shall meet with that Subcontractor or Supplier to provide instructions on invoicing procedures, dispute resolution procedures, and statutory rights, such as claim filing procedures under the McGregor Act. Subcontractors and Suppliers must certify to the City Engineer that Contractor has fulfilled the requirements of this Section.

ARTICLE 6

CONSTRUCTION BY THE CITY OR BY SEPARATE CONTRACTORS

- 6.1 *THE CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS.* The City may perform on-site construction operations related to the Work and as part of the Project with the City's workforce or with separate contractors.
- 6.2 *COORDINATION.*
- 6.2.1 The City will coordinate activities of the City's workforce and of each separate contractor with work of Contractor, and Contractor shall cooperate with the City and separate contractors.
- 6.2.1.1 Contractor shall participate with other separate contractors and the City in reviewing their construction schedules when directed to do so by the Project Manager. Contractor shall make revisions to construction schedule and Contract Price deemed necessary after joint review and mutual agreement. Construction schedules shall then constitute schedules to be used by Contractor, separate contractors, and the City, until subsequently revised.
- 6.2.2 Contractor shall afford to the City and to separate contractors reasonable opportunity for introduction and storage of their materials and equipment, and for performance of their activities.
- 6.2.3 If part of Contractor's work depends on proper execution of construction or operations by the City or a separate contractor, Contractor shall, prior to proceeding with that portion of the Work, inspect the other work and promptly report to City Engineer apparent discrepancies or defects in the other construction that would render it unsuitable for the proper execution of the Work. Failure of Contractor to report apparent discrepancies or defects in the other construction shall constitute acknowledgment that the City's or

separate contractor's completed or partially completed construction is fit and proper to receive Contractor's work, except as to discrepancies or defects not then reasonably discoverable.

6.3 **MUTUAL RESPONSIBILITY.**

6.3.1 The responsible party bears the costs caused by delays, by improperly timed activities, or by nonconforming construction.

6.3.2 Contractor shall promptly remedy damage caused by Contractor to completed or partially completed construction or to property of the City or separate contractor.

6.3.3 Claims or disputes between Contractor and other City contractors, or subcontractors of other City contractors, working on the Project must be submitted to binding arbitration in accordance with Construction Industry Arbitration Rules of the American Arbitration Association upon demand by any party to the dispute or by the City.

6.4 **THE CITY'S RIGHT TO CLEAN UP.** If dispute arises among Contractor, separate contractors, and the City as to responsibility under their respective contracts for maintaining premises and surrounding area free from waste materials and rubbish as described in Section 3.21, the City may clean up and allocate cost among those responsible, as determined by City Engineer.

ARTICLE 7
CHANGES IN THE WORK

7.1 **CHANGES.**

7.1.1 Changes in scope of the Work, subject to limitations in Article 7 and elsewhere in the Contract, may be accomplished without invalidating the Contract, or without notifying Surety by:

- 7.1.1.1 Change Order;
- 7.1.1.2 Work Change Directive; or
- 7.1.1.3 Minor Change in the Work.

7.1.2 The following types of Change Orders require City Council approval:

- 7.1.2.1 a single Change Order that exceeds five percent of Original Contract Price,
- 7.1.2.2 a Change Order which, when added to previous Change Orders, exceeds five percent of Original Contract Price,
- 7.1.2.3 a Change Order, in which the total value of increases outside of the general scope of work approved by City Council, when added to increases outside the general scope of work approved by City Council in previous Change Orders, exceeds 40 percent of the Original Contract Price, even if the net increase to the Original Contract Price is five percent or less.

In this context, "increase" means an increase in quantity resulting from the addition of locations not within the scope of work approved by City Council, or the addition of types of goods or services not bid as unit price items.

Nothing in this Section is intended to permit an increase of the Contract Price in excess of the limit set out in TEX. LOC. GOV'T CODE ANN. §252.048 or its successor statute.

7.1.3 Contractor shall proceed promptly to execute changes in the Work provided in Modifications, unless otherwise stated in the Modification.

7.2 **WORK CHANGE DIRECTIVES.**

- 7.2.1 A Work Change Directive cannot change Contract Price or Contract Time, but is evidence that the Parties agree that a change, ordered by directive, will be incorporated in a subsequently issued Change Order as to its effect, if any, on Contract Price or Contract Time.
- 7.2.2 Failure by Contractor to commence work identified in a Work Change Directive within the time specified by City Engineer, or to complete the work in a reasonable period of time, may be determined by City Engineer to be a material breach of Contract.
- 7.2.3 A Work Change Directive is used in the absence of total agreement of the terms of a Change Order. Interim payments are made in accordance with Paragraph 9.6.1.
- 7.2.4 If Contractor signs a Work Change Directive, then Contractor agrees to its terms including adjustment in Contract Price and Contract Time or method for determining them. Agreement by the Parties to adjustments in Contract Price and Contract Time are immediately recorded as a Change Order.
- 7.2.5 City Engineer, by Work Change Directive, may direct Contractor to take measures as necessary to expedite construction to achieve Date of Substantial Completion on or before expiration of Contract Time. When the Work is expedited solely for convenience of the City and not due to Contractor's failure to prosecute timely completion of the Work, then Contractor is entitled to an adjustment in Contract Price equal to actual costs determined in accordance with Article 7.

7.3 **ADJUSTMENTS IN CONTRACT PRICE.**

- 7.3.1 Adjustments in Contract Price are accomplished by Change Order and are based on one of the following methods:
- 7.3.1.1 mutual acceptance of fixed price, properly itemized and supported by sufficient data to permit evaluation;
- 7.3.1.2 unit prices stated in the Contract or subsequently agreed upon;
- 7.3.1.3 cost to be determined in a manner agreed upon by the Parties and mutually acceptable fixed or percentage fee; or
- 7.3.1.4 as provided in Paragraph 7.3.2.
- 7.3.2 If Contractor does not agree with a change in Contract Price or Contract Time or the method for adjusting them specified in the Work Change Directive within 21 days from date of the Work Change Directive's issuance, method and adjustment are determined by City Engineer. If Project Manager or Contractor disagree with City Engineer's determination they then may file a Claim in accordance with Section 4.4.

	<u>Overhead</u>	<u>Profit</u>
to Contractor for change in the Work performed by Subcontractors:	10 percent	0 percent
to first tier Subcontractors for change in the Work performed by its Subcontractors:	10 percent	0 percent
to Contractor and Subcontractor for change in the Work performed by their respective firms:	10 percent	5 percent

7.3.2.1 If City Engineer determines a method and adjustment in Contract Price under Paragraph 7.3.2, Contractor shall provide, in a form as City Engineer may prescribe, appropriate supporting data for items submitted under Paragraph 7.3.2. Failure to submit the data within 21 days of request for the data by City Engineer shall constitute waiver of a Claim.

7.3.2.2 Unless otherwise provided in the Contract, costs for the purposes of this Paragraph 7.3.2 are limited to the following:

7.3.2.2.1 costs of labor, including labor burden as stated below for social security, unemployment insurance, customary and usual fringe benefits required by agreement or custom, and Workers' Compensation insurance;

7.3.2.2.1.1 the maximum labor burden applied to costs of labor for changes in the Work is 55 percent;

7.3.2.2.2 costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

7.3.2.2.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from Contractor or others, with prior approval of City Engineer;

7.3.2.2.4 costs of premiums for Bonds and insurance and permit fees related to the change in the Work;

7.3.2.2.5 additional costs of direct supervision of work and field office personnel directly attributable to the change; and

7.3.2.2.6 allowances for overhead and profit as stated below.

7.3.2.2.6.1 the maximum allowances for overhead and profit on increases due to Change Orders:

7.3.2.2.6.2 for changes in the Work performed by Contractor and Subcontractors, allowance for overhead and profit are applied to an amount equal to cost of all additions less cost of all deletions to the Work. Allowance for overhead to Contractor and first tier Subcontractors on changes performed by Subcontractors are applied to an amount equal to the sum of all increases to the Work by applicable Subcontractors.

7.3.3 If the City deletes or makes a change, which results in a net decrease in Contract Price, the City is entitled to a credit calculated in accordance with Paragraphs 7.3.1 and 7.3.2 and Subparagraphs 7.3.2.1, and 7.3.2.2.1 through 7.3.2.2.5. When both additions and credits covering related work or substitutions are involved in a change, allowance for overhead and profit is figured on the basis of a net increase, if any, with respect to that change in accordance with Subparagraph 7.3.2.2.6.

7.3.4 When Contractor agrees with the determination made by City Engineer concerning adjustments in Contract Price and Contract Time, or the Parties otherwise reach agreement upon the adjustments, the agreement will be immediately recorded by Change Order.

7.4 **MINOR CHANGES IN THE WORK.** A Minor Change in Work is binding on the Parties. Contractor shall acknowledge, in a written form acceptable to City Engineer, that there is no change in Contract Time or Contract Price and shall carry out the written orders promptly.

ARTICLE 8

TIME

8.1 *PROGRESS AND COMPLETION.*

- 8.1.1 Time is of the essence in the Contract. By executing the Contract, Contractor agrees that Contract Time is a reasonable period for performing the Work.
- 8.1.2 *Computation of Time:* In computing any period of time prescribed or allowed by the General Conditions, the day of the act, event, or default after which designated period of time begins to run is not to be included. Last day of the period so computed is to be included, unless it is a Sunday or Legal Holiday, in which event the period runs until end of next day which is not a Sunday or Legal Holiday. Sundays and Legal Holidays are considered to be days and are to be included in all other time computations relative to Contract Time.
- 8.1.3 Contractor may not commence the Work prior to the effective date of insurance and Bonds required by Article 11.
- 8.1.4 Contractor shall proceed expeditiously and without interruption, with adequate forces, and shall achieve Date of Substantial Completion within Contract Time.
- 8.1.5 Should progress of the Work fall behind construction schedule, except for reasons stated in Paragraph 8.2.1, Contractor shall promptly submit at the request of Project Manager, updated construction schedule to City Engineer for approval. Contractor's failure to submit updated schedule may, at City Engineer's discretion, constitute a material breach of the Contract. Contractor shall take action necessary to restore progress by working the hours, including night shifts and lawful overtime operations as necessary, to achieve Date of Substantial Completion within Contract Time.
- 8.1.6 Except in connection with safety or protection of persons or the Work or property at the site or adjacent to the site, and except as otherwise indicated in the Contract, all the Work at the site will be performed Monday through Saturday between the hours of 7:00 a.m. and 7:00 p.m. Contractor may not perform work between 7:00 p.m. and 7:00 a.m., on a Sunday, or on a Legal Holiday, without giving City Engineer 24-hour prior written notice and receiving written consent of City Engineer.

8.2 *DELAYS AND EXTENSIONS OF TIME.*

- 8.2.1 Contractor may request extension of Contract Time for a delay in performance of work that arises from causes beyond control and without fault or negligence of Contractor. Examples of these causes are:
- 8.2.1.1 acts of God or of the public enemy;
 - 8.2.1.2 acts of government in its sovereign capacity;
 - 8.2.1.3 fires;
 - 8.2.1.4 floods;
 - 8.2.1.5 epidemics;
 - 8.2.1.6 quarantine restrictions;
 - 8.2.1.7 strikes;
 - 8.2.1.8 freight embargoes;
 - 8.2.1.9 unusually severe weather; and
 - 8.2.1.10 discovery of Pollutants or Pollutant Facilities at the site.
- 8.2.2 For any reason other than those listed in Section 4.3.6.2, if the Contractor's work is delayed in any manner or respect, the Contractor shall have no claim for damages and shall have no right of additional compensation from the City by reason of any delay or

increased expense to the Contractor's work, except for an extension of time as provided in this provision.

- 8.2.3 Contractor may request an extension of Contract Time for delay only if:
 - 8.2.3.1 delay is caused by failure of Subcontractor or Supplier to perform or make progress; and
 - 8.2.3.2 cause of failure is beyond control of both Contractor and Subcontractor or Supplier.
- 8.2.4 Claims relating to Contract Time must be made in accordance with Paragraph 4.3.7.
- 8.2.5 Claims for extending or shortening Contract Time are based on written notice promptly delivered by the Party making Claim to other Party. Claim must accurately describe occurrence generating Claim, and a statement of probable effect on progress of the Work.
- 8.2.6 Claims for extension of Contract Time are considered only when a Claim is filed within the time limits stated in Paragraph 4.3.3.
 - 8.2.6.1 Notwithstanding paragraph 4.3.3, an extension of time for delays under this paragraph may be granted only upon written application by the Contractor within 48 hours from the claimed delay.
- 8.2.7 Written notice of Claim must be accompanied by claimant's written statement that adjustment claimed is entire adjustment to which claimant is entitled as a result of the occurrence of the event. When the Parties cannot agree, Claims for adjustment in Contract Time are determined by City Engineer in accordance with Section 4.4.
- 8.2.8 Adjustments to Contract Time are accomplished by Change Order.

ARTICLE 9

PAYMENTS AND COMPLETION

- 9.1 ***UNIT PRICE WORK.***
 - 9.1.1 Where the Contract provides that all or part of the Work is based on Unit Prices, the Original Contract Price includes, for all Unit Price work, an amount equal to the sum of Unit Prices times Unit Price Quantities for each separately identified item of Unit Price work.
 - 9.1.2 Each Unit Price includes an amount to cover Contractor's overhead and profit for each separately identified item.
 - 9.1.3 The Contractor may not make a Claim against the City for excess or deficiency in Unit Price Quantities provided in the Contract, except as provided in Subparagraph 9.1.4. Payment at the prices stated in the Contract is in full for the completed work. Contractor is not entitled to additional payment for materials, supplies, labor, tools, machinery and all other expenditures incidental to satisfactory completion of the Work.
 - 9.1.4 City Engineer may increase or decrease quantities of the Work within limitations stated in Paragraph 7.1.2. Contractor is entitled to payment for actual quantities of items provided at Unit Prices set forth in the Contract.
 - 9.1.5 Where the final quantity of work performed by Contractor on Major Unit Price Work item differs by more than 25 percent from quantity of the item stated in the Contract, a Party may request an adjustment in Unit Price, for the portion that differs by more than 25 percent, by a Change Order under Section 7.3.

9.2 *ESTIMATES FOR PAYMENT, UNIT PRICE WORK.*

9.2.1 Following the day of each month indicated in the Contract, Project Manager will prepare a Certificate for Payment for the preceding monthly period based on estimated units of work completed. Prior to preparing Certificate of Payment, Contractor shall have submitted to City Engineer, on a form approved by the Director of the Office of Business Opportunity, evidence satisfactory to the City Engineer of payments made to Subcontractors and Suppliers for the month preceding the month for which the Certificate for Payment is prepared, including evidence of electronic submission of certified payrolls.

9.2.2 Before final completion, City Engineer will review and confirm with Contractor the actual final installed Unit Price quantities. City Engineer's determination of actual final installed Unit Price quantities will be included in the final Certificate for Payment and any previous underpayments and overpayments will be reconciled with the actual final Unit Price quantities. Contractor shall file written notice of intent to appeal, if any, City Engineer's determination within 10 days of receipt of final Certificate for Payment. Upon expiration of the 10-day period, City Engineer's decision is final and binding on the Parties. If Contractor submits notice within the 10-day period, Contractor shall submit a Claim in accordance with Section 4.4.

9.3 *STIPULATED PRICE WORK.* For work contracted on a Stipulated Price basis, 10 days before submittal of first Application for Payment, Contractor shall submit to City Engineer a Schedule of Values allocated to various portions of the Work, prepared in the form and supported by the data as City Engineer may require to substantiate its accuracy. This schedule, as approved by City Engineer, is used as a basis for approval of Contractor's Applications for Payment.

9.4 *APPLICATIONS FOR PAYMENT, STIPULATED PRICE WORK.*

9.4.1 For work contracted on a Stipulated Price basis, Contractor shall submit Applications for Payment to City Engineer each month on a form acceptable to City Engineer in accordance with Schedule of Values. Application must indicate percentages of completion of each portion of the Work listed in Schedule of Values as of the end of the period covered by the Application for Payment.

9.4.2 Applications for Payment must be supported by substantiating data as City Engineer may require and must reflect retainages as provided below. Evidence satisfactory to the City Engineer of payments made to Subcontractors and Suppliers for the month preceding the month for which the Application for Payment is submitted must accompany each Application for Payment on a form approved by the Director of the Office of Business Opportunity. Evidence of electronic submission of certified payrolls must be included. Application must be sworn and notarized.

9.5 *CERTIFICATES FOR PAYMENT.*

9.5.1 City Engineer will, within 10 days after the date specified in the Contract for Unit Price work, or upon receipt of Contractor's Application for Payment for Stipulated Price work, issue a Certificate for Payment for work based on amount which City Engineer determines is properly due, with copy to Contractor.

9.5.2 Unless otherwise provided in the Contract, payment for completed work and for properly stored Products is conditioned upon compliance with procedures satisfactory to City Engineer to protect the City's interests. Procedures will include applicable insurance, storage, and transportation to site for materials and equipment stored off-site. Contractor is responsible for maintaining materials and equipment until Date of Substantial Completion.

9.5.3 Contractor shall document its use of Ultra Low Sulfur Diesel Fuel by providing invoices and receipts evidencing Contractor's use.

9.6 **COMPUTATIONS OF CERTIFICATES FOR PAYMENT.**

9.6.1 Subject to the provisions of the Contract, the amount of each Certificate for Payment is calculated as follows:

9.6.1.1 that portion of Contract Price allocated to completed work as determined by:

9.6.1.1.1 multiplying the percentage of completion of each portion of the Work listed in the Schedule of Values by the value of that portion of the Work, or

9.6.1.1.2 multiplying Unit Price quantities Installed times the Unit Prices listed in the Contract;

9.6.1.2 plus progress payments for completed work that has been properly authorized by Modifications;

9.6.1.3 less retainage of five percent;

9.6.1.4 plus actual costs, properly substantiated by certified copies of invoices and freight bills, of non-perishable materials and equipment delivered and properly stored, if approved in advance by Project Manager, less 15 percent;

9.6.1.5 less any previous payments by the City.

9.7 **DECISIONS TO WITHHOLD CERTIFICATION.**

9.7.1 City Engineer may decline to certify payment and may withhold payment in whole or in part to the extent reasonably necessary to protect the City if, in City Engineer's opinion, there is reason to believe that:

9.7.1.1 nonconforming work has not been remedied;

9.7.1.2 the Work cannot be completed for unpaid balance of Contract Price;

9.7.1.3 there is damage to the City or another contractor;

9.7.1.4 the Work will not be completed within Contract Time and that unpaid balance will not be adequate to cover actual and liquidated damages;

9.7.1.5 probable evidence that third party claims will be filed in court, in arbitration, or otherwise;

9.7.1.6 Contractor has failed to make payments to Subcontractors or Suppliers for labor, material, or equipment; or

9.7.1.7 Contractor has persistently failed to carry out work in accordance with the Contract.

9.7.1.8 Contractor has not paid Subcontractors or Suppliers because of a payment dispute; or

9.7.1.9 Contractor has failed to provide satisfactory evidence described in Paragraphs 9.2.1, 9.4.2, and 9.8.2.

9.7.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.7.3 City Engineer may decline to certify payment and may withhold request for payment in whole or in part upon failure of Contractor to submit initial construction schedule or monthly schedule updates, as required in Paragraphs 3.15.1 and 3.15.3.

9.8 **PROGRESS PAYMENTS.**

9.8.1 The City will make payment, in an amount certified by City Engineer, within 20 days after City Engineer has issued a Certificate for Payment.

9.8.2 The City has no obligation to pay or to facilitate the payment to a Subcontractor or Supplier, except as may otherwise be required by law. Contractor shall comply with the prompt payment requirements of Chapter 2251 of the Government Code. State law requires payment of Subcontractors and Suppliers by Contractor within 7 calendar days of Contractor's receipt of payment from the City, unless there is a payment dispute between Contractor and a Subcontractor or Supplier evidenced on a form approved by

the Director of Mayor's Office of Business Opportunity and submitted to the City Engineer each month with Application for Payment or Estimate for Payment. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.**

9.8.2.1 The City may, upon request and at the discretion of City Engineer, furnish to Subcontractor information regarding percentages of completion or the amounts applied for by Contractor, and action taken thereon by the City because of work done by the Subcontractor.

9.8.2.2 Contractor shall prepare and submit to City Engineer a Certification of Payment to Subcontractors and Suppliers form to be attached to each monthly Estimate for Payment or Application for Payment.

9.8.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Work by the City, does not constitute acceptance of work which is not in accordance with the Contract.

9.9 **DATE OF SUBSTANTIAL COMPLETION.**

9.9.1 When Contractor considers the Work, or a portion thereof designated by City Engineer, to be substantially complete, Contractor shall prepare and submit to Project Manager a comprehensive punch list of items to be completed or corrected. Failure to include an item on the punch list does not alter the responsibility of Contractor to comply with the Contract.

9.9.1.1 By submitting the punch list to Project Manager, Contractor represents that work on the punch list will be completed within the time provided for in Subparagraph 9.9.4.3.

9.9.2 Upon receipt of Contractor's punch list, Project Manager will inspect the Work, or designated portion thereof, to verify that the punch list contains all items needing completion or correction. If Project Manager's inspection discloses items not on Contractor's punch list, the items must be added to the punch list of items to be completed or corrected. If Project Manager's inspection reveals that Contractor is not yet substantially complete, Contractor shall complete or correct the deficiencies and request another inspection by Project Manager. The City may recover the costs of re-inspection from Contractor.

9.9.3 Prior to City Engineer's issuing a Certificate of Substantial Completion, Contractor shall also provide:

9.9.3.1 Certificate of Occupancy for new construction, or Certificate of Compliance for remodeled work, as applicable, and

9.9.3.2 compliance with Texas Accessibility Standards through state inspection of the Work, if required. If Contractor calls for inspection in a timely manner and the inspection is delayed through no fault of Contractor, and City Engineer so confirms, City Engineer may, upon request by Contractor, add the inspection to the punch list in Paragraph 9.9.2 and issue a Certificate of Substantial Completion.

9.9.4 When the Work, or designated portion thereof, is determined by City Engineer to be sufficiently complete in accordance with the Contract so the City can occupy or utilize the Work, or designated portion thereof, for the purpose for which it is intended, City Engineer will prepare a Certificate of Substantial Completion that incorporates the punch list in Paragraph 9.9.2 and establishes:

9.9.4.1 Date of Substantial Completion;

9.9.4.2 responsibilities of the Parties for security, maintenance, heating, ventilating and air conditioning, utilities, damage to the Work, and insurance; and

- 9.9.4.3 fixed time within which Contractor shall complete all items on punch list of items to be corrected accompanying the certificate.
- 9.9.5 Warranties required by the Contract shall commence on the Date of Substantial Completion unless otherwise provided by City Engineer in Certificate of Substantial Completion. Warranties may not commence on items not substantially completed.
- 9.9.6 After Date of Substantial Completion and upon application by Contractor and approval by City Engineer, the City may make payment, reflecting adjustment in retainage, if any, as follows:
- 9.9.6.1 with the consent of Surety, the City may increase payment to Contractor to 96 percent of Contract Price, less value of items to be completed and accrued liquidated damages.
- 9.9.7 Contractor shall complete or correct the items in Paragraph 9.9.2 within the time period set out in the Certificate of Substantial Completion. If Contractor fails to do so, the City may issue a Notice of Noncompliance and proceed according to Section 2.5.
- 9.10 ***PARTIAL OCCUPANCY OR USE.***
- 9.10.1 The City may occupy or use any completed or partially completed portion of the Work at any stage, provided the occupancy or use is consented to by Contractor and Contractor's insurer and authorized by public authorities having jurisdiction over the Work. Consent of Contractor to partial occupancy or use may not be unreasonably withheld.
- 9.10.2 Immediately prior to the partial occupancy or use, Project Manager and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record condition of the Work.
- 9.10.3 Partial occupancy or use of a portion of the Work does not constitute acceptance of work not in compliance with requirements of the Contract.
- 9.11 ***FINAL COMPLETION AND FINAL PAYMENT.***
- 9.11.1 Contractor shall review the Contract and inspect the Work prior to Contractor notification to City Engineer that the Work is complete and ready for final inspection. Contractor shall submit affidavit that the Work has been inspected and that the Work is complete in accordance with requirements of the Contract.
- 9.11.2 Project Manager will make final inspection within 15 days after receipt of Contractor's written notice that the Work is ready for final inspection and acceptance. If Project Manager finds the Work has been completed in accordance with the Contract, Contractor shall submit items set out in Paragraph 9.11.4 and, for stipulated price contracts, a final Application for Payment. City Engineer will, within 10 days, issue Certificate of Final Completion stating that to the best of City Engineer's knowledge, information, and belief, the Work has been completed in accordance with the Contract, and will recommend acceptance of the Work by City Council.
- 9.11.3 Should work be found not in compliance with requirements of the Contract, City Engineer will notify Contractor in writing of items of noncompliance. Upon inspection and acceptance of the corrections by Project Manager, compliance with all procedures of Paragraph 9.11.2, and Contractor's submission of the items set out in Paragraph 9.11.4, the City Engineer will issue Certificate of Final Completion to Contractor as provided in Paragraph 9.11.2.
- 9.11.4 Contractor shall submit the following items to City Engineer before City Engineer will issue a Certificate of Final Completion:

- 9.11.4.1 affidavit that payrolls, invoices for materials and equipment, and other indebtedness of Contractor connected with the Work, less amounts withheld by the City, have been paid or otherwise satisfied. If required by City Engineer, Contractor shall submit further proof including waiver or release of lien or claims from laborers or Suppliers of Products;
- 9.11.4.2 certificate evidencing that insurance required by the Contract to remain in force after final payment is currently in effect, will not be canceled or materially changed until at least 30 days written notice has been given to the City;
- 9.11.4.3 written statement that Contractor knows of no substantial reason that insurance will not be renewable to cover correction and warranty period required by the Contract;
- 9.11.4.4 consent of Surety to final payment; and
- 9.11.4.5 copies of record documents, maintenance manuals, tests, inspections, and approvals.

Upon City Engineer's issuance of a Certificate of Final Completion, Contractor may request increase in payment to 99 percent of Contract Price, less accrued liquidated damages.

- 9.11.5 If Contractor fails to submit required items in Paragraph 9.11.4 within 10 days of Project Manager's inspection of the Work under Paragraph 9.11.2 or Paragraph 9.11.3, City Engineer may, but is not obligated to:
 - 9.11.5.1 deduct liquidated damages accrued from monies held;
 - 9.11.5.2 proceed to City Council for acceptance of the Work, minus some or all of the items Contractor fails to submit under Paragraph 9.11.4; and,
 - 9.11.5.3 upon acceptance by City Council of the portion of the Work completed, make final payment as set out in Paragraph 9.11.8.
- 9.11.6 If final completion is materially delayed through no fault of Contractor, or by issuance of Change Orders affecting date of final completion, and City Engineer so confirms, the City may, upon application by Contractor and certification by City Engineer, and without terminating the Contract, make payment of balance due for that portion of the Work fully completed and accepted.
- 9.11.7 If remaining balance due for work not corrected is less than retainage stipulated in the Contract, Contractor shall submit to City Engineer written consent of Surety to payment of balance due for that portion of the Work fully completed and accepted, prior to certification of the payment. The payment is made under terms governing final payment, except that it does not constitute waiver of Claims.
- 9.11.8 The City will make final payment to Contractor within 30 days after acceptance of the Work by City Council, subject to limitations, if any, as stated in the Contract.
- 9.11.9 Acceptance of final payment by Contractor shall constitute a waiver of all Claims, whether known or unknown, by Contractor, except those previously made in writing and identified by Contractor as unsettled at the time of final payment.

9.12 **LIQUIDATED DAMAGES.**

- 9.12.1 Contractor, Surety, and the City agree that failure to complete the Work within Contract Time will cause damages to the City and that actual damages from harm are difficult to estimate accurately. Therefore, Contractor, Surety, and the City agree that Contractor and Surety are liable for and shall pay to the City the amount stipulated in Supplementary Conditions as liquidated damages, and that the amount of damages fixed therein is a reasonable forecast of just compensation for harm to the City resulting from Contractor's

failure to complete the Work within Contract Time. The amount stipulated will be paid for each day of delay beyond Contract Time until Date of Substantial Completion.

- 9.12.2 Contractor shall pay the City an amount equal to \$1,200.00 per diesel operating vehicle or piece of motorized equipment per incident of high sulfur diesel fuel usage.

ARTICLE 10

SAFETY PRECAUTIONS

- 10.1 ***SAFETY PROGRAMS.*** Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performance of the Contract. Contractor shall submit a safety program to City Engineer prior to mobilizing for the Work, and is solely responsible for safety, efficiency, and adequacy of ways, means, and methods, and for damage which might result from failure or improper construction, maintenance, or operation performed by Contractor.
- 10.2 ***POLLUTANTS AND POLLUTANT FACILITIES.***
- 10.2.1 If Contractor encounters material on-site which it reasonably believes to be a Pollutant or facilities which it reasonably believes to be a Pollutant Facility, Contractor shall immediately stop work in affected area and immediately notify City Engineer, confirming the notice thereafter in writing.
- 10.2.2 If City Engineer determines that the material is a Pollutant or facility is a Pollutant Facility, work in affected area may not be resumed except by Modification, and only if the work would not violate applicable laws or regulations.
- 10.2.3 If City Engineer determines that the material is not a Pollutant or a facility is not a Pollutant Facility, work in affected area will be resumed upon issuance of a Modification.
- 10.2.4 Contractor is not required to perform, unless authorized by Change Order, work relating to Pollutants or Pollutant Facilities except for that work relating to Pollutants or Pollutant Facilities specified in the Contract.
- 10.3 ***SAFETY OF THE ENVIRONMENT, PERSONS, AND PROPERTY.***
- 10.3.1 Contractor shall take reasonable precautions for safety and shall provide reasonable protection to prevent damage, injury, or loss from all causes, to:
- 10.3.1.1 employees performing work on-site, and other persons who may be affected thereby;
- 10.3.1.2 work, including Products to be incorporated into the Work, whether in proper storage, under control of Contractor or Subcontractor; and
- 10.3.1.3 other property at or adjacent to the site, such as trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal or replacement in course of construction.
- 10.3.2 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons, property, or environment.
- 10.3.2.1 Contractor shall comply with requirements of Underground Facility Damage Prevention and Safety Act TEX. UTIL. CODE ANN. Ch. 251 (Vernon Supp. 2002).
- 10.3.2.2 Contractor shall comply with all safety rules and regulations of the Federal Occupational Health and Safety Act of 1970 and subsequent amendments (OSHA).

- 10.3.3 Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection of persons and property, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.
- 10.3.4 Contractor shall designate responsible member of Contractor's organization at site whose duty is prevention of accidents. This person will be Contractor's Superintendent unless otherwise designated by Contractor in writing to City Engineer.
- 10.3.5 Contractor shall prevent windblown dust and may not burn or bury trash debris or waste products on-site. Contractor shall prevent environmental pollution, including but not limited to particulates, gases and noise, as a result of the Work.
- 10.3.6 When use or storage of hazardous materials or equipment, or unusual methods are necessary for execution of the Work, Contractor shall exercise utmost care and carry on the activities under supervision of properly qualified personnel.
- 10.3.7 Contractor shall promptly remedy damage and loss to property referred to in Subparagraphs 10.3.1.2 and 10.3.1.3, caused in whole or in part by Contractor, or Subcontractors, which is not covered by insurance required by the Contract. Contractor is not required to remedy damage or loss attributable to the City, Design Consultant, or other contractors.
- 10.4 **EMERGENCIES.** In emergencies affecting safety of persons or property, Contractor shall act at Contractor's discretion to prevent imminent damage, injury, or loss. Additional compensation or extension of time claimed by Contractor because of emergencies are determined as provided in Article 7.

ARTICLE 11

INSURANCE AND BONDS

- 11.1 **GENERAL INSURANCE REQUIREMENTS.**
- 11.1.1 With no intent to limit Contractor's liability under indemnification provisions set forth in Paragraphs 3.25 and 3.26, Contractor shall provide and maintain in full force and effect during term of the Contract and all extensions and amendments thereto, at least the following insurance and available limits of liability.
- 11.1.2 If any of the following insurance is written as "claims made" coverage and the City is required to be carried as additional insured, then Contractor's insurance shall include a two-year extended discovery period after last date that Contractor provides any work under the Contract.
- 11.1.3 Aggregate amounts of coverage, for purposes of the Contract, are agreed to be amounts of coverage available during fixed 12-month policy period.
- 11.2 **INSURANCE TO BE PROVIDED BY CONTRACTOR.**
- 11.2.1 *Risks and Limits of Liability.* Contractor shall maintain the insurance coverages in the listed amounts, as set out in Table 1.
- 11.2.2 If Limit of Liability for Excess Coverage is \$2,000,000 or more, Limit of Liability for Employer's Liability may be reduced to \$500,000.
- 11.2.3 *Insurance Coverage.* At all times during the term of this Contract and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the

Contract requirements. Prior to beginning performance under the Contract, at any time upon the Director's request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Contractor shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Contractor waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Contractor shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 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.

- 11.2.4 *Form of insurance.* The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Contract. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide. Each insurer is subject to approval by City Engineer in City Engineer's sole discretion as to conformance with these requirements.
- 11.2.5 *Required Coverage.* The City shall be an Additional Insured under this Contract, and all policies except Professional Liability and Worker's Compensation must name the City as an Additional Insured. Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Contract. If professional liability coverage is written on a "claims made" basis, Contractor shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Contract with a duration of two years after substantial completion.
- 11.2.6 *Deductibles.* Contractor assumes and bears any claims or losses to extent of deductible amounts and waives any claim it may ever have for same against the City, its officers, agents, or employees.
- 11.2.7 *Notice.* **CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the 30-day period, Contractor shall provide other suitable policies in order to maintain the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.
- 11.2.8 *Subrogation.* Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees. Each policy, except professional liability, must contain an endorsement waiving such claim.
- 11.2.9 *Endorsement of Primary Insurance.* Each policy, except Workers' Compensation policies, must contain an endorsement that the policy is primary insurance to any other insurance available to additional insured with respect to claims arising hereunder.

11.2.10 *Liability for Premium.* Contractor is solely responsible for payment of all insurance premium requirements hereunder and the City is not obligated to pay any premiums.

11.2.11 *Additional Requirements for Workers' Compensation Insurance Coverage.* Contractor shall, in addition to meeting the obligations set forth in Table 1, maintain throughout the term of the Contract Workers' Compensation coverage as required by statute, and Contractor shall specifically comply with requirements set forth in Paragraph 11.2.10. The definitions set out below shall apply only for purposes of this Paragraph 11.2.10.

11.2.12 Definitions.

11.2.12.1 *Certificate of Coverage:* A copy of certificate of insurance, or coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory Workers' Compensation insurance coverage for Contractor's, Subcontractor's, or Supplier's employees providing services for the duration of the Contract.

11.2.12.2 *Duration of the Work:* Includes the time from Date of Commencement of the Work until Contractor's work under the Contract has been completed and accepted by City Council.

11.2.12.3 *Persons providing services for the Work (Subcontractor in Texas Labor Code § 406.096):* includes all persons or entities performing all or part of services Contractor has undertaken to perform on the Work, regardless of whether that person contracted directly with Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of the entity, or employees of entity which furnishes persons to provide services on the Work. Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to the Work. Services do not include activities unrelated to the Work, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

11.2.13 Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of coverage agreements, which meets the statutory requirements of TEX. LAB. CODE ANN., Section 401.011(44) for employees of Contractor providing services on the Work, for duration of the Work.

11.2.14 Contractor shall provide a Certificate of Coverage to the City prior to being awarded the Contract.

11.2.15 If coverage period shown on Contractor's original Certificate of Coverage ends during duration of the Work, Contractor shall file new Certificate of Coverage with the City showing that coverage has been extended.

11.2.16 Contractor shall obtain from each person providing services on the Work, and provide to City Engineer:

11.2.16.1 Certificate of Coverage, prior to that person beginning work on the Work, so the City will have on file Certificates of Coverage showing coverage for all persons providing services on the Work; and

11.2.16.2 no later than seven days after receipt by Contractor, new Certificate of Coverage showing extension of coverage, if coverage period shown on current Certificate of Coverage ends during the duration of the Work.

11.2.17 Contractor shall retain all required Certificates of Coverage for the duration of the Work and for one year thereafter.

- 11.2.18 Contractor shall notify City Engineer in writing by certified mail or personal delivery, within 10 days after Contractor knew or should have known, of any change that materially affects provision of coverage of any person providing services on the Work.
- 11.2.19 Contractor shall post on-site a notice, in text, form and manner prescribed by Texas Workers' Compensation Commission, informing all persons providing services on the Work that they are required to be covered, and stating how person may verify coverage and report lack of coverage.
- 11.2.20 Contractor shall contractually require each person with whom it contracts to provide services on the Work to:
- 11.2.20.1 provide coverage, based on proper reporting of classification codes, payroll amounts and filing of any coverage agreements, which meets statutory requirements of TEX. LAB. CODE ANN., Section 401.011(44) for all its employees providing services on the Work, for the duration of the Work;
 - 11.2.20.2 provide to Contractor, prior to that person's beginning work on the Work, a Certificate of Coverage showing that coverage is being provided for all employees of the person providing services on the Work, for the duration of the Work;
 - 11.2.20.3 provide Contractor, prior to the end of the coverage period, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current Certificate of Coverage ends during the duration of the Work;
 - 11.2.20.4 obtain from each other person with whom it contracts, and provide to Contractor: (1) Certificate of Coverage, prior to other person's beginning work on the Work; and (2) new Certificate of Coverage showing extension of coverage, prior to end of coverage period, if coverage period shown on the current Certificate of Coverage ends during duration of the Work.
 - 11.2.20.5 retain all required Certificates of Coverage on file for the duration of the Work and for one year thereafter;
 - 11.2.20.6 notify City Engineer in writing by certified mail or personal delivery within 10 days after person knew, or should have known, of change that materially affects provision of coverage of any person providing services on the Work; and
 - 11.2.20.7 contractually require each person with whom it contracts to perform as required by Paragraphs 11.2.10.1 through 11.2.10.7, with Certificates of Coverage to be provided to person for whom they are providing services.
- 11.2.21 By signing the Contract or providing or causing to be provided a Certificate of Coverage, Contractor is representing to the City that all employees of Contractor who will provide services on the Work will be covered by Workers' Compensation coverage for the duration of the Work, that coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with appropriate insurance carrier. Contractor is not allowed to self-insure Workers' Compensation. Contractor may be subject to administrative penalties, criminal penalties, civil penalties, or other civil actions for providing false or misleading information.
- 11.2.22 Contractor's failure to comply with Paragraph 11.2.10 is a breach of the Contract by Contractor, which entitles the City to declare the Contract void if Contractor does not remedy breach within 10 days after receipt of notice of breach from City Engineer.
- 11.2.23 *Subcontractor Insurance Requirements:* Contractor shall require Subcontractors and Suppliers to obtain Commercial General Liability, Workers' Compensation, Employer's Liability and Automobile Liability coverage that meets all the requirements of Paragraph

11.2. The amount must be commensurate with the amount of the subcontract, but not less than \$500,000 per occurrence. Contractor shall require all Subcontractors with whom it contracts directly, whose subcontracts exceed \$100,000, to provide proof of Commercial General Liability and Automobile Liability insurance coverage meeting the above requirements. Contractor shall comply with all requirements set out under Paragraph 11.2.10 as to Workers' Compensation Insurance for all Subcontractors and Suppliers.

TABLE 1 REQUIRED COVERAGE	
Coverage	Limit of Liability
Workers' Compensation	<ul style="list-style-type: none"> • Texas Statutory Limits for Workers' Compensation
Employer's Liability	<ul style="list-style-type: none"> • Bodily Injury by Accident \$1,000,000 (each accident) • Bodily Injury by Disease \$1,000,000 (policy limit) • Bodily Injury by Disease \$1,000,000 (each employee)
Commercial General Liability: Including Broad Form Property Damage, Contractual Liability, Explosion, Underground and Collapse, Bodily Injury, Personal Injury, Products, and Completed Operations (for a period of one year following completion of the Work).	<ul style="list-style-type: none"> • \$1,000,000 Limit (each occurrence), subject to general aggregate Limit of \$2,000,000 • Products and Completed Operations \$2,000,000 aggregate Limit
Owner's and Contractor's Protective Liability	<ul style="list-style-type: none"> • \$1,000,000 each Occurrence/ aggregate
Installation Floater (Unless alternative coverage approved by City Attorney)	<ul style="list-style-type: none"> • Value of stored material or equipment, listed on Certificates of Payments, but not yet incorporated into the Work
Automobile Liability Insurance: (For automobiles furnished by Contractor in course of his performance under the Contract, including Owned, Non-owned, and Hired Auto coverage)	<ul style="list-style-type: none"> • \$1,000,000 combined single limit each occurrence for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Excess Coverage	<ul style="list-style-type: none"> • \$1,000,000 each occurrence/ aggregate in excess of limits specified for Commercial General Liability, and Automobile Liability
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

11.3 PROOF OF INSURANCE.

11.3.1 Prior to commencing services and at time during the term of the Contract, Contractor shall furnish City Engineer with Certificates of Insurance, along with Affidavit from Contractor confirming that Certificate accurately reflects insurance coverage that is available during term of the Contract. If requested in writing by City Engineer, Contractor shall furnish City Engineer with certified copies of Contractor's actual insurance policies. Failure of Contractor to provide certified copies, as requested, may be deemed, at City Engineer's or City Attorney's discretion, a material breach of the Contract.

11.3.2 Notwithstanding the proof of insurance requirements, Contractor shall continuously maintain in effect required insurance coverage set forth in Paragraph 11.2. Failure of

Contractor to comply with this requirement does constitute a material breach by Contractor allowing the City, at its option, to immediately suspend or terminate work, or exercise any other remedy allowed under the Contract. Contractor agrees that the City has not waived or is not estopped to assert a material breach of the Contract because of any acts or omissions by the City regarding its review or non-review of insurance documents provided by Contractor, its agents, employees, or assigns.

- 11.3.3 Contractor shall provide updated certificates of insurance to the Director upon request. The Contractor shall be responsible for delivering a current certificate of insurance in the proper form to the Director as long as Contractor is required to furnish insurance coverage under Paragraph 11.2.
- 11.3.4 Every certificate of insurance Contractor delivers in connection with this Contract shall
- 11.3.4.1 be less than 12 months old;
 - 11.3.4.2 include all pertinent identification information for the Insurer, including the company name and address, policy number, NAIC number or AMB number, and authorized signature;
 - 11.3.4.3 include in the Certificate Holder Box the Project name and reference numbers, contractor's email address, and indicates the name and address of the Project Manager;
 - 11.3.4.4 include the Contractor's email address in the Certificate Holder Box;
 - 11.3.4.5 include the Project reference numbers on the City address so the Project reference number is visible in the envelope window; and
 - 11.3.4.6 be appropriately marked to accurately identify all coverages and limits of the policy, effective and expiration dates, and waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and Worker's Compensation/Employers' Liability.
- 11.4 **PERFORMANCE AND PAYMENT BONDS.** For Contracts over the value of \$25,000, Contractor shall provide Bonds on the City's standard forms covering faithful performance of the Contract and payment of obligations arising thereunder as required in the Contract pursuant to Chapter 2253 of the Government Code. The Bonds must be for 100 percent of Original Contract Price and in accordance with conditions stated on standard City Performance and Payment Bond and Statutory Payment Bond forms. Bonds may be obtained from Contractor's usual source and cost for the Bonds are included in Contract Price.
- 11.5 **MAINTENANCE BONDS – One-year Maintenance Bond.** Contractor shall provide Bond on standard City One-year Maintenance Bond form, providing for Contractor's correction, replacement, or restoration of any portion of the Work which is found to be not in compliance with requirements of the Contract during one-year correction period required in Paragraph 12.2. The Maintenance Bond must be for 100 percent of the Original Contract Price.
- 11.6 **SURETY.**
- 11.6.1 A Bond that is given or tendered to the City pursuant to the Contract must be executed by a surety company that is authorized and admitted to write surety Bonds in the State of Texas.
 - 11.6.2 If a Bond is given or tendered to the City pursuant to the Contract in an amount greater than 10 percent of Surety's capital and surplus, Surety shall provide certification that Surety has reinsured that portion of the risk that exceeds 10 percent of Surety's capital and surplus. The reinsurance must be with one or more reinsurers who are duly authorized, accredited, or trusted to do business in the State of Texas. The amount reinsured by reinsurer may not exceed 10 percent of reinsurer's capital and surplus. The amount of allowed capital and surplus must be based on information received from State Board of Insurance.

- 11.6.3 If the amount of a Bond is greater than \$100,000, Surety shall:
- 11.6.3.1 also hold certificate of authority from the United States Secretary of Treasury to qualify as surety on obligations permitted or required under federal law; or,
- 11.6.3.2 Surety may obtain reinsurance for any liability in excess of \$100,000 from reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States Secretary of the Treasury to qualify as surety or reinsurer on obligations permitted or required under federal law.
- 11.6.4 Determination of whether Surety on the Bond or the reinsurer holds a certificate of authority from the United States Secretary of the Treasury is based on information published in Federal Register covering the date on which Bond was executed.
- 11.6.5 Each Bond given or tendered to the City pursuant to the Contract must be on City forms with no changes made by Contractor or Surety, and must be dated, executed, and accompanied by power of attorney stating that the attorney in fact executing such the bond has requisite authority to execute such Bond. The Bonds must be dated and must be no more than 30 days old.
- 11.6.6 Surety shall designate in its Bond, power of attorney, or written notice to the City, an agent resident in Harris County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.
- 11.6.7 Contractor shall furnish information to a payment bond beneficiary as required by TEX. GOV'T CODE ANN. CH. 2253.
- 11.7 **DELIVERY OF BONDS.** Contractor shall deliver required Bonds to the City within time limits stated in Notice of Intent to Award and prior to Date of Commencement of the Work.

ARTICLE 12

UNCOVERING AND CORRECTION OF THE WORK

- 12.1 **UNCOVERING OF THE WORK.** If a portion of the Work has been covered which City Engineer has not specifically requested to observe prior to its being covered, City Engineer may request to see such work and it must be uncovered by Contractor. If such work is in accordance with the Contract, the costs of uncovering and covering such work are charged to the City by Change Order. If such work is not in accordance with the Contract, Contractor shall pay for uncovering and shall correct the nonconforming Work promptly after receipt of Notice of Noncompliance to do so.
- 12.2 **CORRECTION OF THE WORK.**
- 12.2.1 Contractor shall promptly correct or remove work rejected by City Engineer or work failing to conform to requirements of the Contract, whether observed before or after Date of Substantial Completion and whether fabricated, Installed, or completed.
- 12.2.2 Contractor bears costs of correcting the rejected or nonconforming work including additional testing and inspections, and compensation for Design Consultant's services and expenses made necessary thereby.
- 12.2.3 If within one year after Date of Substantial Completion, or after date for commencement of warranties established under Paragraph 9.9.5 or by other applicable special warranty required by the Contract, whichever is later in time, any of the Work is found not to be in accordance with the requirements of the Contract, Contractor shall correct such work promptly after receipt of Notice of Noncompliance to do so.

- 12.2.4 One-year correction period for portions of the Work completed after Date of Substantial Completion will begin on the date of acceptance of that portion of the Work. This obligation under this Paragraph survives acceptance of the Work under the Contract and termination of the Contract.
- 12.2.5 The one-year correction period does not establish a duration for the Contractor's general warranty under Paragraph 3.12. The City retains the right to recover damages from the Contractor as long as may be permitted by the applicable statute of limitations.
- 12.2.6 If Contractor does not proceed with correction of the nonconforming work within time fixed by Notice of Noncompliance, the City may correct nonconforming work or remove nonconforming work and store salvageable Products at Contractor's expense. Contractor shall pay the costs of correction of nonconforming work and removal and storage of salvageable Products to the City. If Contractor does not pay costs of the correction or removal and storage within 10 days after written notice, the City may sell the Products at auction or at private sale. The City will account for proceeds thereof after deducting costs and damages that would have been borne by Contractor, including compensation for services of Design Consultant and necessary expenses. If the proceeds of sale do not cover costs which Contractor should have borne, Contractor shall pay the value of the deficiency to the City.
- 12.2.7 Contractor bears cost of correcting work originally installed by Contractor, the City, or by separate contractors and damaged by Contractor's correction or removal of Contractor's work.
- 12.3 **ACCEPTANCE OF NONCONFORMING WORK.** If City Engineer prefers to accept work which is not in accordance with requirements of the Contract, City Engineer may do so only by issuance of Change Order, instead of requiring its removal and correction. City Engineer will determine Contract Price reduction. The reduction will become effective even if final payment has been made.

ARTICLE 13

MISCELLANEOUS PROVISIONS

- 13.1 **GOVERNING LAW AND VENUE.** This Contract shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Contract shall lie exclusively in Harris County, Texas.
- 13.2 **SUCCESSORS.** The Contract binds and benefits the Parties and their legal successors and permitted assigns; however, this Paragraph 13.2.1 does not alter the restrictions on assignment and disposal of assets set out in Paragraph 13.3.1. The Contract does not create any personal liability on the part of any officer or agent of the City.
- 13.3 **BUSINESS STRUCTURE AND ASSIGNMENTS.**
- 13.3.1 Contractor may not assign the Contract at law or otherwise, or dispose of all or substantially all of its assets without City Engineer's prior written consent. Nothing in this Section, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §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.

13.3.2 Any series, as defined by the TEX. BUS. ORG. CODE ANN., affiliate, subsidiary, or successor to which Contractor assigns or transfers assets shall join in privity and be jointly and severally liable under this Contract.

13.4 **WRITTEN NOTICE.**

13.4.1 All notices required or permitted by the Contract must be in writing and must be effected by hand delivery; registered or certified mail, return receipt requested; or facsimile with confirmation copy mailed to receiving Party. Notice is sufficient if made or addressed with proper postage to the address stated in the Agreement for each Party ("Notice Address") or faxed to the facsimile number stated in the Agreement for each Party. The notice is deemed delivered on the earlier of:

13.4.1.1 the date the Notice is actually received;

13.4.1.2 the third day following deposit in a United States Postal Service post office or receptacle; or

13.4.1.3 the date the facsimile is sent unless the facsimile is sent after 5:00 p.m. local time of the recipient and then it is deemed received on the following day.

Any Party may change its Notice Address or facsimile number at any time by giving written notice of the change to the other Party in the manner provided for in this Paragraph at least 15 days prior to the date the change is affected.

13.5 **RIGHTS AND REMEDIES.**

13.5.1 Duties and obligations imposed by the Contract and rights and remedies available thereunder are in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

13.5.2 No act or failure to act by the City or Contractor is a waiver of rights or duties afforded them under the Contract, nor is the act or failure to act constitute approval of or acquiescence in a breach of the Contract. No waiver, approval or acquiescence is binding unless in writing and, in the case of the City, signed by City Engineer.

13.6 **TESTS AND INSPECTIONS.**

13.6.1 Contractor shall give City Engineer, Construction Manager, and Design Consultant timely notice of the time and place where tests and inspections are to be made. Contractor shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

13.6.2 The City will employ and pay for services of an independent testing laboratory to perform inspections or acceptance tests required by the Contract except:

13.6.2.1 inspections or tests covered by Paragraph 13.6.3;

13.6.2.2 those otherwise specifically provided in the Contract; or

13.6.2.3 costs incurred in connection with tests or inspections conducted pursuant to Paragraph 12.2.2.

13.6.3 Contractor is responsible for and shall pay all costs in connection with inspection or testing required in connection with City Engineer's acceptance of a Product to be incorporated into the Work, or of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation into the Work.

13.6.4 Neither observations by the City, Construction Manager, or Design Consultant, nor inspections, tests, or approvals by others, relieves Contractor from Contractor's obligations to perform the Work in accordance with the Contract.

13.7 **INTEREST.** No interest will accrue on late payments by the City except as provided under Chapter 2251 of the Government Code.

- 13.8 *PARTIES IN INTEREST.* The Contract does not bestow any rights upon any third party, but binds and benefits the Parties only.
- 13.9 *ENTIRE CONTRACT.* The Contract merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants, express or implied, or other terms of any kind, exist between the Parties regarding the Contract.
- 13.10 *WRITTEN AMENDMENT.* Changes to the Contract that cannot be effected by Modifications, must be made by written amendment, which will not be effective until approved by City Council.
- 13.11 *COMPLIANCE WITH LAWS.*
- 13.11.1 Contractor shall comply with the Americans with Disabilities Act of 1990 as amended (ADA) and Texas Architectural Barriers Act and all regulations relating to either statute.
- 13.11.2 Contractor shall comply with all applicable federal, state, and city laws, rules and regulations.
- 13.12 *SEVERABILITY.* If any part of the Contract is for any reason found to be unenforceable, all other parts remain enforceable to the extent permitted by law.
- 13.13 *COMPLIANCE WITH CERTAIN STATE LAW REQUIREMENTS.*
- 13.13.1 *Anti-Boycott of Israel.* Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.
- 13.13.2 *Anti-Boycott of Energy Companies.* Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.
- 13.13.3 *Anti-Boycott of Firearm Entities or Firearm Trade Associations.* Contractor certifies that Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.
- 13.13.4 *Certification of No Business with Foreign Terrorist Organizations.* For purposes of Section 2252.152 of the Code, Contractor certifies that, at the time of this Agreement neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Code as a company known to have contracts with or provide supplies or to a foreign terrorist organization.
- 13.14 *ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING & RELATED ACTIVITIES.* The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Agreement's effective date. Contractor shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Contractor or its subcontractors providing services or goods under this Agreement.

ARTICLE 14

TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 **TERMINATION BY THE CITY FOR CAUSE.**

14.1.1 Each of the following acts or omissions of Contractor or occurrences shall constitute an "Event of Default" under the Contract:

- 14.1.1.1 Contractor refuses or fails to supply enough properly skilled workers or proper Products;
- 14.1.1.2 Contractor disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;
- 14.1.1.3 Contractor is guilty of material breach of any duty or obligation of Contractor under the Contract, including, but not limited to, failure to submit certified payrolls electronically;
- 14.1.1.4 Contractor has had any other contract with the City terminated for cause at any time subsequent to the effective date of the Contract as set out in the Agreement; or
- 14.1.1.5 Contractor fails to utilize Ultra Low Sulfur Diesel Fuel, as required in Paragraph 3.9.1.1.

14.1.2 If an Event of Default occurs, City Engineer may, at his option and without prejudice to any other rights or remedies which the City may have, deliver a written notice to Contractor and Surety describing the Event of Default and giving the Contractor 10 days to cure the Event of Default. If after the cure period, Contractor has failed or refused to cure the Event of Default, then City Engineer may deliver a second written notice to Contractor giving notice of the termination of the Contract or of the termination of Contractor's performance under the Contract ("Notice of Termination"). If City Engineer issues a Notice of Termination, then City Engineer may, subject to any prior rights of Surety and any other rights of the City under the Contract or at law:

- 14.1.2.1 request that Surety complete the Work; or
- 14.1.2.2 take possession of the site and all materials, equipment, tools, and construction equipment and machinery on the site owned by Contractor; and
- 14.1.2.3 finish the Work by whatever reasonable method City Engineer may deem expedient.

14.1.3 After Contractor's receipt of a Notice of Termination, and except as otherwise directed in writing by City Engineer, Contractor shall:

- 14.1.3.1 stop the Work on the date and to the extent specified in the Notice of Termination;
- 14.1.3.2 place no further orders or subcontracts for Products or services;
- 14.1.3.3 terminate all orders and subcontracts to the extent that they relate to performance of work terminated;
- 14.1.3.4 assign to the City, in the manner, at the times, and to the extent directed by City Engineer, all rights, title, and interest of Contractor, under the terminated supply orders and subcontracts. The City may settle or pay claims arising out of termination of the orders and subcontracts;
- 14.1.3.5 settle all outstanding liabilities and all claims arising out of the termination of supply orders and subcontracts with approval of City Engineer;
- 14.1.3.6 take action as may be necessary, or as City Engineer may direct, for protection and preservation of property related to the Work that is in possession of Contractor, and in which the City has or may acquire an interest; and
- 14.1.3.7 secure the Work in a safe state before leaving the site, providing any necessary safety measures, shoring, or other devices.

14.1.4 If the City terminates the Contract or terminates Contractor's performance under the Contract for any one or more of the reasons stated in Paragraph 14.1.1, Contractor may not receive any further payment until the Work is complete, subject to Paragraph 14.1.5.

- 14.1.5 If the unpaid balance of Contract Price exceeds the costs of finishing the Work, including liquidated damages and other amounts due under the Contract, the balance will be paid to Contractor. If the costs of finishing the Work exceed the unpaid balance, Contractor shall, within 10 days of receipt of written notice setting out the amount of the excess costs, pay the difference to the City. The amount to be paid to Contractor or the City will be certified by City Engineer in writing, and this obligation for payment shall survive termination of the Contract or termination of Contractor's performance under the Contract. Termination of the Contractor for cause shall not relieve the Surety from its obligation to complete the project.

14.2 *TERMINATION BY THE CITY FOR CONVENIENCE.*

- 14.2.1 City Engineer may, without cause and without prejudice to other rights or remedies of the City, give Contractor and Surety a Notice of Termination with a seven days written notice.
- 14.2.2 After receipt of the Notice of Termination, and except as otherwise approved by City Engineer, Contractor shall conform to requirements of Paragraph 14.1.3.
- 14.2.3 After receipt of the Notice of Termination, Contractor shall submit and substantiate to the City its termination Claim, in forms required by City Engineer. The Claim will be submitted and substantiated to the City promptly, but no later than six months from the effective date of termination, unless one or more extensions are granted by City Engineer in writing. If Contractor fails to submit its termination Claim within the time allowed, in accordance with Paragraph 14.2.4, City Engineer will determine, on the basis of available information, the amount, if any, due to Contractor because of termination, and City Engineer's determination is final and binding on the Parties. The City will then pay to Contractor the amount so determined.
- 14.2.4 City Engineer will determine, on the basis of information available to City Engineer, the amount due, if any, to Contractor for the termination as follows:
- 14.2.4.1 Contract Price for all work performed in accordance with the Contract up to the date of termination determined in the manner prescribed for monthly payments in Article 9, except no retainage is withheld by the City either for payment determined by percentage of completion or for materials and equipment delivered to the site, in storage or in transit.
- 14.2.4.2 Reasonable termination expenses, including costs for settling and paying Subcontractor and Supplier claims arising out of termination of the Work, reasonable cost of preservation and protection of the City's property after termination, if required, and the cost of Claim preparation. Termination expenses do not include field or central office overhead, salaries of employees of Contractor, or litigation costs, including attorneys' fees.
- No amount is allowed for anticipated profit or central office overhead on uncompleted work, or any cost or lost profit for other business of Contractor alleged to be damaged by the termination.
- 14.2.5 Contractor shall promptly remove from the site any construction equipment, tools, and temporary facilities, except the temporary facilities which City Engineer may wish to purchase and retain.
- 14.2.6 Contractor shall cooperate with City Engineer during the transition period.
- 14.2.7 The City will take possession of the Work and materials delivered to the site, in storage, or in transit, as of date or dates specified in the Notice of Termination, and is responsible for maintenance, utilities, security, and insurance, as stated in Notice of Termination.

14.3 *SUSPENSION BY THE CITY FOR CONVENIENCE.*

- 14.3.1 City Engineer may, without cause, after giving Contractor and Surety 24-hour prior written notice, order Contractor to suspend, delay, or interrupt the Work in whole or in part for a period of time as City Engineer may determine.
- 14.3.2 An adjustment will be made in Contract Time equivalent to the time of suspension.
- 14.3.3 Adjustment will be made to Contract Price for increases in the cost of performance of the Work, including profit on increased cost of performance caused by suspension, delay, or interruption of the Work in accordance with Paragraph 7.3. No adjustment will be made to the extent that:
- 14.3.3.1 performance was, or would have been, suspended, delayed, or interrupted by another cause for which Contractor is responsible; or
 - 14.3.3.2 adjustment is made or denied under another provision of the Contract.
- 14.4 **TERMINATION BY CONTRACTOR.**
- 14.4.1 Contractor may terminate the Contract if the Work is stopped for a period of 30 days through no act or fault of Contractor, directly related to one of these events:
- 14.4.1.1 issuance of an order of a court or other public authority having jurisdiction;
 - 14.4.1.2 act of government, such as a declaration of national emergency which makes material unavailable; or
 - 14.4.1.3 if repeated suspensions, delays, or interruptions by the City as described in Paragraph 14.3 constitute, in the aggregate, more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less;
- No termination will be effective for the above reasons if Contractor delivers written notice to City Engineer describing the reason for termination, giving the proposed termination date, and granting the City a reasonable opportunity to respond and cure any City default before termination is effective.
- 14.4.2 If the Contract is terminated pursuant to this Paragraph 14.4, Contractor shall comply with the requirements of Paragraphs 14.2.2 through 14.2.7.

[END OF DOCUMENT]

EXHIBIT "D"

TITLE VI: NON-DISCRIMINATION

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

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

EXHIBIT "E"
DRUG POLICY COMPLIANCE AGREEMENT

I, 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 _____.

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:
Initials _____ (Start Date) (End Date)

Random	Reasonable Suspicion	Post Accident	Total
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Number Employees Tested _____

Number Employees Positive _____

Percent Employees Positive _____

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.

Initials _____

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)

EXHIBIT "H"

FEDERAL CONTRACT PROVISIONS

NON-AIP FUNDED AGREEMENT

As used in this Exhibit, the term "contractor" or "Contractor" shall refer to Consultant. Consultant shall include the provisions of set out in this exhibit in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto.

I. GENERAL CIVIL RIGHTS PROVISIONS

Consultant 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 Consultant and subtier contractors/consultants 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.

II. TITLE VI CLAUSES COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

During the performance of this contract, Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein 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, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's

obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

4. Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a

contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-

discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the contractor under the contract until the contractor complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. Incorporation of Provisions: The contractor will include the provisions of paragraphs one

through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

III. TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

During the performance of this contract, Consultant, 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 U.S.C. § 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 U.S.C. § 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 U.S.C. § 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 U.S.C. § 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 U.S.C. §§ 12131 — 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 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 non-discrimination 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 U.S.C. 1681 et seq).

EXHIBIT "I"
PERFORMANCE BOND

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS
COUNTY OF HARRIS §

THAT WE, _____ as principal, hereinafter called "Contractor" and the other subscriber hereto as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Houston, a municipal corporation in the sum of _____ DOLLARS. (\$_____) for the payment of which sum, well and truly to be made to the City of Houston, and its successors, the said Contractor and surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the said Contractor has on or about this day entered into a contract in writing with the City of Houston, Texas, entitled Agreement for Cabling Installation and Repair Services which is made a part of this instrument as fully and completely as if set in full herein.

NOW, THEREFORE, if the said Contractor shall faithfully and strictly perform as set out in said contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and shall comply strictly with each and every provision of said contract and with this bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect.

It is further understood and agreed that the Surety does hereby relieve the said City of Houston or its representatives from the exercise of any diligence whatever in securing compliance on the part of the said Contractor with the terms of the said contract, and the Surety hereby waives any notice to it of any default, or delay by the Contractor in the performance of his contract and agrees that it, the said Surety, shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the said Contractor in all matters pertaining to said contract.

It is further expressly agreed by said Surety that the City of Houston or its representatives are at liberty at any time, without notice to the Surety, to make any changes in said contract and in the work to be done thereunder, as provided in said contract, and in the terms and conditions thereof, or to make any changes in, addition to, or deduction from the work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this bond and undertaking, or release said Surety therefrom.

It is expressly agreed and understood that the Contractor and surety will fully indemnify and save harmless the City of Houston from any liability, loss, cost, expense or damage arising out of or in connection with the work done by the Contractor under said Contract.

In the event that the City of Houston shall bring any suit or other proceeding at law on this bond, the Contractor and Surety agree to pay to the said City the sum of ten percent (10%) of whatever amount may be recovered by the City in said suit or legal proceeding, which sum of ten percent (10%) is agreed by all parties to be payment to the City of Houston for the expense of or time consumed by its City Attorney, his assistants and office force and other cost and damage occasioned to the City. This said amount of ten percent (10%) is fixed and liquidated by the parties, it being agreed by them that the exact damage to the City would be difficult to ascertain.

This bond and all obligations created hereunder shall be performable in Harris County, Texas.

IN TESTIMONY WHEREOF, witness our hands this _____ day of _____, A.D. 20_____

ATTEST: (Corporate Seal)

(Principal)

By: _____ By: _____
Name: (Typed) _____ Name: (Typed) _____
Title: _____ Title: _____

ATTEST/WITNESS: (Corporate Seal)

(Full Name of Surety)
By: _____ By: _____
Name: (Typed) Name: (Typed)
Title: Title:
The foregoing bond is approved and accepted this _____
day of _____, A.D. 20_____.

REVIEWED:

Legal Assistant