



CITY OF HOUSTON HOUSTON AIRPORT SYSTEM

REQUEST FOR QUALIFICATIONS (RFQ) SOLICITATION NO.: H27-SKYWAY-2022-005 DESIGN-BUILD-OPERATE-MAINTAIN THE SKYWAY APM SYSTEM REPLACEMENT AT GEORGE BUSH INTERCONTINENTAL AIRPORT/HOUSTON (IAH)

Date Issued: October 15, 2021

Pre-Submittal Conference: November 2, 2021 1:30 P.M. (local time)
MS Teams Virtual Meeting:
<https://bit.ly/2YqipOz>

Questions Deadline: November 16, 2021 @ 12:00 Noon (local time)

Solicitation Due Date: January 4, 2022 @ 10:00 A.M. (local time)

Solicitation Contact Person: Al Oracion
Sr. Procurement Specialist, Houston Airport System
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281-230-8009

Project Summary: This Project covers the demolition, disposal, design, fabrication, assembly, factory testing, construction, installation, delivery, integration, testing, commissioning, safety certification, demonstration and operations and maintenance of the Skyway APM Replacement System.

NIGP Code: 90625

M/WBE Goal: Design-Build 25% (17% MBE, 8% WBE); Operations and Maintenance 10% M/WBE

DocuSigned by:

Jerry Adams

Jerry Adams
Chief Procurement Officer
City of Houston

10/12/2021 | 12:50 CDT

Date

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CA

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REQUEST FOR QUALIFICATIONS (RFQ)

PART I – GENERAL INFORMATION

1.0 GENERAL INFORMATION

1.1 The City of Houston (City), hereinafter referred to as the “City,” is hereby soliciting Statements of Qualifications (SOQ) in accordance with Texas Government Code § Chapter 2269, Subchapter H and Texas Government Code § Chapter 2252, for Design-Build and Operate-Maintain Services for the Skyway Automated People Mover (APM) System Replacement Project at George Bush Intercontinental Airport/Houston (IAH).

1.2 The City is soliciting qualifications and responses for the demolition, disposal, design, fabrication, assembly, factory testing, construction, installation, delivery, integration, testing, commissioning, safety certification, demonstration, and operations and maintenance of the Skyway APM Replacement Project hereinafter referred to as the “Project”. The Scope of Services to be provided is defined in Attachment A – Scope of Services. The total of the activities and responsibilities is referred to as the “Work”. The City is seeking a project team approach to demolish, dispose, design, build, and maintain with a focus and commitment to achieving design, build, and maintenance excellence. The Contractor’s scope of work for the Project will be performed under the Design-Build and Operate-Maintain Agreement between the City and the selected Respondent, hereinafter referred to as the “Contractor”.

1.3 **Defined Terms**

1.3.1 **City.** Houston, Texas.

1.3.2 **Contractor.** The entity who has entered into the Contract with the City to provide the APM Operating System and operations and maintenance services.

1.3.3 **Evaluation Committee.** Committee established by the City of Houston to evaluate the responses to this RFQ and shortlist qualified Respondents.

1.3.4 **Fixed Facilities.** Generally, the fixed System structures that represent permanent improvements to the Work Site, including guideway structure(s), tunnels, stations, equipment rooms, M&SF, propulsion power substations, Central Control Room, and administrative offices related to the System.

1.3.5 **Maintenance and Storage Facility (M&SF).** An area including a maintenance facility of repair shops, work bays, and other amenities; a layout (yard) of tracks and switches that includes a test track and storage lanes; Central Control Room and necessary administrative offices.

1.3.6 **Notice to Proceed for the Design-Build work (NTP 1).** The written communication issued by the City to the Contractor directing the Contractor to begin the Work and establishing the date of commencement of the Work.

1.3.7 **Notice to Proceed for the Operations and Maintenance service (NTP2).** The written communication issued by the City to the Contractor directing the Contractor to begin the Operations and Maintenance service.

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- 1.3.8 **Major Subsystems.** Refers to the subsystems that comprise the most important functional elements of the APM Operating System and includes vehicles, electrical power system, automatic train control, power rail and vehicle power collector assemblies and interface, vehicle running gear/guidance assemblies and interface, vehicle/train switching and automatic station platform doors.
- 1.3.9 **Major Subsystem Change.** A new subsystem that is proposed to be used as a replacement for a Major Subsystem in a first-time implementation as part of this Project. A radical design change or incorporation into the Operating System of technically immature (without analysis, performance and test data documentation) or experimental processes, components, or materials does not qualify as a Technology Modification and will be considered a Major Subsystem Change
- 1.3.10 **Operating System.** Refers to the fully integrated system that functions as a whole and consists of the Major Subsystems when appropriately and successfully combined with other system components to form a single operating system.
- 1.3.11 **Project.** Skyway APM System Replacement and Operations and Maintenance Services at IAH.
- 1.3.12 **Proposer.** Any individual, partnership, firm, or corporation, acting directly or through a duly authorized representative who submits a Proposal for the Work. See also Respondent.
- 1.3.13 **Reference Drawings.** The drawings provided by the Owner within the Contract Documents that **generally** describe the location and design of the System, its facilities, and its other elements and ancillary structures. See Attachment B.
- 1.3.14 **Respondent(s).** Any individual, partnership, firm, or corporation, acting directly or through a duly authorized representative who submits a response to this RFQ. See also Proposer.
- 1.3.15 **Substantial Completion.** In reference to Certificate of Substantial Completion, when all Work under this Contract has been successfully completed through verification and System Demonstration by the Contractor and the System is ready to carry passengers.
- 1.3.16 **Technology Modification.** Means a changed design for a Major Subsystem. The change may be evolutionary, as evidenced by incremental changes to a previous design and/or a previous generation of the subsystem.
- 1.3.17 **Work.** All of the administrative, design, documentation, manufacturing and supply, installation, construction, removal/disposal, check-out, testing, verification, acceptance, any operations and maintenance, management, and other duties and services of the Contractor to produce and deliver a System that satisfies all of the requirements of this Contract.
- 1.4 **Acronyms**
- 1.4.1 **APM.** Automated People Mover System
- 1.4.2 **CC.** Central Control
- 1.4.3 **DBOM.** Design-Build Operate Maintain

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- 1.4.4 **IAH.** George Bush Intercontinental Airport
- 1.4.5 **HAS.** Houston Airport System
- 1.4.6 **JV.** Joint Venture
- 1.4.7 **M&SF.** Maintenance and Storage Facility
- 1.4.8 **NTP.** Notice to Proceed
- 1.4.9 **OS.** Operating System
- 1.4.10 **PPHPD.** Passengers per hour per direction
- 1.4.11 **RFP.** Request for Proposals
- 1.4.12 **RFQ.** Request for Qualifications
- 1.4.13 **SOQ.** Statement of Qualification

2.0 BACKGROUND

2.1 The Houston Airport System (HAS) has identified a need for a replacement of the Skyway APM System at IAH. The Work includes 1) all work necessary to demolish, retrofit and refurbish existing APM facilities, Stations, Guideway, Maintenance and Storage Facility, Central Control (CC), and Power Distribution Facilities; 2) the removal and replacement of Vehicles, Train Control, Power Distribution, Communications, Platform Screen Doors and Central Control Equipment as described in Attachment A; 3) operations and maintenance of the new Skyway APM System.

2.2 Vision

2.2.1 Key to this Project's success is to support the Houston Airport System's Vision Statement to establish Houston as a five-star global air service gateway where the magic of flight is celebrated.

2.2.2 The Respondents shall embrace the following HAS core values in completing the design and the construction of this Project.

Relationships	Service
<ul style="list-style-type: none"> ▪ We work together with integrity; treat every individual with courtesy and respect. 	<ul style="list-style-type: none"> ▪ We WOW our customers through a "can do" attitude and respond quickly to meet and exceed their expectations.
<ul style="list-style-type: none"> ▪ We honor our commitments and behave in a manner that earns trust. 	<ul style="list-style-type: none"> ▪ We find ways to bring fun and joy into our work and bring customers along for the ride.
<ul style="list-style-type: none"> ▪ We promote collaboration and teamwork across the organization. 	<ul style="list-style-type: none"> ▪ We respond promptly and effectively.
<ul style="list-style-type: none"> ▪ We are reliable and trustworthy; we honor our promises and commitments. 	<ul style="list-style-type: none"> ▪ We show respect, compassion, and let people know we care.

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Relationships	Service
<ul style="list-style-type: none"> ▪ We are open, positive and constructive in our feedback. 	<ul style="list-style-type: none"> ▪ We willingly provide the necessary time and effort to meet the customer's needs.
<ul style="list-style-type: none"> ▪ We treat people like they want to be treated. 	<ul style="list-style-type: none"> ▪ We are flexible and adaptive in a dynamically changing business environment.
<ul style="list-style-type: none"> ▪ We take responsibility for our actions. 	<ul style="list-style-type: none"> ▪ We display enthusiasm and passion for our work.
<ul style="list-style-type: none"> ▪ We lead by example. 	

Innovation	Excellence
<ul style="list-style-type: none"> ▪ We have the courage and willingness to consider new and unconventional ways of thinking. 	<ul style="list-style-type: none"> ▪ We strive for quality and skillful execution without compromise.
<ul style="list-style-type: none"> ▪ We assume responsibility for learning new things. 	<ul style="list-style-type: none"> ▪ We use the power of total employee involvement to achieve our organizational goals.
<ul style="list-style-type: none"> ▪ We embrace new ideas. 	<ul style="list-style-type: none"> ▪ We foster a culture of shared values that gets things done.
<ul style="list-style-type: none"> ▪ We listen with an open mind. 	<ul style="list-style-type: none"> ▪ We take calculated risks needed to achieve results.
<ul style="list-style-type: none"> ▪ We are future-focused; "I've always done it this way" does not exist in our vocabulary. 	<ul style="list-style-type: none"> ▪ We look for new and more effective ways to do business.
<ul style="list-style-type: none"> ▪ We recognize change as an opportunity. 	<ul style="list-style-type: none"> ▪ We encourage continuous improvement.

2.2.3 Objectives for Project delivery are as follows:

2.2.3.1 Quality: Deliver a project that exceeds the minimum performance specification outlined in the design criteria package.

2.2.3.2 Cost: Obtain the most cost-effective Design-Build and Operate-Maintain solution that will optimize the total cost of ownership for HAS.

2.2.3.3 Schedule: Achieve the scheduled completion dates for design, construction, and performance testing of the Project. Anticipate night work shifts during construction and other off-hour work schedules.

2.2.3.4 Public: Provide a safe and effective project that minimizes nuisance impacts to the public.

2.2.3.5 Traffic: Maintain existing traffic patterns at all times.

2.2.3.6 Risk: Effectively manage and achieve an optimal balance of risk allocation between HAS and the Respondent.

2.2.3.7 Safety: Manage and implement an effective safety program incorporating industry best practices.

2.2.3.8 Accountability: Provide for a single point of accountability for performance of all services under the Design-Build and Operate-Maintain Agreement.

2.2.3.9 Collaboration: Provide for coordinated design development with the Respondent eliciting HAS input in a manner that preserves Respondent's sole responsibility for the achievement of Project performance objectives while meeting HAS objectives associated with cost, quality, and long-term operability.

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3.0 SCHEDULE

3.1 The City may hold interviews to clarify responses for the benefit of the Houston Airport System's interest. Respondents shall be prepared to accommodate the schedule requirements throughout the procurement process so as not to unreasonably extend the length of the procurement process. Respondents may be required to provide additional information before the City selects a Respondent that best meets the RFQ requirements.

4.0 SOLICITATION SCHEDULE

4.1 The following schedule has been established for this Solicitation process. The City reserves the right to modify the schedule during the Solicitation process. Changes/Updates will be posted on the HAS website (<https://fly2houston.com/biz/opportunities/solicitations>) via Letter(s) of Clarification.

EVENT	DATE
Date RFQ Published	10/15/21
Pre-Submittal Conference	11/02/21
Questions from Respondents Due to City	11/16/21
SOQ Submittal Due from Respondent (Step One)	01/04/22
Notification of short-listed Firms (Estimated)	02/14/22
Date RFP Issued to short-listed Firms (Estimated)	02/14/22
Technical and Price Proposals Due (Step Two)	02/28/22
Oral Interview/Presentation	03/24/22
Negotiation (Estimated)	05/04/22
City Council Agenda Date (Estimated)	08/05/22
Contract Start (Estimated)	09/06/22

5.0 PROCUREMENT PROCESS OVERVIEW

5.1 Procurement Approach

5.1.1 This Request for Qualifications (RFQ) represents **Step One** of the procurement process and establishes the process for soliciting and evaluating Statements of Qualifications (SOQs) from those entities (Respondents) interested in serving as the Contractor.

5.1.2 The City will conduct a Pre-Submittal Conference for this solicitation. Please refer to the procurement schedule for exact details of time and place. At the conference, the City will present an overview of the Project scope including the procurement process, schedule, and required forms for the Project. Attendance is highly recommended.

5.1.3 The SOQs will be reviewed and evaluated in accordance with this RFQ to develop a Short-list of Qualified Respondents deemed as the most qualified to execute the Design-Build and Operate-Maintain Project on behalf of the City. Short-listed firms will receive an invitation to

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proceed to Request for Proposals (RFP), **Step Two** of the process.

- 5.1.4 **Step Two** of the procurement process may also require an oral interview/presentation of the short-listed firms.
- 5.1.5 Upon determining the best ranked Proposer, the City shall commence contract negotiations at the appropriate time. If the City is unable to negotiate a satisfactory contract with the best ranked Proposer, the City shall formally and in writing, end all negotiations and proceed to negotiate with the next ranked Proposer in the order of the selection ranking until an agreement is reached or negotiations with all ranked Proposers end.
- 5.2 **Contracting Approach**
- 5.2.1 The City plans to award the contract to the Respondent/Proposer based on “Best Value” utilizing the Design-Build Operate Maintain (DBOM) delivery method.
- 5.2.2 The Contractor will perform services for this Project under a Two-Part delivery method. This Project will be performed under one contract in two parts. The two parts consist of:
- 5.2.2.1 **Part 1 – Design-Build:** This part will commence shortly after award of the Contract upon issuance of a Part 1 Notice to Proceed (NTP-1) by the City in accordance with the accepted proposal for Part 1 Services. The culmination of Part 1 will be the completion of the design, fabrication, assembly, factory testing, demolition, disposal, construction, installation, delivery, integration, testing, commissioning, system demonstration and the issuance of the Certificate of Substantial Completion by the City.
- 5.2.2.2 **Part 2- Operations and Maintenance:** This part will commence after the issuance of the Certificate of Substantial Completion by the City and the issuance of the Notice to Proceed for the Operations and Maintenance of the Skyway (NTP-2). The Operations and Maintenance initial term is for a ten-year extension and a second option for a 5-year extension. Each extension shall be either the operations and maintenance effort or just the maintenance effort, depending on the City’s preference.
- 5.2.2.3 The Two Sample Contracts provided in Attachment C – Sample Contracts, contain the base requirements for a Design-Build Contract and an Operations & Maintenance Contract. The final contract will be a single contract combining both the Design-Build and Operations & Maintenance requirements.

PART II – GENERAL REQUIREMENTS

6.0 GENERAL REQUIREMENTS

- 6.1 The City of Houston will rely upon the Respondent to verify that any prospective participating vendors and subcontractors are appropriately licensed, insured, and have arranged to work with a bonding company as well as financial institution; provide quality work; and meet all other requirements specified by the RFQ pursuant to procedures and policies of the City. The City reserves the right to add, delete, or modify any requirements at its discretion.

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6.2 Portions of this Project may be funded by a Federal Grant from the Department of Commerce; therefore, reporting requirements may be implemented by the City to comply with the requirements of these grants.

7.0 QUALIFICATIONS OF RESPONDENTS

7.1 Demonstrated Competence and Qualifications

7.1.1 All Respondents must propose qualified personnel and team members to accomplish the services required by the City as described herein. Design portions of the work must be executed by appropriately licensed Architects and Engineers. Professional service providers under this contract shall be licensed to practice in the State of Texas.

7.2 Performance and Payment Bonds

7.2.1 In accordance with Chapter 2269 of the Texas Government Code, the Contractor will be required to provide performance and payment bonds on forms prescribed by the City no later than the 10th Calendar Day after the date the Contractor executes the Design-Build and Operate-Maintain Contract. The penal sums for the performance and payment bonds must be in an amount equal to the total Contract Price of the Work.

7.3 Surety Letter of Intent

7.3.1 Provide an acknowledgement by the Respondent/Proposer's Surety of the Respondent/Proposer's ability to provide 100% Performance and Payment Bonds for the Design-Build Work in the name of the Proposer as the Principal under the Bonds.

7.3.2 The Surety must be rated no less than "A-" as to management and no less than "VIII" as to strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Post Office Box 1107, Summit, New Jersey 07901. Information shall be provided by the Surety on behalf of the Respondent/Proposer.

7.3.3 Provide an acknowledgement by a Surety or Lender that demonstrates the Respondent/Proposer will be able to provide a performance bond or an irrevocable letter of credit to guarantee performance of the Operations and Maintenance Work. The terms of this bond or letter of credit are subject to approval by the City.

7.3.4 Respondent shall fill out Surety Letter of Intent form, Exhibit K.

7.4 Financial Capabilities

7.4.1 Respondent is required to submit in a **separate**, sealed envelope, clearly marked "Financial Statements," one (1) stamped "Original" and one (1) copy of its Financial Statements with its Submittal.

7.4.1.1 Respondent must provide audited financial statements for the last three years if they are available. If audited financial statements are not available, Respondent must provide tax returns and along with unaudited or reviewed financials for the last three years.

7.5 Minority/Women Business Enterprises (M/WBE)

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7.5.1 Contractors shall make Good Faith Efforts to award subcontracts or supply agreements in at least the values stated in Section 15.4. Contractor acknowledges that it has reviewed the requirements for Good Faith Efforts on file with the City's Office of Business Opportunity and will comply with them.

7.6 **Safety Records – EMR and OSHA**

7.6.1 Respondent is required to submit in a **separate**, sealed envelope, clearly marked "Safety Records", one (1) stamped "Original" and one (1) copy of its Safety Records with its Submittal as described below:

7.6.2 Respondent, and if a joint venture, each member of the joint venture, must have an Experience Modification Rate (EMR) at or below 0.95 for the previous 12 months (from the RFQ issuance date). This information must be validated in a letter from the Respondent's insurance carrier.

7.6.3 Respondent and if a joint venture, each member of the joint venture, shall provide an OSHA Form 300A Summary of Work – Related Injuries and Illnesses for all company activities in the past five (5) years.

7.6.4 Has the Respondent or any member of the joint venture received a citation from OSHA in excess of serious (i.e., willful) within the previous five (5) years? If yes, provide details.

7.7 **Joint Ventures or Partnerships**

7.7.1 If the Respondent is a joint venture or partnership, the Respondent must submit with its SOQ a copy of the partnership or joint venture or current teaming agreement. The agreement must describe the scope and amount of work each participant will perform and contain a provision that each participant will be jointly and severally liable to the City for completing all of the work and to third parties for all duties, obligations and liabilities which arise out of the joint venture's performance of the work. See forms to be submitted with SOQ as described in PART VI Section 18.0.

7.7.2 Each firm of the joint venture or partnership must respond to all elements of the required forms described in PART VI Section 18.0 separately. The firms must each submit a complete set to the City at the time the responses are due.

7.7.3 Only one firm of the joint venture or partnership needs to meet or exceed each of the SOQ Experience Requirements to be further evaluated as a Respondent.

7.8 **Prohibitions**

7.8.1 Prime Respondent Prohibitions

7.8.1.1 Firms, joint ventures, or teams who are performing work or have performed work as a Prime Contractor/Prime Consultant for the City on the planning, environmental, design, engineering, program oversight or program management of this Program (listed in Attachment C) are prohibited from participating on this Project.

7.8.2 Prohibition Questions

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- 7.8.2.1 Should you have any questions regarding the applicability of these prohibitions to your firm, potential team, potential joint venture, potential subcontractors or potential sub consultants, please direct a very specific question to:
- 7.8.3 Attention: Al Oracion, Senior Procurement Specialist
- 7.8.4 Subject: "PROHIBITION QUESTION – Skyway APM Replacement and Operations and Maintenance at IAH Project"
- 7.8.5 Email address: Alfredo.Oracion@houstontx.gov
- 7.8.6 Any Respondents who submit an SOQ that involves prohibited firms, joint ventures, or teams, will be rejected as non-responsive regardless of whether that Respondent sought prohibition clarification or not. Respondent's failure to submit a specific prohibition question is not an excuse. The City is the sole judge of which firms are prohibited from proposing on this Project.
- 7.9 **Respondent References**
- 7.9.1 The Respondent shall provide three to five valid client references that include the client names, addresses, telephone numbers, and email addresses as described in Exhibit N. The City will contact the referenced clients to verify Respondent provided information and/or to solicit comments.
- 7.9.2 References must be people that were directly involved in the previous projects listed and who have first-hand knowledge of the performance of the Respondent and its proposed staff/team.
- 7.9.3 Any information stated in the response found and determined by the City to be a misrepresentation of a Respondent's past experiences may be considered as grounds for disqualification of the response and Respondent may be banned from participation in future RFQ's from the City.
- 7.9.4 Submittal of qualifications indicates Respondent's acceptance of the evaluation techniques and the recognition that subjective judgments must be made by the City, their respective representatives, advisors, representatives, and attorneys ("Investigating Parties") during the evaluation process. Each Respondent, by submittal of its response, acknowledges and understands that the Investigating Parties will perform investigations into the Respondent's past performance, character, financial capacity, and experience and agrees that submittal of a response acts to waive and release any and all of the Respondent's claims against the Investigating Parties in relation to such investigations and further, that submittal of a response acts as an authorization by the Respondent for the Investigating Parties to request and obtain information concerning the respective Respondent and as authorization for any party to whom the Investigating Parties directs an inquiry, to release the information so requested.
- 7.10 **Claims History**
- 7.10.1 The Respondent shall disclose all lawsuits, arbitrations, and claims filed or raised by or against the Respondent or any team member over the last five years, specifically identifying:
- 7.10.1.1 The project involved;

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- 7.10.1.2 The parties involved;
- 7.10.1.3 The nature of the claim(s);
- 7.10.1.4 Amount at issue;
- 7.10.1.5 Disposition or status; and
- 7.10.1.6 Case style, number, and jurisdiction.

8.0 OTHER INFORMATION

8.1 Validity Period

- 8.1.1 All submittals under this RFQ must be valid for a period of one-hundred and eighty (180) consecutive Calendar Days from the date of receipt by the City.

8.2 Only One Submittal Accepted

- 8.2.1 The City will accept only one submittal for this solicitation from any one Respondent. This includes submittals received under different names by one firm, corporation, partnership, or joint venture. Evidence of collusion among Respondents shall be grounds for exclusion of any Respondent who is a participant in any such collusion. Optional offers submitted in addition to conforming submittals will not be reviewed. A firm may not participate in more than one joint venture or participate as a prime contractor on more than one team who is submitting a response to this RFQ.

8.3 Authorized Signatures

- 8.3.1 When signing the Response, each party signing must:
 - 8.3.1.1 State that the facts represented in the submittal are true and correct; and
 - 8.3.1.2 The Signer has authority to sign on behalf of the contracting entity.

8.4 Information Requested And Not Furnished

- 8.4.1 The information requested and the manner of submittal is essential to permit prompt evaluation of all Responses. Accordingly, the City reserves the right to declare as non-responsive and reject any Responses in which information is requested and is not furnished (within the City's time limits) or when a direct or complete answer is not provided.

8.5 Designation Of Independent Engineer

- 8.5.1 Pursuant to Chapter 2269 of the Texas Government Code, the City will designate an Engineer who is independent of the Design-Build firm to act as representative for the procurement process and for duration of the work on the Project.

8.6 Stipend For Unsuccessful Respondents

- 8.6.1 The Stipend is zero dollars.

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8.7 Response Errors

8.7.1 Omissions and Errors

Respondent is liable for all errors or omissions incurred by Respondent in preparing the Response. Respondent will not be allowed to alter response documents after the due date for submittal unless a request is made in writing that thoroughly describes the circumstances and which is approved by the City in writing. Nothing herein shall be construed to entitle Respondent to alter Response documents except as required by law.

8.7.2 Corrections after Submittal

The City reserves the right to make corrections or amendments due to errors identified in the Response by the City or the Respondent. This type of correction or amendment will only be allowed for errors as typing and transposition. All changes must be coordinated in writing with, and authorized by the City.

8.7.3 Incorrect Response Information

If the City determines that a Respondent has provided incorrect information for consideration in the evaluation process, which the Respondent knew or should have known was materially incorrect, that Response may be deemed non-responsive and the Response may be rejected or may be accepted in City's sole discretion.

8.7.4 Prohibition of Alternate Terms and Conditions

Respondent shall not submit its own Contract terms and conditions in Response to this RFQ. If a Response contains supplemental terms and conditions, the City, at its sole discretion, may determine the Response to be a non-responsive counteroffer, and the Response may be rejected.

8.7.5 Waiver of Minor Administrative Irregularities

The City reserves the right, at its sole discretion, to waive minor administrative irregularities contained in any Response submitted for this solicitation.

8.7.6 Withdrawal of Responses

Respondent may withdraw its submitted response at any time prior to the specified response due date and time. Withdrawals of the response must be by written request. After withdrawing a previously submitted response, the Respondent may submit another response at any time up to the specified response due date and time.

PART III – EVALUATION SCORING AND SELECTION PROCESS

9.0 RFQ SCORING PROCESS

9.1 Evaluation committee members shall review the Evaluation Committee Guidelines and sign Nondisclosure Agreements before receipt of proposals or submissions.

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- 9.2 The team leader shall review all submittals to determine if they are responsive and that the respondent is responsible. If the team leader believes any of the submittals are not responsive or responsible, he or she shall consult with the Chief Procurement Officer. Any non-responsive or non-responsible submittals shall be withheld from the evaluation committee by the team leader. The team leader shall distribute the submittals to evaluation committee members along with a scoring matrix for the procurement. Each committee member shall be assigned a letter or a number to use for the scoring form; individual names will not be attributed to the individual scoring forms. Each evaluation committee member shall independently review the submission and score each criteria (sub-criterion) against the total number of points allocated for that criteria. Only evaluation committee members shall have voting rights; observers shall not vote.
- 9.3 At the evaluation committee meeting, the committee will discuss their scores and the reasons for their scores, noting strength and weakness of each submittal. **Each submittal will be evaluated on its own merits, not compared to others.** Committee members may revise their scores—up or down—based on observations made by other members or observers.
- 9.4 If oral interviews are held, the expectation is that the respondents, and the key members of the respondent's team, will explain to the evaluation committee why their team is the best qualified for the Project. In preparation for the interview session, the short-listed firms will be provided, in advance, with a list of questions that will be asked of all short-listed firms. In addition to the standard questions, individual committee members may ask questions specific to a particular submission. If oral interviews are held, the committee members shall convene and discuss their impressions immediately following each interview, if possible. If the discussion must occur later, it should occur as soon as practicable thereafter. The discussion shall focus on strengths, weakness, and any new observations the committee may have on the particular vendor as applied to the criteria set forth in the solicitation. After discussion, the committee members shall update their scores for each criterion and record their updated scores on the scoring matrix (even if any member does not change the score on any criteria, he or she shall enter the final score on the matrix) based on the firm's explanation regarding its qualification for the Project and responses to interview questions (both standard questions and questions specific to the submission/proposal, if any). The team leader shall collect the scoring matrices.
- 9.5 After all scores have been updated, the submittals shall be ranked in order of the scores from greatest to least. Further clarifications may be requested from one or more of the top Respondents, if the committee so decides.
- 9.6 The team leader shall document the rationale for the committee's recommendation. The summary of the process shall be circulated to all committee members for their input and ultimate approval.

10.0 STEP ONE: REQUEST FOR QUALIFICATIONS

10.1 Overview

- 10.1.1 Step one of the Response shall consist of the SOQ with the required forms described below.

10.2 City Required Forms

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10.2.1 The Respondent shall complete all the City required forms enclosed herein as Section 18.0 – FORMS TO BE SUBMITTED WITH SOQ and shall initial any and all alterations or erasures in its submittals. The Respondent shall not delete, modify, or supplement the printed matter on the City required forms, or make substitutions thereon.

10.3 City Required Forms Format

10.3.1 Contents of Envelope #1 must include one (1) original and one (1) copy of the City required forms described in PART VI Section 18.0, as well as an electronic PDF copy on a non-returnable USB drive provided with the original.

10.3.2 The hard copies shall be bound using 8½” by 11” pages with no staples.

10.3.3 The Respondent shall ensure that each page of its response is identified with the Project name and Respondent’s name and page number.

10.4 City Required Forms Review

10.4.1 The City required forms will be reviewed for compliance. The Respondent’s failure to comply with the instructions or to submit a complete Response may result in the response being deemed non-responsive.

10.5 Statement Of Qualifications Format And Content

10.5.1 Contents of Envelope #2 will include one (1) original of Statement of Qualifications (SOQ) signed in blue ink and ten (10) hard copies, as well as an electronic PDF version of the same on ten (10) non-returnable USB drives provided with the original. Original to be marked as “Original” and copies to marked as “copy 1 of X” etc.

10.5.2 Each copy of the SOQ shall be bound using GBC or other semi-permanent binding method to ensure that pages are not lost. Pages shall be no larger than letter-size (8½” by 11”) or folded to that dimension, twice letter size (11”x17”). Each section (defined below) shall be separated by a tabbed divider. Elaborate covers, binders, dividers, etc. are not required. Document text should be in ARIAL 10-point font and must be consistent throughout the document. Each RFQ response shall be organized in the following order:

SOQ Content (Envelope #2)
Cover Letter / Introduction Letter / Executive Summary / Letter of Transmittal
Project Approach
Firm(s) Qualifications
Project Teams Qualifications
Design and Construction Phase Services
Management and Staffing Plan
Project Controls
Proposed Operating System

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SOQ Content (Envelope #2)
Minimum Required Experience

10.5.3 Contents of Envelope #3 will include one (1) original and one (1) hard copy of the documents mentioned below, as well as an electronic PDF version of the same in one (1) non-returnable USB drive provided with the original. Original to be marked as “Original” and copies to be marked as “copy.”

SOQ Content (Envelope #3)
Financial Capabilities
M/WBE Compliance (Design)
Safety Record (Experience Modification Rate)
OSHA Records (Citations)
Claims History

10.5.4 The Respondent shall ensure that each page of its response is identified with the Project name and Respondent’s name and page number.

10.5.5 Responses shall include tabbed section indicators and tab pages shall not include any content, graphic or text other than header of the section.

10.5.5.1 SOQ responses which contain unnecessarily elaborate artwork, marketing brochures or expensive paper and/or bindings are highly discouraged.

10.5.5.2 All forms provided in this RFQ shall use the exact format provided.

10.5.5.3 All Responses must be submitted in accordance with this RFQ. Responses shall be in writing and Respondents shall complete and return all applicable documents. If the Response does not conform to the City’s requirements, the Response may be deemed non-responsive and therefore not be considered for further evaluation. The contents of the Response shall be complete in description and concise in volume. Any supplementary artwork, visual aids, films, and other extraneous materials will not be accepted unless it specifically addresses the requirements for approach and/or information.

10.5.6 Submittals shall be delivered to the address below not later than 10:00 A.M. (local time), 01/04/22 to:

Cathy Vander Plaats
Procurement Officer
Supply Chain Management
18600 Lee Road
Humble, TX 77338

10.5.7 City reserves the right to extend the due date for this Request for Qualification as deemed necessary and in its best interests. Any postponement of the due date will be issued as a Letter of Clarification (LOC) to this RFQ. The submittal of a SOQ does not in any way commit the City to enter into an agreement with that Respondent or any other Respondent.

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10.5.8 City reserves the right to cancel this RFQ, accept or reject, in whole or in part any all or SOQs received in the best interest of the City.

10.5.9 Step one of the Response shall consist of STATEMENT OF QUALIFICATIONS with the required forms described below.

10.6 **Step One - Statement of Qualifications Evaluation**

10.6.1 Selection Process:

10.6.1.1 Based on the number and quality of submittals to this RFQ, the evaluation committee may form a short-list of Respondents, up to five firms, whose submittals provide the most desirable methods for providing the services. In developing the short-list, the committee will consider, among other things, the criteria described in Sections 10.7 and 10.8. Respondents will be evaluated with the scoring criteria established below:

Step 1: RFQ Content	Weights
Project Approach	20 points
Firm(s) Qualifications	15 points
Project Team Qualifications	15 points
Design and Construction Phase Services	10 points
Management and Staffing Plan	15 points
Project Controls	10 points
Proposed Operating System	15 points
TOTAL SCORE	100 Points
Minimum Experience	Pass/Fail
M/WBE Plan (Design)	Pass/Fail
Financial Capabilities	Pass/Fail
Experience Modification Rate	Pass/Fail
OSHA Citations	Pass/Fail
Claims History	Pass/Fail

10.6.1.2 The short-listed firms will be notified in writing that they made it to step Two of the selection process where they will be asked for additional information through the issuance of Request for Proposals (RFP) and invited for an interview and oral presentation.

10.7 **Statement Of Qualifications Response Scoring Criteria**

10.7.1 Project Approach – 20 Points

10.7.1.1 Provide an executive brief explaining the Respondent's understanding of the Project and its Project approach, including the following:

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- 10.7.1.2 A narrative describing a comprehensive Project approach for the design and construction for Skyway APM Replacement.
- 10.7.1.3 A proposed schedule addressing all work activities to complete all Skyway APM System Replacement design, demolition, construction, disposal, manufacturing, commissioning, testing and certification work through initiation of passenger service.
- 10.7.1.4 A narrative identifying the composition of the Respondent's team and available resources for the Design-Build phase.
- 10.7.1.5 An Organizational Chart that identifies all key members of the Respondent's team.
- 10.7.1.6 A summary of manufacturing resources, quantifying production capacity, current demand and projected demand forecasted through the on-site delivery of the proposed equipment.
- 10.7.1.7 A narrative outlining the Respondent's approach to the Operations and Maintenance services for the Skyway APM system including an Organizational Chart and the plan for the management of spare parts and consumables.
- 10.7.1.8 A narrative outlining the Respondent's innovative approach to sustainability during the Design-Build Work and the Operations and Maintenance services.
- 10.7.1.9 A description of the Respondent's quality control program addressing system/facility interfaces and integration, sub-system design and its integration, manufacturing, on-site construction, installation and integration, testing and commissioning, Safety Certification, and Operations and Maintenance. Include the proposed method for communication and coordinating with the City, its other consultants and other interested governmental agencies.
- 10.7.1.10 Exhibits/drawings/sketches illustrating the application and fit of the proposed Operating System at the Skyway APM existing stations, guideway, maintenance facility including maintenance access to APM cars and emergency walkway. Exhibit/drawings/sketches should specifically include the vehicle dynamic envelope and the Operating System relationship to each of the existing facilities identified above. Reference Drawings of the Skyway APM are provided in Attachment B for the Respondent's use.
- 10.7.1.11 A description of the Respondent's innovative approach, related to system design, maintenance plans, spare parts management, and construction techniques related to removal and replacement of running surface, guideway equipment and fixed facilities for an existing System.
- 10.7.1.12 As an add alternate, a description of the Respondents experience capability, and capacity to finance the project, if the City elects to include a financing agreement.
- 10.7.2 Firm(s) Qualifications – 15 Points
 - 10.7.2.1 Explain your organization structure and why it has the necessary expertise and resources to execute a project of this scope:
 - 10.7.2.2 Detail years in business, past awards, and other pertinent information about your firm, Joint Venture (JV), or significant key sub-consultants/contractors.

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- 10.7.2.3 If a JV, further explain why your firms decided to partner and the value the partnership will bring to the City.
- 10.7.2.4 For any Key JV partner or significant subcontractor, provide your previous relationship history of working together.
- 10.7.2.5 What is the strength each subconsultant and subcontractor brings to this relationship?
- 10.7.3 Project Team Qualifications – 15 Points
 - 10.7.3.1 It is preferred that Respondents, including team members and key personnel, have prior experience on a minimum of three (3) similar Design-Build-Operate-Maintain projects within the last ten (10) years. The following experience is also preferred:
 - 10.7.3.2 Prior experience completing similar turn-key APM systems with a similar scope and complexity as this Project and that required a high degree of reliability and 24 hours-per-day, 7 days-per-week operation.
 - 10.7.3.3 Prior experience replacing an existing, operating APM System, similar to the Skyway APM system.
 - 10.7.3.4 Prior experience in Operations and Maintenance of an APM system with similar scope and complexity as this project and that required a high degree of reliability and 24 hours per day, 7 days per week operation.
 - 10.7.3.5 Prior experience working on an active airport, public facility or commercial environment with complex phasing.
 - 10.7.3.6 Prior experience working together with the proposed team members.
 - 10.7.3.7 Prior experience using the same or similar APM Operating System technologies; and prior experience 1) coordinating with, 2) meeting the requirements on projects funded by, 3) and operating in accordance with the rules and regulations of the following public/governmental agencies: the Texas Department of Transportation, the Federal Transit Administration and the Texas Utilities Commission.
 - 10.7.3.8 Complete the Project Questionnaire that is attached as Exhibit P for all Design-Build-Operate-Maintain projects within the last ten (10) years that address the City's preferences listed above.
 - 10.7.3.9 Reference checks may be conducted for any project including, but not limited to, those referenced in the project questionnaire.
- 10.7.4 Design and Construction Phase Services – 10 Points
 - 10.7.4.1 Describe Respondent's concepts for working in a team relationship as a Design-Build Contractor and how this works for the benefit of the Project.
 - 10.7.4.2 Describe Respondent's perception of critical design and construction issues for this Project and strategy for mitigating risks.

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- 10.7.4.3 Describe Respondent's commissioning experience. Include Respondent's approach to system testing, activation/training, and commissioning.
- 10.7.4.4 Describe Respondent's approach to Project Closeout. Include process for completing the record drawings and specifications, operations and maintenance documents, and the turnover of all documentation in a Design-Build Project environment.
- 10.7.5 Management and Staffing Plan – 15 Points
 - 10.7.5.1 Describe the organization of Respondent's team for the Design-Build Work.
 - 10.7.5.2 Provide a management and staffing plan in a table format that lists all Project tasks and proposed team member names to each project task and their level of responsibility for each task during each Project phase.
 - 10.7.5.3 Describe your plan for transitioning between Design and Construction/Installation/Testing and Commissioning phases in terms of management continuity and roles and responsibilities of key personnel.
 - 10.7.5.4 Include resumes for all Key Personnel for the Design-Build Work. Key personnel shall include as a minimum: Project Director, Project Manager, Project Discipline Leads, Project Controls Lead, Quality Management Lead, Safety lead and Testing and Commissioning Lead
 - 10.7.5.5 Include resumes for all Operations and Maintenance key personnel. Key Personnel shall include, as a minimum: Operations and Maintenance Manager, Engineering Manager, Operations Manager, Maintenance Manager and Safety Manager.
- 10.7.6 Project Controls – 10 Points
 - 10.7.6.1 Describe Respondent's computer applications and software, to be used for project management on this Project. *Note: The Respondent shall use Primavera® P6 to be compatible with the City's project controls software.*
 - 10.7.6.2 Describe how Respondent will develop, maintain, and update the Project schedule during each Phase.
 - 10.7.6.3 Describe Respondent's approach to assuring timely completion of this Project, including methods for performance measurement and float creation and schedule recovery, if necessary.
 - 10.7.6.4 Describe how innovative work practices, innovative use of technologies, and innovative techniques or cost reduction strategies could benefit the City.
 - 10.7.6.5 Describe cost tracking and control methods during construction. Describe how your Project Controls Systems will be able to supply information to the City in the WBS identified by the City.
- 10.7.7 Proposed Operating System – 15 points
 - 10.7.7.1 The overall Operating System (OS) reliability and availability will be a primary consideration in the City's evaluation of the SOQs. The City strongly prefers that the proposed Operating

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System be successfully proven, as an integrated system, in passenger service operation for a period of at least two years in daily, year-round service, with a System Service Availability of not less than 99.5%. This preference is based upon the City's judgment regarding the time required for the Respondent to: (a) detect any technological or design deficiencies that occur in service conditions, (b) make adequate corrections for any deficiencies, and (c) attain a steady-state performance. Respondents should propose their best solution for the Project that is consistent with the City's preferences as stated in these Submission Requirements.

10.7.7.2 General System Parameters: The General System Parameters are preliminary and subject to revision. The final parameters will be included in the Request for Proposals and Design Criteria Package that will be issued to the short-listed firms.

10.7.7.3 The following general system parameters are preferred minimums:

Operating System Parameters	Minimum Value
System Service Availability (%)	99.5%
Hours of Operation	24 hours per day, 7 days per week Peak Hours 0530 to 2200 hours Off-Peak Hours 2200 to 0530 hours
Minimum Capacity (pphpd)	Minimum line capacity of 4,800 pphpd
Minimum Operational Headway (seconds)	90 seconds
Mode of Operation	Pinched-Loop
Maximum Guideway Slope (%)	3.5%
Minimum Radius of Curvature (ft)	75-foot minimum horizontal turn radius

10.7.7.4 APM Design Service Life Requirements: All guideway running surfaces and guidance equipment, including guideway switches, should have a design service life of 30 years. ATC and communication equipment should have a design service life of 15 years. Power distribution system substations (transformers and rectifiers), switchgear, wiring and cabling should have a design service life of 30 years. Power rails should have a design service life of 15 years. All wiring and cabling should have a design service life of 30 years. The design service life of the vehicle and its subsystems should be at least 25 years in passenger service at the average number of vehicle miles per year to meet the operating performance. The vehicle shall provide safe and reliable service during its entire design service life. Normal deterioration due to causes such as corrosion and fatigue shall not degrade safety or performance of the body, chassis, and running gear. All other major Operating System equipment elements should have a design service life of 15 years.

10.7.7.5 Respondents must include the following in the SOQ:

- A. Identify the proposed OS, including the following:
 - a) A summary description of the proposed Operating System and each of the Major

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Subsystems (i.e., train control, power distribution, vehicles, etc.) and any other application upon which the system is based, specifically addressing each of the preferred general system parameters set forth in the above table.

- b) Demonstrate how the performance of the proposed Operating System has been successfully proven, including the following:
 - i. A narrative explaining the operating history of the proposed Operating System and Major Subsystems. Identify the locations where the Operating System has been successfully applied, details of the operating configuration and characteristics, the System Service Availability, the name of the Owner, and contact information for a Senior Management representative of the owner that is familiar with the Operating System and the date that the system started passenger service operation.
 - ii. Provide information from at least one passenger service-proven application, documenting that the proposed Operating System technology is technically mature and has been satisfactorily and appropriately integrated into a functional whole. Information shall clearly identify if there are any changes/modifications or differences between the passenger service proven application and the proposed Operating System for this project.
 - c) A brief description and essential features of the vehicles, emergency evacuation (side evacuation is required to emergency walkways alongside the guideway), civil requirements (including, but not limited to, minimum required and recommended horizontal and vertical curve radii, maintenance depot, control room and drive room space requirements), vehicle static and dynamic envelopes, vehicle weight (AWO, AW1 and AW2), coupling capability, minimum configuration of proposed vehicle, emergency and failure management recovery capabilities, vehicle passenger capacity (based on a 3.5 square foot per passenger space allocation per standee), guidance system, switch configurations and civil requirements, running/track surface, power distribution, automatic train control, Supervisory Control and Data Acquisition (SCADA) and communications.
 - d) A narrative describing the proposed OS innovative features related to data collection and processing, predictive maintenance, identification of potential failures and managing System, subsystem, and part obsolescence.
- B. If the proposed Operating System includes a Major Subsystem Change and/or a Technology Modification, include the following additional information in the SOQ.
- a) For a proposed Major Subsystem Change, provide a detailed description of the change and identify the locations where the Major Subsystem Change has been successfully applied/integrated and put into successful passenger operation as part of an integrated Operating System similar to that proposed for this Project. Such passenger service shall approximate the Operating System operations commensurate with those for this Project. Include details of the operating configuration and characteristics of the Major Subsystem, the date the system started passenger service, the System Service Availability, the name of the Owner, and contact information for a Senior Management representative of the owner that is familiar with the Operating System and the date that the system started passenger service. If successful passenger operation of the Major Subsystem

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Change has not been demonstrated, the City at its sole discretion, may consider evidence of successful test-track operations if supported by analysis, performance and test data documentation.

- b) For a proposed Technology Modification, provide a detailed description of the modification and identify the location(s) where it has been successfully applied/integrated and put into successful passenger operation, for a length of time sufficient to prove performance and reliability of the equipment, as integrated into an Operating System similar to that proposed for this Project. Such passenger service shall approximate the Operating System operations commensurate with those for this project. Identify the details of the Operating System, the operating configuration and characteristics, the date system started service, the System Service Availability, the name of the Owner and contact information for a Senior Management representative of the Owner that is familiar with the Technology Modification and the date that the system started passenger service. If successful passenger operation has not been demonstrated, the City at its sole discretion, may consider evidence of successful test-track operations if supported by analysis, performance and test data documentation.
- c) Sufficient evidence documenting that a similar Operating System with the proposed Technology Modification or Major Subsystem Change has satisfactorily performed and regularly achieves a System Service Availability equal to or greater than 99.5%.
- d) Evidence of analysis, performance and/or test data documentation demonstrating that the proposed Major Subsystem Change and/or Technology Modification has been integrated into the proposed Operating System for this Project.
- e) Narrative explaining Respondent's successful proven experience in designing, supplying and installing APM applications of new APM Operating System technologies.
- f) Narrative explaining the experience of Respondent's proposed key personnel in designing, supplying and installing APM applications of new system technologies and their experience with the proposed Technology Modification and/or Major Subsystem Change and its integration into the Operating System proposed for this Project.

10.8 **Minimum Requirements**

10.9 **Minimum Required Experience**

10.9.1 Must have experience as Prime or Joint Venture Partner in the delivery of a Design-Build and Operations and Maintenance APM Project that is in progress or completed in the last 10 years. Provide references from the owner. Provide no more than five (5) example projects.

10.10 **Financial capabilities**

10.10.1 As referenced in PART II. Section 7.4 Financial Capabilities, submit audited financial statements for the last three years. Provide a brief statement of the Respondent's bonding ability to fulfill the obligations.

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10.11 M/WBE Compliance

10.11.1 As referenced in Section 7.5 and PART V. Section 15.4 M/WBE and Local Participation Plan and City required documents listed as Exhibits, Attachments, and referenced in Part IV herein.

10.12 Experience Modification Rate

10.12.1 Respondent and if a joint venture, each member of the joint venture, must have an Experience Modification Rate (EMR) at or below 0.95 for the previous 12 months (based on the RFQ issuance date). This information must be validated in a letter from the Respondent's insurance carrier.

10.13 OSHA Records

10.13.1 Respondent, and if a joint venture, each member of the joint venture, shall provide an OSHA Form 300A Summary of Work - Related Injuries and Illnesses for all company activities in the past five (5) years.

10.13.2 Has the Respondent or any member of the joint venture received a citation from OSHA in excess of serious (i.e., willful) within the previous five (5) years?-. If yes, provide details.

10.14 Claims History

10.14.1 As referenced in PART II. Section 7.10 Claims History, disclose all lawsuits, arbitrations and claims filed by or against the Respondent or any team member over the last five years.

11.0 RESPONSE TO REQUEST FOR QUALIFICATIONS DELIVERY INSTRUCTIONS

The response packages shall be submitted in two (2) separate envelopes/boxes **clearly** identified and addressed as follows: **H27-APMSKY-2022-005**

ENVELOPE #1 - CITY REQUIRED FORMS

<p>RESPONDENT NAME _____</p> <p>CONTACT NAME _____</p> <p>CONTACT EMAIL _____</p> <p>CONTACT PHONE NUMBER _____</p> <p>CITY REQUIRED FORMS</p>

<p>HOUSTON AIRPORT SYSTEM RFQ- SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE PROJECT SOLICITATION NO.: H27-SKYWAY-2022-005</p> <p>Attention:</p> <p>Cathy Vander Plaats Procurement Officer Supply Chain Management 18600 Lee Road Humble, TX 77338</p>
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Label in Upper Left-Hand Corner
ENVELOPE #2 – STATEMENT OF QUALIFICATIONS

RESPONDENT NAME _____
CONTACT NAME _____
CONTACT EMAIL _____
CONTACT PHONE NUMBER _____

STATEMENT OF QUALIFICATIONS

Label in Center

HOUSTON AIRPORT SYSTEM
RFQ- SKYWAY APM SYSTEM
REPLACEMENT AND OPERATIONS AND
MAINTENANCE PROJECT
SOLICITATION NO.:
H27-APMSKY-2022-005

Attention:
Cathy Vander Plaats
Procurement Officer
Supply Chain Management
18600 Lee Road
Humble, TX 77338

Label in Upper Left-Hand Corner

Label in Center

ENVELOPE #3 OTHER REQUIREMENTS

RESPONDENT NAME _____
CONTACT NAME _____
CONTACT EMAIL _____
CONTACT PHONE NUMBER _____

**MINIMUM EXPERIENCE, M/WBE,
FINANCIAL CAPABILITIES, EMR, OSHA
CITATIONS, CLAIM HISTORY**

HOUSTON AIRPORT SYSTEM
RFQ- SKYWAY APM SYSTEM
REPLACEMENT AND OPERATIONS AND
MAINTENANCE PROJECT
SOLICITATION NO.:
H27-APMSKY-2022-005

Attention:
Cathy Vander Plaats
Procurement Officer
Supply Chain Management
18600 Lee Road
Humble, TX 77338

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Label in Center

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12.0 STEP TWO: REQUEST FOR PROPOSAL

STEP TWO: REQUEST FOR PROPOSALS WILL ONLY BE TRANSMITTED TO SHORT-LISTED RESPONDENTS AS DETERMINED BY THE CITY. RFP DOCUMENTS WILL INCLUDE: INSTRUCTIONS TO PROPOSERS, SUPPLEMENTAL CONDITIONS, GENERAL CONDITIONS, SPECIAL PROVISIONS, TECHNICAL PROVISIONS, OPERATIONS AND MAINTENANCE GENERAL PROVISIONS AND OPERATIONS AND MAINTENANCE SPECIAL PROVISIONS.

PART IV – SUBMITTAL OF RESPONSES

13.0 INSTRUCTION FOR SUBMITTALS

- 13.1 Time for Submittal. Submittals shall be submitted no later than the date and time indicated for submittal in this RFQ. Late submittals will not be considered and will be returned unopened.
- 13.2 Format. Submittal should be left-bound. Material should be organized following the order of the submittal requirements separated by labeled tabs. Expensive paper and bindings are discouraged since no materials will be returned.
- 13.3 Complete Submittal. Respondents are advised to carefully review all the requirements and submit all documents and information as indicated in this RFQ. Incomplete submittals may lead to a submittal being deemed non-responsive. Non-responsive submittals will not be considered.
- 13.4 Timely Delivery of Submittals. The submittal must be delivered by hand or sent to the Houston Airport System, Supply Chain Management’s Office through U.S. Mail or other available courier services to the address shown on the cover sheet of this RFQ. Include the RFQ number on any package delivered or sent to the City of Houston and on any correspondence related to the submittal. If using an express delivery service, the package must be delivered to the designated building. Packages delivered by express mail services to other locations might not be re-delivered in time to be considered.
- 13.5 Late Submittals. The Respondent remains responsible for ensuring that its submittal is received at the time, date, place, and office specified. The City assumes no responsibility for any submittal not so received, regardless of whether the delay is caused by the U.S. Postal service, the courier delivery service, or some other act or circumstance.

PART V – GENERAL TERMS AND SPECIAL CONDITIONS

14.0 GENERAL TERMS

14.1 Contractor Performance Language

- 14.1.1 The Contractor should make citizen satisfaction a priority in providing services under this contract. The Contractor's employees should be trained to be customer-service oriented and to positively and politely interact with citizens when performing contract services. The

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Contractor's employees should be clean, courteous, efficient, and neat in appearance at all times and committed to offering the highest degree of service to the public. If, in the Director's determination, the Contractor is not interacting in a positive and polite manner with citizens, the Contractor shall take all remedial steps to conform to the standards set by this contract and is subject to termination for breach of contract.

14.2 **Interpreting Specifications**

14.2.1 The specifications and product references contained herein are intended to be descriptive rather than restrictive. The City is soliciting Statements of Qualification that provide a complete product and service package which meets its overall requirements. Specific equipment and system references may be included in this RFQ for guidance, but they are not intended to preclude Respondent(s) from recommending alternative solutions offering comparable or better performance or value to the City.

14.2.2 Changes in the specifications, terms and conditions of this RFQ will be made in writing by the City prior to the SOQ due date. Results of informal meetings or discussions between a potential Respondent(s) and a City official or employee may not be used as a basis for deviations from the requirements contained in this RFQ.

14.3 **Contractor Debt**

14.3.1 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, HE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR.

14.4 **Competency of Respondent**

14.4.1 The receipt and opening of a SOQ submittal shall not be construed as an acceptance of the Respondent as qualified and responsible. The City reserves the right to determine the competency and responsibility of the Respondent from information submitted in the SOQ and verification of the Respondent's qualifications from other sources.

14.5 **Disqualification of Respondent**

14.5.1 Although not intended to be an exhaustive list of causes for disqualification, one or more of the following causes, among others, may be considered sufficient for the disqualification of the Respondent and the rejection of its SOQ submittal.

- A. Evidence of collusion among Respondents
- B. Default on a previous project for failure to perform
- C. Not passing the PASS/FAIL criteria of Section 10.6.

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RFQ NO.: H27-SKYWAY-2022-005**

15.0 SPECIAL CONDITIONS

15.1 Additional Instructions, Notifications and Information

- 15.1.1 Respondents who provide false or misleading information, whether intentional or not, in any documents presented to the City for consideration in the selection process shall be excluded. Any false or misleading information in these documents would, in effect, render the entire document suspect and therefore useless.
- 15.1.2 Respondents shall not offer any gratuities, favors, or anything of monetary value to any official or employee of the City of Houston for the purposes of influencing this selection. Any attempt by the Respondent to influence the selection process by any means, shall be grounds for exclusion from the selection process.
- 15.1.3 CONTRACT NEGOTIATIONS - This solicitation is not to be construed as a contract or as a commitment of any kind. If this solicitation results in a contract offer by the City; a specific scope of work, fees, insurance coverages, and other contractual matters will be determined during contract negotiations. To ensure that the appropriate staff is assigned to the project the City may include a "key persons" clause during contract negotiations.
- 15.1.4 CONFIDENTIAL INFORMATION - All responses shall be held confidential from other parties by the City to the extent allowable by law until after the selection process is completed. Respondents should be aware that at the completion of the selection process the contents of their RFQ are subject to the provisions of the Texas Open Records Act and may be made public. CONFIDENTIAL or SENSITIVE information should not be included in the responses to the solicitation.
- 15.1.5 This RFQ is not to be construed as a contract or a commitment of any kind, nor does it commit the City of Houston to pay for any cost incurred in the preparation of a submittal or of any costs incurred prior to the execution of a final contract.
- 15.1.6 In the event that a mutually agreeable contract cannot be negotiated between the Contractor and the City, then the City reserves the right to select an alternate Contractor.
- 15.1.7 The City reserves the sole right to:
- A. Evaluate submittals
 - B. Waive any irregularities therein
 - C. Request supplemental or additional information as necessary
 - D. Contact others to verify information provided in the submittal
 - E. Cancel the solicitation and/or reject any and all submittals should it be deemed at the best interest of the City of Houston

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- 15.1.8 No debriefings by the City staff to unsuccessful Respondents will occur until after the award of a contract by the Houston City Council to the successful firm.
- 15.1.9 The Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order 1-31, Revised 3/1/95) requires that all contractors who are awarded City contracts for labor or services comply with the compliance with the Executive Order (EO) and will have to file the following documents with the Aviation Department's Contract Compliance Officer for Drug Testing (CCODT) prior to award.
- A. A copy of the Respondent's drug-free workplace policy
 - B. A Drug Policy Compliance Agreement substantially in the format described in the EO, together with a designation of safety impact positions.
 - C. If applicable, a Certification of No Safety Impact Positions substantially in the format described in the EO.
- 15.1.10 The successful Respondent will have to complete an Affidavit of Ownership or Control prior to completion of contract negotiations. The affidavit certifies that the Respondent is not delinquent in any debt owed to the City of Houston (taxes, fines, fees, etc.) .
- 15.2 **No Contact Period**
- 15.2.1 Neither bidder(s) nor any person acting on bidder(s)'s behalf shall attempt to influence the outcome of the award by the offer, presentation or promise of gratuities, favors, or anything of value to any appointed or elected official or employee of the City of Houston, their families or staff members. All inquiries regarding the solicitation are to be directed to the designated City Representative identified on the first page of the solicitation ("City Representative"). Upon issuance of the solicitation through the pre-award phase and up to the date the City Secretary publicly posts notice of any City Council agenda containing the applicable award, aside from bidder's formal response to the solicitation, through the pre-award phase, written requests for clarification during the period officially designated for such purpose by the City Representative, neither bidder(s) nor persons acting on their behalf shall communicate with any appointed or elected official or employee of the City of Houston, their families or staff through written or oral means in an attempt to persuade or influence the outcome of the award or to obtain or deliver information intended to or which could reasonably result in an advantage to any bidder. However, nothing in this paragraph shall prevent a bidder from making public statements to the City Council convened for a regularly scheduled session after the official selection has been made and placed on the City Council agenda for action, or to a City Council committee convened to discuss a recommendation regarding the solicitation.
- 15.2.2 Guidance - Interested parties shall always contact the designated City Representative regarding the substance of this procurement. It is permissible to also contact the following, based on the specific circumstances:
- A. Questions regarding programs administered by the Office of Business Opportunity (OBO) may be submitted directly to OBO without going through the City Representative for this procurement.

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- B. Questions regarding the process in general or that the City Representative may not be able to answer may be submitted to the Chief Procurement Officer.
- C. Communications with the city legal department regarding contract terms after notification of intent to award are permissible.

15.3 Security and Badges (As Applicable to this Project)

- 15.3.1 The Respondent shall comply with all applicable Federal rules governing security at the Airport.
- 15.3.2 All on-site personnel of Respondent, including subcontractors, who perform services under the Agreement inside the AOA fence or in secure areas of the Airport, are required to undergo a fingerprint-based criminal history records check. Fingerprints are collected at the Airport Badging Office and submitted electronically for investigation.
- 15.3.3 The Respondent shall obtain HAS security badges for its personnel performing services on-site, including its subcontractors' personnel, as required by HAS. On-site personnel within the AOA or in secure areas of the Airport shall wear identification badges at all times while on Airport property. The cost of badges, which is subject to change, is currently \$55.00 each at IAH/HOU and \$16.00 at EFD. Costs for the fingerprint-based criminal history records check are reflected in the cost of the badges. The Respondent is responsible for the cost of badges, including replacements thereof. The Respondent personnel losing badges will be charged for replacement badges at the then current rate. Badge yearly renewal cost is currently \$16.00.
- 15.3.4 The Respondent acknowledges that fines or penalties associated with non-compliance with security regulations shall be reimbursed to HAS.

15.4 M/WBE and Local Business Participation Plan

- 15.4.1 The M/WBE goal is Design-Build: 25% (17% MBE; 8% WBE) Operations and Maintenance: 10% M/WBE.
- 15.4.2 The M/WBE Participation Plan is based on the total design and construction portion of this project.
- 15.4.3 M/WBE Participation Plan (Exhibit O, Attachment A) are due at the time of statement of qualification submission.
- 15.4.4 Failure by Contractor to comply with the Good Faith Efforts policy will be considered non-compliance with the M/WBE program. Failure to be compliant will result in any and all actions permitted by City Ordinance or the Office of Business Opportunity's Policies and Procedures Manual.
- 15.4.5 "Good Faith Efforts Policy" is defined in the Office of Business Opportunity's Policy and Procedures Manual, which is available at: <http://www.houstontx.gov/obo/index.html>.

15.5 Protest

- 15.5.1 An interested party may file a protest on the basis that the City has failed to comply with applicable federal or state law or with City ordinances as set forth in City of Houston

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Administrative Policy 5-12. <http://www.houstontx.gov/policies>.

15.6 Certificate of Interested Parties

15.6.1 In accordance with Texas Gov't Code §2252.908, the successful Respondent must complete Form 1295, Certificate of Interested Parties.

15.6.2 The successful Respondent must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number.

15.6.3 No later than 30 days after the contract's effective date, the City will upload the successful Respondent's completed Form 1295. The Texas Ethics Commission will post the Contractor's completed Form 1295 within seven business days of receipt.

15.7 Anti-Boycott of Israel

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

15.8 Anti-Boycott of Energy Companies

15.8.1 Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.

15.9 Anti-Boycott of Firearm Entities or Firearm Trade Associations

15.9.1 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.

15.10 Certification of No Business with Foreign Terrorist Organizations

15.10.1 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 affiliate of Contractor, is a company listed by the Texas Comptroller of Public Accounts under Section 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.

15.11 Executive Order 1-56 Zero Tolerance For Human Trafficking In City Service Contracts And Purchasing

15.11.1 The City has a zero tolerance for human trafficking, and per Executive Order 1-56, City funds shall not be used to promote human trafficking. City vendors are expected to comply with this Executive Order and notify the City's Chief Procurement Officer of any information regarding possible violation by the vendor or its subcontractors providing services or goods to the City. The Executive Order is available on the City's website:

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<http://www.houstontx.gov/execorders/1-56.pdf>

15.12 SB 943 - Public Information And Disclosure Of Certain Contracting Information

15.12.1 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this (include "bid" or "contract" as applicable) and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter."

Ref.: (<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.552.htm#552>)

15.13 Hire Houston First

This Procurement is subject to the Hire Houston First Program, which gives a preference to certain local bidders in award of the Procurement.

15.13.1 Local Preference Points.

To be eligible for the preference, a company must be designated as a City Business (CB) or Local Business (LB) under the Hire Houston First Program prior to Submission. Respondents must provide Declaration of Hire Houston First Designation with Submission. At the conclusion of scoring Submissions, Hire Houston First preference points shall be distributed in such a way that grants the highest number of points to a City Business (CB) and the next highest number of points to a Local Business (LB).

- 5 Points: For Proposer firm designated as a Hire Houston First "City Business" (CB);
- 3 Points: For Proposer firm designated as a Hire Houston First "Local Business" (LB);
- 0 Points: For Proposer firm not designated as either a "City Business" (CB) or a "Local Business" (LB)

HAS may solicit from other departments of the City, other government agencies or any other available sources, relevant information concerning the Proposer's record of past performance.

PART VI – INSTRUCTIONS TO RESPONDENTS

16.0 PRE-SUBMITTAL CONFERENCE

16.1 A Pre-Submittal Conference will be held at the date, time, and location as indicated on the first page of this RFQ document. Interested Respondent(s) should plan to attend. It will be assumed that potential Respondent(s) attending this meeting have reviewed the RFQ in detail and are prepared to bring up any substantive questions not already addressed by the City.

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- 16.2 A Site Visit at George Bush Intercontinental Airport's APM Skyway is scheduled on Tuesday, November 9, 2021, at 9:30 A.M. (local time). Assembly area will be at Skyway Maintenance and Storage Facility. The site visit is the only opportunity for respondents to see the site prior to Statement Qualifications Due Date. The Respondents joining the site visit must register/complete the form provided in the HAS website: <https://fly2houston.com/biz/opportunities/solicitations> and submit it via email to alfredo.oracion@houstontx.gov by Friday, 12:00 P.M. (local time), on November 5, 2021. Site Visit Transportation – Due to COVID-19, registries will take personal vehicles.
- 16.3 **Additional Information and Specification Changes**
- 16.3.1 Requests for additional information and questions should be addressed to the Houston Airport System, Supply Chain Management Buyer Al Oracion, 281-230-8009, fax 281-233-1685, or email (preferred method) to Alfredo.Oracion@houstontx.gov no later than the date and time as indicated on the first page of this RFQ document. The City of Houston shall provide written responses to all questions received in writing before the submittal deadline. Questions received from all Respondent(s) shall be answered and sent to all Respondent(s) who are listed as having obtained the RFQ. Respondent(s) shall be notified in writing of any changes in the specifications contained in this RFQ.
- 16.4 **Letter(s) of Clarification**
- 16.4.1 All Letters of Clarification and interpretations to this Solicitation shall be in writing. Any Letter of Clarification(s) or interpretation that is not in writing shall not legally bind the City of Houston. Only information supplied by the City of Houston in writing or in this RFQ should be used in preparing Submittal responses.
- 16.4.2 The City does not assume responsibility for the receipt of any Letters of Clarification sent to Respondent(s).
- 16.5 **Examination of Documents and Requirements**
- 16.5.1 Each Respondent shall carefully examine all RFQ documents and thoroughly familiarize themselves with all requirements prior to submitting a Submittal to ensure that the Submittal meets the intent of this RFQ.
- 16.5.2 Before submitting a Submittal, each Respondent shall be responsible for making all investigations and examinations that are necessary to ascertain conditions affecting the requirements of this RFQ. Failure to make such investigations and examinations shall not relieve the Respondent from obligation to comply, in every detail, with all provisions and requirements of the RFQ.
- 16.6 **Exceptions to Terms and Conditions**
- 16.6.1 All exceptions included with the Submittal shall be submitted in a clearly identified separate section of the Submittal in which the Respondent clearly cites the specific paragraphs within the RFQ where the Exceptions occur. Any Exceptions not included in such a section shall be without force and effect in any resulting contract unless such Exception is specifically referenced by the Chief Procurement Officer, City Attorney, Director(s) or designee in a written statement. The Respondent's preprinted or standard terms will not be considered by the City as a part of any resulting contract.

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- 16.6.2 All Exceptions that are contained in the Submittal may negatively affect the City's Submittal evaluation based on the evaluation criteria as stated in the RFQ or result in possible rejection of Submittal.
- 16.6.3 Exceptions to Standard Contract. All short-listed Respondents must submit any exceptions to the standard contract by redlining the standard contract electronically in unlocked, fully editable Microsoft Word format (in addition to any other hard copy delivery requirements). Short-listed Respondents must include the rationale for taking the exception in the redlined contract (using the Comments feature, as needed) and by summarizing the exception in the attached Contract Exception Chart (Exhibit Q). Such exceptions will be considered when evaluating the short-listed Respondent's response to this RFQ. If a short-listed Respondent takes exception to the contract language (more than simply a deletion), it must include its proposed alternative language for the City's consideration. Redlines and the Contract Exception Chart will be due at the date and time set forth in the notice inviting the short-listed Respondents to an interview, which due date will be on or before the date and time of the Respondent's interview.
- 16.7 **Post-Submittal Discussions with Respondent(s)**
- 16.7.1 It is the City's intent to commence final negotiation with the Respondent(s) deemed most advantageous to the City. The City reserves the right to conduct post-Submittal discussions with any Respondent(s).

(Intentionally left blank)

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
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17.0 ATTACHMENTS

- Attachment A – Scope of Services
- Attachment B – Reference Drawings
- Attachment C – Sample Design-Build Contracts/Sample O&M Contract
- Attachment D – Prohibited Firms

18.0 FORMS TO BE SUBMITTED WITH STATEMENT OF QUALIFICATION

- Exhibit A – Offer and Submittal
- Exhibit B – Bidder's Statement of MBE/WBE/PDBE/DBE/SBE Status
- Exhibit C - Affidavit of Non-Interest
- Exhibit D – Consolidated Ownership Information Forms
- Exhibit E - Fair Campaign Ordinance (Form A)
- Exhibit F – Drug Detection and Deterrence Procedures
- Exhibit G – [Pay or Play Acknowledgement Form](#)
- Exhibit H – Anti-Collusion Statement
- Exhibit I – Conflict of Interest Questionnaire
- Exhibit J – RFQ Statement of Qualification/RFQ Addendum Acknowledgement
- Exhibit K – Surety Letter of Intent
- Exhibit L – Required Submittal Checklist
- Exhibit M – Respondent Contact Directory Form
- Exhibit N – Reference Verification Form
- Exhibit O – Schedule of M/WBE Participation
- Exhibit P – Minimum Required Experience
- Exhibit Q – Contract Exception Chart

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
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ATTACHMENT A
SCOPE OF SERVICES**

Scope of Services

[Attached Separately]

SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
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ATTACHMENT A

SCOPE OF SERVICES

The City of Houston (“the City”) intends to replace the existing Skyway APM System operating at George Bush Intercontinental Airport/Houston (IAH).

The layout of the present Skyway APM System is shown in Figure 1. It consists of a dual-lane guideway (one (1) mile length) connecting Terminals, A, B, C and D/E.

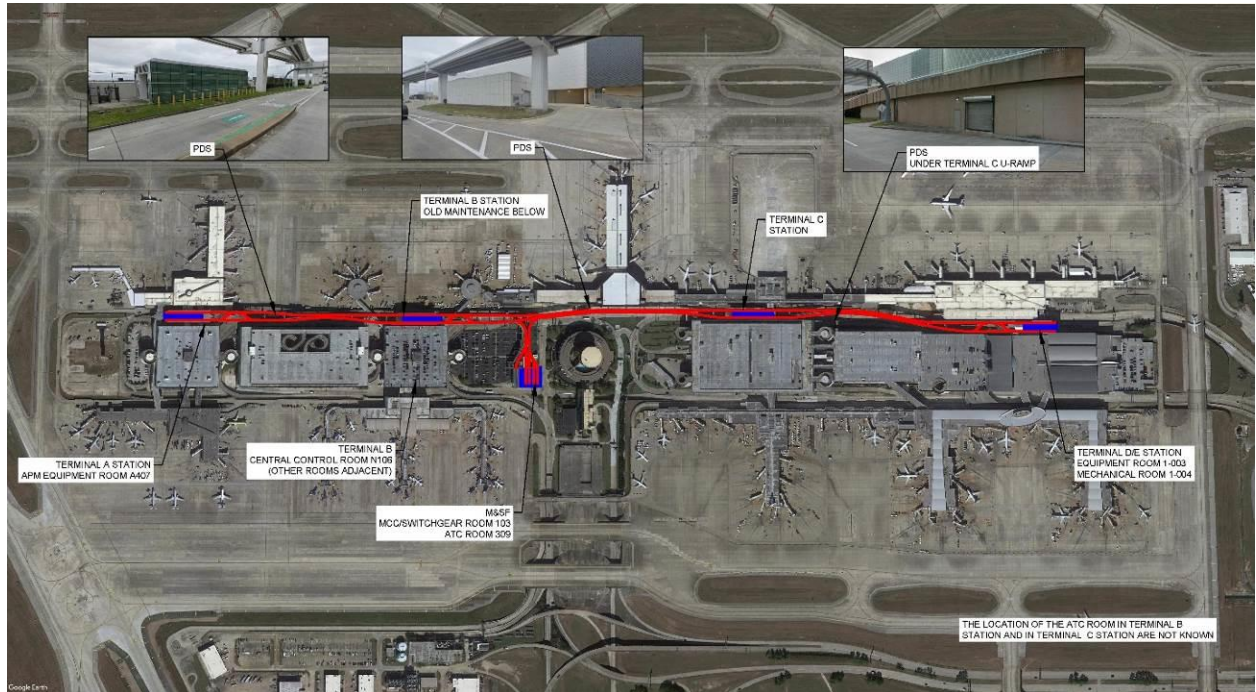


Figure 1 - Skyway APM System Layout

System operation consists of a pinched-loop mode between the two end stations. In the pinched-loop mode, trains depart the D/E Terminal Station, proceed along the north guideway in the west direction, stopping at stations at Terminals C, B and A. After stopping at Terminal A, trains will reverse direction and travel back to the D/E Terminal Station along the south guideway.

The operating periods for the Skyway APM System are as follows:

Peak Hours 0530 to 2200 hours

Off-Peak Hours 2200 to 0530 hours

The operating headway during the peak period shall not exceed 180 seconds, while the roundtrip time is eleven (11) minutes. The maximum grade on the Skyway APM System is 3.5 %, and the minimum horizontal curve radius is 75 ft.

The Maintenance and Storage Facility (M&SF) is located as shown on the Reference Drawings. The Central Control Facility (CCF) will be relocated as an expansion to the M&SF. There are

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ATTACHMENT A

five (5) lanes in the M&SF: three (3) lanes for light maintenance, one (1) lane for heavy maintenance and car wash, and one (1) storage lane.

The Contractor will be responsible for building an enclosure to surround the Skyway guideway at the Terminal D/E station. This enclosure is intended to span from the exterior edge of the guideway to the face of the station at each berthing locations.

The System includes three (3) traction power substations. Traction Power Substation 1 is supplied by two independent CenterPoint Energy three-phase, 12.47 kV, 60 Hz primary sources. From Substation 1, three-phase, 12.47 kV, 60 Hz power is distributed along the guideway to Traction Power Substations 2 and 3.

The Skyway APM System replacement includes the complete design, fabrication, assembly, factory testing, demolition, disposal, construction, installation and on-site integration, test and demonstration and implementation of the System, beginning with the Notice to Proceed (NTP 1) for the Design-Build Contract, and ending with the Final Acceptance of the completed APM System. Upon Substantial Completion of the Design-Build Contract, the City will issue Notice to Proceed (NTP 2) for the Operations & Maintenance Contract, authorizing the Contractor to commence the operations and maintenance of the APM System.

At NTP 1, the Contractor's Work will include:

- the removal/demolition and disposal, and/or the removal/salvage and placement into storage for City use (to be coordinated with the City's Representative and the existing operations and maintenance supplier) of the existing system equipment and facilities, as defined in the Contract Documents, including any existing equipment that the Contractor elects not to reuse;
- the design of the Operating System as defined in the Contract Documents;
- the modification of existing Fixed Facilities and construction of new Fixed Facilities;
- the analysis, manufacture, supply, fabrication, assembly, factory testing, shipping, and site installation of the Operating System;
- the on-site inspection, testing of the new Contractor-provided Fixed Facilities and required modifications to the existing Fixed Facilities;
- the on-site integration and verification testing and all other preparations required for the start-up of the Operating System through Safety Certification, Substantial Completion and Final Acceptance;
- the integration with the existing elements;
- related project management, control and administration;
- Safety Certification.
- As a possible Add Alternate Project Financing.

The full scope of the work will be defined in the Request for Proposal Documents.

For Item 1 above, the City retains the right of first refusal to salvage portions of the existing System equipment including vehicles. The Contractor is responsible for coordinating the salvage of this equipment with the City. If the City chooses not to salvage all or part of this

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ATTACHMENT A**

existing equipment, then the Contractor shall dispose of all remaining material at no cost to the City.

The existing System will be shut down in coordination with the City and the existing Operations & Maintenance (O&M) supplier. At that time, the City will put in place alternative conveyance for airport passengers, providing the Contractor full access to the existing System to facilitate and minimize the duration of the transition to the replacement System. The City will coordinate with the Contractor when the City needs access to the System.

The Contractor will be responsible to retrofit and refurbish all existing APM facilities, stations, guideway, M&SF, Central Control Facility (CCF), and Power Distribution Subsystem (PDS). All existing PDS equipment, wiring, and cabling shall be removed and replaced with new equipment, wiring and cabling. All APM System equipment shall be removed from the existing CCF and adjacent equipment room, and the facility shall be reconstructed and turned over to the City. The Contractor shall be solely responsible (turnkey) for delivering all aspects of the Work and integrating the Operating System and the Fixed Facilities into a fully functional System.

At NTP 2, the Contractor will provide complete operation and maintenance of the APM at IAH 24 hours per day, 7 days a week, 365 days per year. Contractor will directly operate and maintain the Skyway system with its own personnel. Contractor's base service work will include, but not be limited to:

- provide all required personnel, supplies and materials necessary to perform, and shall perform, the administration and management of the operations and maintenance of the System:
- manage and maintain inventory activities required to maintain an adequate supply of materials, supplies and equipment to operate and maintain the System:
- provide training required for the maintenance staff and operating personnel:
- perform preventative and corrective maintenance on vehicles and System equipment:
- develop, implement and maintain an on-going safety program:
- provide cleaning and janitorial services for the System: and
- prepare and issue reports recording the performance of the System. The full scope of the work will be defined in the Request for Proposal Documents.

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
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ATTACHMENT B**

REFERENCE DRAWINGS

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
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ATTACHMENT C
SAMPLE DESIGN-BUILD CONTRACT**

SAMPLE DESIGN-BUILD CONTRACTS

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
ATTACHMENT C
SAMPLE DESIGN-BUILD CONTRACT**

CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
SAMPLE AGREEMENT SUBJECT TO CHANGE

DESIGN-BUILD AGREEMENT FOR _____ AT GEORGE BUSH
INTERCONTINENTAL/HOUSTON AIRPORT (IAH) AIRPORT
SOLICITATION NO.:

SAMPLE

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
ATTACHMENT C
SAMPLE DESIGN-BUILD CONTRACT**

CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
SAMPLE AGREEMENT SUBJECT TO CHANGE

SAMPLE CONTRACT SUBJECT TO CHANGE:

DESIGN BUILD CONTRACT

BETWEEN

THE CITY OF HOUSTON

AND

[]

FOR

PROJECT NO.

CIP NO. []

SAMPLE

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
ATTACHMENT C
SAMPLE DESIGN-BUILD CONTRACT**

CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
SAMPLE AGREEMENT SUBJECT TO CHANGE

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EXHIBITS

A	Defined Terms
B	Scope of Services
C	General Conditions (including Supplementary Conditions, if applicable)
D	Key Personnel Staff Classification and Rates
E	Preconstruction Services Schedule
F	Component and Guaranteed Maximum Price Proposal
G	Forms of Bonds
H	City's Wage Rates
I	Project Schedule
J	Federally Required Provisions
K	Intellectual Property Confidentiality Agreement
L	Drug Policy Compliance Agreement
M	Certification of No Safety Impact Positions
N	Drug Policy Compliance Declaration

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
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ATTACHMENT C
SAMPLE DESIGN-BUILD CONTRACT**

CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
SAMPLE AGREEMENT SUBJECT TO CHANGE

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Contract as of the Effective Date.

DESIGN BUILD CONTRACTOR:

CITY:

[NAME OF CONTRACTOR]

THE CITY OF HOUSTON, TEXAS

By: _____
Name:
Title:
Tax ID NO. _____

By: _____
Mayor

ATTEST/SEAL:

COUNTERSIGNED BY:

City Secretary

City Controller

APPROVED:

DATE COUNTERSIGNED:

Director, Houston Airport System

Effective Date

APPROVED AS TO FORM:

Assistant City Attorney
L.D. File No. _____

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
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ATTACHMENT C
SAMPLE DESIGN-BUILD CONTRACT**

CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
SAMPLE AGREEMENT SUBJECT TO CHANGE

GUARANTY [IF A JOINT VENTURE]

[] and [] in order to induce the City of Houston to enter into this Agreement with [NAME OF JV], hereby irrevocably, unconditionally, jointly and severally guarantee the performance of all obligations and undertakings of [NAME OF JV] under this Agreement. [] and [] each acknowledges that it will benefit, directly or indirectly, from the Agreement and waives all legal and equitable defenses to the enforcement of this guaranty.

[]

By: _____
By: _____
Name: _____
Title: _____
Tax ID NO. _____
Date: _____

[]

By: _____
Name: _____
Title: _____
Tax ID NO. _____
Date: _____

[]

By: _____
Name: _____
Title: _____
Tax ID NO. Date: _____

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
ATTACHMENT C
SAMPLE DESIGN-BUILD CONTRACT**

CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
SAMPLE AGREEMENT SUBJECT TO CHANGE

**DESIGN BUILD CONTRACT FOR
___ AT IAH**

This **DESIGN BUILD CONTRACT** ("Contract") is entered into and effective as of the Effective Date, by and between the **CITY OF HOUSTON, TEXAS**, a home-rule city (the "City") and [_____] ("DESIGN BUILD CONTRACTOR"), a [_____] and authorized to do business in the State of Texas (each also referred to as "Party" individually or "Parties" collectively).

The City is: The City of Houston, Texas

Address for Written Notice: P.O. Box 60106, Houston TX 77205-0106

DESIGN BUILD CONTRACTOR is: [_____]

Address for Written Notice: [_____]

E-mail address: [_____]

The Project is: [_____]

Project Location: George Bush Intercontinental Airport

Project No: [_____]

DESIGN-BUILD CONTRACTOR's Lead Design Firm Designer is:
[_____]

RECITALS

WHEREAS,

...

WHEREAS, pursuant to the Enabling Law, the City issued a Request for Qualifications ("RFQ") on [_____] in order to obtain Statements of Qualifications from design-build firms interested in being included on a shortlist of qualified design-build firms who would be invited to submit proposals for the performance of the design-build work necessary for the Project;

WHEREAS, in accordance with the requirements and criteria for selection set forth in the RFQ, the City on [_____] 2021, selected [] design build firms (including the DESIGN BUILD CONTRACTOR) for inclusion on its shortlist of qualified design-build firms;

WHEREAS, pursuant to the Enabling Law, the City issued a Notification to Short-listed Proponents on [_____] 2021, requesting each design build firms to submit Technical and Price Proposals;

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WHEREAS, each of the qualified design build firms, including the DESIGN BUILD CONTRACTOR, submitted a proposal (comprising a sealed technical proposal and a separate sealed cost proposal) on [____], 2021;

WHEREAS, following the review and selection process established in the RFP and based on the evaluation criteria and scoring formula set forth in the RFP, the City selected the DESIGN BUILD CONTRACTOR as the highest ranked design build firm among the qualified design build firms that submitted proposals in response to the RFP;

WHEREAS, on [____], 2021, the City initiated negotiations with the DESIGN BUILD CONTRACTOR, which negotiations have concluded with this Agreement;

WHEREAS, the City desires to receive, and the DESIGN BUILD CONTRACTOR desires to provide, design-build services for the Project in accordance with the terms and conditions of this Contract;

NOW THEREFORE, for and in consideration of the mutual covenants, agreements, and benefits to the Parties herein named, it is agreed as follows:

ARTICLE 1. THE PROJECT

1.1 Project Description. As of the Effective Date, City intends to construct the Project, at IAH, as set forth in Exhibit “B”. The date of Substantial Completion for the Construction Phase will be established when and if the Director accepts DESIGN BUILD CONTRACTOR’s Guaranteed Maximum Price proposal.

ARTICLE 2. CONTRACT DOCUMENTS AND INTERPRETATION

2.1 Contract Documents. The “Contract Documents” comprise :

- 2.1.1 this Contract and all Exhibits;
- 2.1.2 any GMP Amendment;
- 2.1.3 any Change Order or other Modification or Amendment;
- 2.1.4 any Notice to Proceed; and
- 2.1.5 any Construction Drawings and Specifications.

2.2 Interpretation. The Contract Documents are intended to be complementary, and what is set forth in any one document is as binding as if set forth in each document. The Parties recognize that Amendments and Modifications may provide for specific modification to the terms and conditions of other Contract Documents, in which case, the modified terms and conditions shall govern, as expressly set forth in the Amendment or Modification. However, all terms and conditions of such other Contract Documents that are not expressly modified or deleted by an Amendment or

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Modification shall remain in effect. Section 2.3 shall govern matters of interpretation related to the applicability, stringency, and consistency of the Contract Documents, which are included among the Contract Standards. Unless stated otherwise in this Contract, if a conflict between the sections of this Contract and the exhibits arises, the sections control over the exhibits.

2.3 Applicability of Contract Standards. The DESIGN BUILD CONTRACTOR shall be obligated to comply only with those Contract Standards which are applicable in any particular case. Where more than one Contract Standard applies to any particular performance obligation of the DESIGN BUILD CONTRACTOR hereunder, each such applicable Contract Standard shall be complied with. In the event there are different levels of stringency among such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern. In the event of any inconsistency among the Contract Standards, the DESIGN BUILD CONTRACTOR shall notify the Director. The Director's determination as to the applicable standard shall be binding.

2.4 Defined Terms. Capitalized terms used in the Contract Documents have the meanings set forth in Exhibit "A". Further interpretation provisions are set forth in Exhibit "A".

ARTICLE 3. GENERAL PERFORMANCE REQUIREMENTS

3.1 Reliance. The DESIGN BUILD CONTRACTOR acknowledges and agrees that the City is entering into this Contract in reliance on the DESIGN BUILD CONTRACTOR's expertise with respect to the performance of the Work. The Project will serve an essential public service and will be critically important to enable the City to continue to meet its needs and obligations. The DESIGN BUILD CONTRACTOR shall perform the Work in accordance with the Contract Standards to further the interests of the City and the Project.

3.2 Scope of the Work. The Scope of the Work or "Scope of Work" is divided into Preconstruction and Construction Phase Services as more thoroughly described in Exhibit "B". The DESIGN BUILD CONTRACTOR recognizes that, notwithstanding this division, the components of the Work may overlap and agrees to perform the Work in accordance with the applicable Contract Standards. Except as authorized under a CGMP Amendment, in no event will the DESIGN BUILD CONTRACTOR commence performance of any construction prior to the issuance of a Notice to Proceed following the GMP Amendment Date.

3.3 Information Provided by or on Behalf of the City. The City makes no representation or warranty with respect to any information provided to the DESIGN BUILD CONTRACTOR by or on behalf of the City in connection with this Contract. The DESIGN BUILD CONTRACTOR shall assess all risks related to the Project and independently verify and confirm all information supplied to it by or on behalf of the City and upon which the DESIGN BUILD CONTRACTOR elects to rely in connection herewith. Except as may reasonably be requested by the DESIGN BUILD CONTRACTOR, expressly permitted by this Contract and General Conditions, and provided there is no resulting increase to the GMP or the Contract Time (unless otherwise agreed by the Director in his sole discretion), DESIGN BUILD CONTRACTOR, and expressly established in the GMP), shall have no right to relief hereunder, or to make any claim against the City, or to seek any adjustment to compensation or the Contract Times as the result of any error, omission, or insufficiency relating to any information provided to the DESIGN BUILD CONTRACTOR by or on behalf of the City in connection with this Contract.

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3.4 Related Projects. The DESIGN BUILD CONTRACTOR acknowledges that the City may undertake other capital projects at or near the Project (“Related Projects”) and agrees to accept the obligations of the DESIGN BUILD CONTRACTOR concerning the Related Projects, as set forth in the General Conditions. Nothing in the Contract Documents shall be interpreted as granting the DESIGN BUILD CONTRACTOR exclusive occupancy of the Project Site. The DESIGN BUILD CONTRACTOR must ascertain to its own satisfaction the scope of the Project and the nature of any other contracts that have been or may be awarded for any Related Project(s).

3.5 Responsibility for Personnel and DESIGN BUILD CONTRACTOR-Related Entities. All obligations of the DESIGN BUILD CONTRACTOR hereunder shall be performed by DESIGN BUILD CONTRACTOR-Related Entities (subject to the limitations established herein) who are qualified to perform the specific services and meet all licensing and certification requirements of Applicable Law. The DESIGN BUILD CONTRACTOR shall be fully responsible, in accordance with the terms and conditions of the Contract Documents, for all Work performed by all DESIGN BUILD CONTRACTOR-Related Entities. The DESIGN BUILD CONTRACTOR shall, as between itself and the City, be responsible and liable to the City for, and not relieved of, its obligations under the Contract Documents by, the acts, omissions, breaches, defaults, non-compliance, negligence, willful misconduct, or other legal fault of each DESIGN BUILD CONTRACTOR-Related Entity and all references in this Contract to any act, omission, breach, default, non-compliance, negligence, willful misconduct, or other legal fault of the DESIGN BUILD CONTRACTOR will be construed accordingly to include any such act, omission, breach, default, non-compliance, negligence, willful misconduct or other legal fault committed by any other DESIGN BUILD CONTRACTOR-Related Entity.

3.6 Key Personnel. The DESIGN BUILD CONTRACTOR acknowledges that the identity and commitment of certain key management and supervisory personnel proposed by the DESIGN BUILD CONTRACTOR in its Proposal were material factors in the selection of the DESIGN BUILD CONTRACTOR to perform this Contract. Such personnel, their affiliations, and their anticipated roles in the performance of the Work are set forth in Exhibit “D”. The DESIGN BUILD CONTRACTOR shall utilize such personnel to perform such services unless such personnel are unavailable for good cause shown. “Good cause shown” shall not include performing services on other projects for the DESIGN BUILD CONTRACTOR or any of its Affiliates, but shall include termination for cause, employee death, disability, retirement, or resignation. In the event of any such permissible unavailability, the DESIGN BUILD CONTRACTOR shall utilize replacement key management and supervisory personnel of equivalent skill, experience, and reputation. Any on-site personnel change shall be proposed to the Director with reasonable advance notice (no less than 30 days) for the Director’s review and approval, which shall not be unreasonably withheld or delayed. The Director may exclude from the Project any personnel performing Work if the Director, acting reasonably, determines that an unworkable relationship has developed between the City and the individual.

3.7 Designated Representative. The individual identified in Exhibit “D” as the “Designated Representative” shall, until further designation under this Section, act as the designated representative of the DESIGN BUILD CONTRACTOR with respect to this Contract and shall coordinate with the Director as to administrative matters under this Contract. The DESIGN BUILD CONTRACTOR may replace the individual designated as its representative under this Contract from time to time by written notice to the Director, subject to the reasonable approval of the Director. The DESIGN BUILD CONTRACTOR shall replace the individual designated as its representative under this Contract at any time upon written notice by the Director in the Director’s reasonable discretion.

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Any individual designated as the representative of the DESIGN BUILD CONTRACTOR under this Contract shall have sufficient qualifications and experience to serve as the DESIGN BUILD CONTRACTOR's representative hereunder and shall be vested with the authority to act on behalf of the DESIGN BUILD CONTRACTOR, to receive notices on behalf of the DESIGN BUILD CONTRACTOR, to make binding decisions with respect to the performance of the Work, and to bind the DESIGN BUILD CONTRACTOR with respect to any certification to be made by the DESIGN BUILD CONTRACTOR hereunder. The designated representative shall be the Director's primary contact for the performance of the Work and shall be available, as required, for the benefit of the City and the Project.

3.8 Meetings. Meetings are to be conducted in the manner described in the Contract Documents unless otherwise agreed in writing by the Director.

ARTICLE 4. PRECONSTRUCTION SERVICES

4.1 Generally. The DESIGN BUILD CONTRACTOR shall render and perform the Preconstruction Services for the City in accordance with Exhibit "B" and all other applicable Contract Standards. The DESIGN BUILD CONTRACTOR's responsibility for the Preconstruction Services includes the responsibility to employ or subcontract with (subject to the limitations established herein) the necessary professionals (including architects, if applicable), technicians and engineers, properly qualified, licensed and skilled in the various aspects of the Preconstruction Services, and to perform all services reasonably inferable from the description of the Preconstruction Services. The Design-Build Contractor will perform services for this Project under a Three-Phase delivery method. The three phases consist of:

Phase 1 –

Phase 2 –

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Phase 3

4.2 Notices to Proceed. The DESIGN BUILD CONTRACTOR shall commence performing Preconstruction Services upon the date specified in a Notice to Proceed with Preconstruction Services issued by the Director. The DESIGN BUILD CONTRACTOR is not entitled to reimbursement for any costs incurred for performance of Preconstruction Phase Services incurred prior to the performance before issuance of a Notice to Proceed. The DESIGN BUILD CONTRACTOR acknowledges that the Preconstruction Services are segregated into discrete tasks associated with the advancement of the Preconstruction Services, as identified in Exhibit “B”, and that a Notice to Proceed with Preconstruction Services may be limited to certain specifically identified tasks. The City will therefore have the right to issue multiple Notices to Proceed with respect to Preconstruction Services, identifying the Preconstruction Services tasks to be performed by the DESIGN BUILD CONTRACTOR.

4.3 Existing Conditions. DESIGN BUILD CONTRACTOR acknowledges that it was afforded unrestricted access to the existing improvements and conditions on the Project Site and it has thoroughly investigated those conditions. The results of DESIGN BUILD CONTRACTOR’s investigation shall be deemed to be taken into account in establishing the Guaranteed Maximum Price of the Work. Therefore, DESIGN BUILD CONTRACTOR may not make and is not entitled to any claim for any adjustment to the Contract Time, Preconstruction Phase Services Fee, or the GMP arising from Project conditions that DESIGN BUILD CONTRACTOR discovered or, in the exercise of reasonable care, should have discovered in DESIGN BUILD CONTRACTOR’s investigation of the Project site.

4.4 Design Errors and Omissions. Before proceeding with the Construction Phase Services, DESIGN BUILD CONTRACTOR shall review the Drawings, Specifications, and other Construction Documents and notify the Director of any errors, omissions, or discrepancies in the Construction Documents of which it is aware. DESIGN BUILD CONTRACTOR is responsible for discovering and correcting any defect, error, omission, conflict, inconsistency, failure to comply with the Contract Documents, or lack of clarity in the Construction Documents. DESIGN BUILD CONTRACTOR shall be responsible for all costs, including the cost of redoing or remedying the Work and time delays resulting from any defect, error, omission, conflict, inconsistency, lack of clarity, or failure to comply with the Contract Documents in the Construction Documents.

4.5 Additional Preconstruction Phase Services

4.5.1 Provision of Additional Preconstruction Services shall apply only when necessary, as determined by the Director in his sole discretion and as authorized in writing by the Director related to the purpose of the Agreement, and when sufficient funding is allocated for such services. City, as provided in Article 9 of the Agreement, shall pay for the following Additional Preconstruction Phase Services, in addition to the

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compensation for Basic Preconstruction Services, if authorized by the Director in writing:

- 4.5.1.1. Provide financial, feasibility or other special studies;
- 4.5.1.2. Provide planning surveys, site evaluations, environmental studies or comparative studies of prospective sites;
- 4.5.1.3. Prepare special surveys, studies and submissions required for approvals by governmental authorities or others having jurisdiction over the Project;
- 4.5.1.4. Provide services relative to future facilities, systems, and equipment that are not intended to be constructed during the Contract Administration Services;
- 4.5.1.5. Provide detailed estimates of construction cost beyond the scope based on current area, volume, or similar unit costs as required in the Contract Documents (but providing estimating to prepare the GMP proposal is part of Basic Preconstruction Phase Services);
- 4.5.1.6. Provide analyses of owning and operating costs, or detailed quantity surveys, inventories of material, equipment, and labor;
- 4.5.1.7. Make revisions in drawings, specifications, or other documents when the revisions are inconsistent with written approvals or instructions previously given, or during Construction Documents Phase, making revisions to Construction Documents required by the enactment or revision of codes, laws, or regulations subsequent to the preparation of the Construction Documents or due to other causes not within the control of DESIGN BUILD CONTRACTOR;
- 4.5.1.8. Prepare Drawings, Specifications, supporting data and provide other services in connection with a change to approved Construction Documents to the extent that such services are in excess of the Basic or other Additional Pre-Construction Services required of DESIGN BUILD CONTRACTOR pursuant to the Contract Documents, as determined by the City Engineer in his sole discretion; provided that such changes are not necessitated by an act or omission of DESIGN BUILD CONTRACTOR. In the event a Change Order is caused by an act or omission of DESIGN BUILD CONTRACTOR, DESIGN BUILD CONTRACTOR is required to prepare the Drawing, Specifications, and supporting data at no expense to City;
- 4.5.1.9. Provide land survey services to supplement any legal description and site information provided by City, and to include, but not be limited to, as applicable to the Project, grades of streets, alleys, pavements, adjoining property; rights-of-way, restrictions, easements, encroachments, deed restrictions, contours of the site, locations, dimensions and complete data pertaining to existing buildings, other improvements and trees, as well as information concerning available services and utility lines both public and

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private, above and below grade, including inverts and depths, in accordance with the Project requirements. DESIGN BUILD CONTRACTOR, if authorized by the Director, shall commission a signed and sealed survey prepared by a registered land surveyor acceptable to the Director;

- 4.5.1.10. Provide geotechnical investigation and engineering services beyond that required for the design of the Project in Basic Preconstruction Phase Services. Such services may include, as applicable to the Project, test borings, test pits, soil bearing values, percolation tests and similar investigations and engineering services with reports and appropriate recommendations in accordance with the Project requirements. DESIGN BUILD CONTRACTOR, if authorized by the City Engineer, shall commission the completion of a signed and sealed geotechnical investigation by a registered geotechnical Subcontractor acceptable to the Director;
- 4.5.1.11. Provide cultural resource reconnaissance or surveying services as defined in the General Rules of Practice and Procedures, Chapter 41 of the Texas Antiquities Committee, to supplement the site information provided by City and to identify potential historic or prehistoric sites in the Project areas affected by improvements planned as part of the Project. Performance of the reconnaissance, if authorized by the City Engineer, shall be in accordance with procedures promulgated by the Texas Antiquities Committee in conformance with the Antiquities Code of Texas, and signed by a professional archaeologist acceptable to the Texas Antiquities Committee and the Director. For the purpose of this Agreement, the Director is authorized to approve the archaeologist's permit applications for the cultural resource reconnaissance or surveys on behalf of City;
- 4.5.1.12. Provide data processing and photographic production techniques when used in connection with another Additional Preconstruction Phase Service; and
- 4.5.1.13. Any other Additional Preconstruction Phase Services mutually agreed to by Director and DESIGN BUILD CONTRACTOR.

4.6 Ownership and Use of Work Products.

- 4.6.1 DESIGN BUILD CONTRACTOR conveys and assigns to the City its entire interest and full ownership worldwide in and to any work, invention, notes, plans, computations, data bases, tabulations, exhibits, reports, underlying data, photographs and other work products, and any modifications or improvements to them (collectively "Documents"), and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively "Proprietary Rights") that DESIGN BUILD CONTRACTOR, its agents, employees, contractors, and Subconsultants (collectively "Authors") develop, write, or produce under this Contract (collectively "Works").

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- 4.6.2 The Authors shall not claim or exercise any Proprietary Rights related to the Works. If requested by the Director, DESIGN BUILD CONTRACTOR shall place a conspicuous notation on any Works which indicates that the City owns the Proprietary Rights.
- 4.6.3 DESIGN BUILD CONTRACTOR shall execute all documents required by the Director to further evidence this assignment and ownership. DESIGN BUILD CONTRACTOR shall cooperate with the City in registering, creating, and enforcing Proprietary Rights arising under this Contract. If DESIGN BUILD CONTRACTOR's assistance is requested and rendered under this Section, the City shall reimburse DESIGN BUILD CONTRACTOR for all out-of-pocket expenses it incurs in rendering assistance, subject to the availability of funds. On termination of this Contract, or if requested by the Director, DESIGN BUILD CONTRACTOR shall deliver all Works to the City. DESIGN BUILD CONTRACTOR shall obtain written agreements from the Authors which bind them to the terms in this Section.
- 4.6.4 All Works developed, written, or produced under this Contract for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, are "works made for hire."
- 4.6.5 DESIGN BUILD CONTRACTOR may retain copies of the Documents for its archives. DESIGN BUILD CONTRACTOR shall not otherwise use, sell, license, or market the Documents.
- 4.6.6 Confidentiality: Design-Build Contractor, its agents, employees, contractors, consultants and Subconsultants shall hold all City information, data, and Documents (collectively, the "Information") that they receive, or to which they have access, in strictest confidence. Design-Build Contractor, its agents, employees, contractors, and Subconsultants shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Design-Build Contractor shall obtain written agreements from its agents, employees, contractors, consultants and Subconsultants which bind them to the terms in this Section.

ARTICLE 5. GUARANTEED MAXIMUM PRICE PROPOSAL

5.1 GMP Submittal. The Design-Build 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 the Design-Build Contractor's possession as a result of this Contract.

5.2 CGMP. The Parties anticipate that there may be some phases of Construction that are ready for commencement before the GMP Amendment Date. In addition to the Advanced Packages set forth in Exhibit "B", the DESIGN BUILD CONTRACTOR may recommend such phases or elements of the Construction ("Advance Packages") to the Director, as appropriate, during performance of the Preconstruction Services. The Director shall have the sole discretion to authorize an Advance Package pursuant to this Section and Exhibit "B" but has no obligation to enter into any CGMP

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Amendment. Prior to any such authorization, the DESIGN BUILD CONTRACTOR shall provide the Director with a CGMP Submittal in accordance with Section 5.3 and Exhibit "F".

5.3 CGMP Submittal. The DESIGN BUILD CONTRACTOR shall prepare and submit the CGMP Submittal in accordance with Exhibit "F" and all other applicable Contract Standards. In the event the Director believes the CGMP Submittal does not comply with the requirements of the Contract and Exhibit "F", the Director shall provide written notice to the DESIGN BUILD CONTRACTOR of any additions, corrections, or revisions required to achieve such compliance. The DESIGN BUILD CONTRACTOR, without any increase in the Preconstruction Phase Services Fee, shall promptly take all necessary rectification action, making multiple re-submittals, if required.

5.4 CGMP Negotiation and Execution. If the Director agrees to authorize the commencement of a portion of Construction under a CGMP Submittal, the DESIGN BUILD CONTRACTOR and Director shall negotiate and enter into a CGMP Amendment. A CGMP Amendment at a minimum shall incorporate and definitively address all of the items identified in Exhibit "F" and shall contain any other commercial terms and conditions specific to the Advanced Package (but shall not alter the terms and conditions of this Contract). Advanced Packages may be structured in a manner that provides for the commencement of the related Construction at any time determined by the Parties.

5.5 CGMP Amendment. If the Director determines to accept the CGMP Submittal, following negotiations at the election of the Director in his sole discretion and subject to approval by the Director, the Parties will enter into the CGMP Amendment and the CGMP Amendment Date will be established hereunder. Subject to the appropriation of funds, the Director has the authority to enter into a CGMP Amendment. Upon the Director's approval of a CGMP Amendment, the CGMP Amendment shall become a part of this Contract for all purposes.

5.6 Complete Pricing. It is the intention of the Parties that each CGMP Submittal, and any associated CGMP Amendment, includes complete pricing for the Work to be performed thereunder. Accordingly, all such amounts in CGMP Amendments shall be excluded in determining the Cost of the Work for the GMP Amendment. The Construction Services Fee, however, is intended to and shall be applicable to all construction whether performed as part of the CGMP Amendment or otherwise with the Construction Services. The Parties acknowledge and agree that the Preconstruction Services Fee and the Construction Services Fee were negotiated by the Parties prior to the Effective Date and included in the Contract as executed on the Effective Date and shall not be the subject of the CGMP and/or GMP Submittal or the CGMP and/or GMP Amendment.

5.7 CGMP Compensation. The City shall pay the CGMP for the Advanced Package Work to the DESIGN BUILD CONTRACTOR for Work properly performed and completed pursuant to the terms of the CGMP Amendment in accordance with, and subject to the limitations contained in this Contract, notwithstanding the fact that no GMP Amendment will be in effect at the time the Parties execute a CGMP Amendment. City agrees to release all retainage related to Advanced Package Work when DESIGN BUILD CONTRACTOR completes the CGMP Work pursuant to the CGMP Amendment terms. All related Warranties, as applicable, for Work performed under the CGMP will commence upon substantial completion of the CGMP Work, notwithstanding any other provision in this contract.

5.8 GMP Submittal. The DESIGN BUILD CONTRACTOR shall prepare and submit the GMP Submittal in accordance with Exhibit "F" and all other applicable Contract Standards. In the event

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the Director believes the GMP Submittal does not comply with the requirements of the Contract including **Exhibit “F”**, the Director shall provide written notice to the DESIGN BUILD CONTRACTOR of any additions, corrections, or revisions required to achieve such compliance. The DESIGN BUILD CONTRACTOR, without any increase in the Preconstruction Services Fee, shall promptly take all necessary rectification action, making multiple re-submittals, if required.

5.9 GMP Amendment. If the Director determines to accept the GMP Submittal, following negotiations at the election of the Director in his sole discretion and subject to approval by the City Council, the Parties will enter into the GMP Amendment and the GMP Amendment Date will be established hereunder and thereupon the Construction Services shall commence. Upon City Council approval, the GMP Amendment shall become a part of this Contract for all purposes.

5.10 Failure to Reach a GMP. In the event the City rejects the GMP Amendment, the City, in its sole discretion, may direct the DESIGN BUILD CONTRACTOR at no additional cost to the City, to adjust the design and/or scope to attempt to bring the Guaranteed Maximum Price to an amount acceptable to the City or the City may elect to end its attempt to reach an agreement with the DESIGN BUILD CONTRACTOR. In the event DESIGN BUILD CONTRACTOR's scope of work is reduced by the Director, then the Director and DESIGN BUILD CONTRACTOR shall attempt to negotiate a new GMP. In the event the City elects to end its attempts to reach an agreement with the DESIGN BUILD CONTRACTOR, the DESIGN BUILD CONTRACTOR does hereby assign all rights to any agreement with DESIGN BUILD CONTRACTOR to the City effective upon written notice of acceptance by the City to the DESIGN BUILD CONTRACTOR. The City shall be entitled to use any intellectual property developed by or on behalf of DESIGN BUILD CONTRACTOR for this Project for the completion, maintenance, and further development of the TSA-HPD Bunker & K-9 Facility, or for any other purpose, without additional compensation to DESIGN BUILD CONTRACTOR.

ARTICLE 6. CONSTRUCTION SERVICES

6.1 Generally. The DESIGN BUILD CONTRACTOR shall render and perform Construction Services for the City in accordance with **Exhibit “B”**, **Exhibit “C”**, and all other applicable Contract Documents, Standards and Codes. The DESIGN BUILD CONTRACTOR's responsibility for the Construction Services includes the responsibility to employ or subcontract with (subject to the limitations established herein) the necessary professionals (including architects, if applicable) technicians and engineers, properly qualified, licensed and skilled in the various aspects of the Construction Services, and to perform all services reasonably inferable from the description of the Construction Services.

6.2 Notices to Proceed. The DESIGN BUILD CONTRACTOR shall commence performing Construction Services upon the date specified in a Notice to Proceed with Construction Services issued by the Director. The DESIGN BUILD CONTRACTOR acknowledges that the Construction Services are segregated into discrete tasks associated with the advancement of the Preconstruction Services, as identified in **Exhibit “B”**, and that a Notice to Proceed with Construction Services may be limited to certain specifically identified tasks. The City will therefore have the right to issue multiple Notices to Proceed with Construction Services, identifying the Construction Services tasks to be performed by the DESIGN BUILD CONTRACTOR.

6.3 The DESIGN BUILD CONTRACTOR warrants, represents, covenants, and agrees that all of the services to be performed by it under or pursuant to this Contract shall be of at least the standard

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and quality which prevail among similar businesses and organizations with knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances and involving a project such as the Project, including the performance of work in a high volume and international airport with ongoing operations.

6.4 The DESIGN BUILD CONTRACTOR's duties as set forth herein shall at no time be in any way diminished by reason of any approval by the City or the Director nor shall the DESIGN BUILD CONTRACTOR be released from any liability by reason of such approval by the Director, it being understood that the City at all times is ultimately relying upon the DESIGN BUILD CONTRACTOR's skill and knowledge in performing the services required hereunder.

6.5 The DESIGN BUILD CONTRACTOR warrants, represents, covenants, and agrees that the DESIGN BUILD CONTRACTOR and all persons connected with the DESIGN BUILD CONTRACTOR directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.

6.6 The DESIGN BUILD CONTRACTOR warrants, represents, covenants, and agrees to notify Director in writing within five days of encountering, of anything within its knowledge which it discovers of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the DESIGN BUILD CONTRACTOR (by the City or any other party) which the DESIGN BUILD CONTRACTOR considers in its opinion to be unsuitable, improper, inaccurate, or defective in any way in connection with the purposes for which such document or data is furnished. Nothing shall excuse or detract from the DESIGN BUILD CONTRACTOR's responsibilities or obligations hereunder in any case where such document or data is furnished unless the DESIGN BUILD CONTRACTOR advises City in writing that in DESIGN BUILD CONTRACTOR's opinion such document or data and any requests made therein for action are unsuitable, improper, inaccurate or defective, and City confirms in writing that it wishes the DESIGN BUILD CONTRACTOR to proceed in accordance with the documents or data as originally given. DESIGN BUILD CONTRACTOR shall suspend that portion of the Work affected by the reported discrepancy until clarification is received. If DESIGN BUILD CONTRACTOR does not suspend work, any increase in cost as a result, including the necessity to perform any re-work, shall be borne by DESIGN BUILD CONTRACTOR and not be reimbursable under this Contract. Notwithstanding the foregoing DESIGN BUILD CONTRACTOR shall be responsible for all errors and omissions and lack of coordination in its own documents and the documents created by those working for DESIGN BUILD CONTRACTOR.

6.7 The DESIGN BUILD CONTRACTOR warrants, represents, covenants, and agrees to furnish efficient business administration and superintendence and perform its services hereunder in the most expeditious and economical manner consistent with the requirements of the Contract Documents.

6.8 In accordance with and not as an expansion of the time limitations set forth in the General Conditions, the DESIGN BUILD CONTRACTOR warrants, represents, covenants, and agrees that it shall, at its own cost, make good any errors or omissions in the Preconstruction Services and Construction Services it performs as soon as the DESIGN BUILD CONTRACTOR becomes aware of such errors or omissions or is notified of such errors or omissions. Should the DESIGN BUILD CONTRACTOR refuse or neglect to make good such errors or omissions within a reasonable time after receiving written notice requesting such remedial work, then the City shall be entitled to make good such errors or omissions at the expense of the DESIGN BUILD CONTRACTOR. This commitment by DESIGN BUILD CONTRACTOR is in addition to, and not in substitution for, any other remedy for errors

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or omissions in the Preconstruction Services and Construction Services which the City may have at law or in equity.

6.9 DESIGN BUILD CONTRACTOR shall attend training on HAS Project Management System and utilize that system for the numbering and tracking for all Work records, including, Modifications, requests for information, submittals and supplementary instructions, and shall provide updated records, including meeting minutes, at each meeting with City as requested. The numbering system shall be consistent with the HAS project management system.

6.10 Subcontracts or other agreements shall conform to the applicable payment provisions of the Contract Documents and shall not be awarded based on cost plus a fee without the prior written consent of Director.

6.11 DESIGN BUILD CONTRACTOR shall require its Subcontractors who have not competitively bid to disclose to Director their markups (both overhead and profit), estimates, and costs calculated in their bids or incurred or expected in sub-subcontracts and the Work performed, including any Change Order Work, for the assessment of reasonableness by the Director.

6.12 DESIGN BUILD CONTRACTOR shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to DESIGN BUILD CONTRACTOR by the terms of the Contract Documents, and to assume toward DESIGN BUILD CONTRACTOR all the obligations and responsibilities that DESIGN BUILD CONTRACTOR, by these Documents, assumes toward City. Each subcontract agreement shall preserve and protect the rights of City under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, DESIGN BUILD CONTRACTOR shall require each Subcontractor to enter into similar agreements with sub-subcontractors. DESIGN BUILD CONTRACTOR shall make available to the Director and to each proposed subcontractor prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors. DESIGN BUILD CONTRACTOR shall provide City with a copy of each subcontract agreement upon request.

6.13 Each subcontract agreement is assignable by DESIGN BUILD CONTRACTOR to City on acceptance by the Director of the assignment. DESIGN BUILD CONTRACTOR agrees to execute such additional documents as City may request to confirm such assignments. DESIGN BUILD CONTRACTOR shall include a provision in each subcontract agreement recognizing the rights of City pursuant to the foregoing contingent assignment. Despite such acceptance by City of any such assignment, City shall not be liable for anything under such subcontract prior to the acceptance by City of the assignment or for any liability of DESIGN BUILD CONTRACTOR to the Subcontractor. Acceptance of any such assignment shall not relieve DESIGN BUILD CONTRACTOR or the Subcontractor of their responsibilities and liabilities for any Work performed prior to City's acceptance of such assignment.

6.14 Nothing contained in the Contract Documents shall create any obligations or liabilities owed by City to any Subcontractor or Supplier. Except as may be required by law, City shall have no liability or responsibility for the performance or nonperformance of any Subcontractor, Supplier, or consultant, even if City designated, required, identified or approved such Subcontractor, Supplier, consultant, or sub-consultant of any tier.

6.15 DESIGN BUILD CONTRACTOR is an independent contractor and not an agent of City.

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DESIGN BUILD CONTRACTOR shall be liable to City for acts and omissions that result in a breach of the obligations herein of DESIGN BUILD CONTRACTOR and DESIGN BUILD CONTRACTOR's Subcontractors and Suppliers of any tier, and their agents, employees and parties in privity of contract with any of them and anyone acting on behalf of any of them, and any other persons performing any of the Work directly or indirectly under contract with DESIGN BUILD CONTRACTOR, including any design professionals and their consultants and sub-consultants of any tier.

6.16 DESIGN BUILD CONTRACTOR and any of its design professionals, consultants, the Subcontractors and Suppliers and their agents and employees warrant that the information provided to City about the qualifications, including financial information and past performance, is accurate, has not materially changed, and does not omit information that would materially affect those qualifications and that DESIGN BUILD CONTRACTOR is financially sound, fully solvent, and experienced in and fully qualified to perform the type of Work to be performed under this Contract.

6.17 DESIGN BUILD CONTRACTOR represents that it has: (a) visited the Project site, (b) taken such other steps as may be necessary to ascertain the nature and location of the Work and the general and local conditions that affect the Work or the cost thereof, and (c) investigated the labor situation, including the availability of all necessary labor and material.

6.18 DESIGN BUILD CONTRACTOR shall coordinate with other Contractors and projects on or around the Project site, as well as the Project Team or other HAS staff, and to minimize disruptions to normal airport operations.

6.19 Without diminishing the other obligations of DESIGN BUILD CONTRACTOR, DESIGN BUILD CONTRACTOR represents and agrees that it will perform its services under no circumstances with less than the usual and customary standards of DESIGN BUILD CONTRACTOR's profession or business and in compliance with all Applicable Laws and in strict accordance with the Contract Documents. DESIGN BUILD CONTRACTOR agrees to correct in a timely manner and as may be directed by the Director and to bear the full cost of correcting DESIGN BUILD CONTRACTOR's Work and services that are not in strict conformance with the Contract Documents or Applicable Laws or that are otherwise defective or negligently performed, those of its Subcontractors, Suppliers, and consultants, and any related damages or other harm. The term defective work or similar terms when used in the Contract Documents include Work that is not in strict conformance with the Contract Documents. DESIGN BUILD CONTRACTOR agrees to perform Work required by the Contract Documents in a good and workman-like manner.

6.20 DESIGN BUILD CONTRACTOR represents and agrees to perform its services under the Contract Documents in an expeditious and economical manner consistent with good business practices and the interests of City in accordance with the Project Schedule reflected in Exhibit "I".

6.21 DESIGN BUILD CONTRACTOR represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Contract.

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6.22 Except for the obligations of City set forth in this Contract, City has no liability to DESIGN BUILD CONTRACTOR or to anyone claiming through or under DESIGN BUILD CONTRACTOR by reason of the execution or performance of this Contract.

6.23 DESIGN BUILD CONTRACTOR shall give all required notices and comply with all Applicable Laws. The Work, including documents that are the responsibility of DESIGN BUILD CONTRACTOR, shall be in accordance with all Applicable Laws. If DESIGN BUILD CONTRACTOR otherwise performs any Work that is contrary to Applicable Laws, DESIGN BUILD CONTRACTOR shall correct such Work at its expense and shall be liable for all costs, delays, and damages attributable thereto, including any damage to other Work or other property arising from or relating to the corrective Work.

6.24 DESIGN BUILD CONTRACTOR shall establish, implement, and follow a quality control program for the Work during all Construction Services. DESIGN BUILD CONTRACTOR shall provide Director with a copy of the written quality control program.

6.25 DESIGN BUILD CONTRACTOR shall provide Value Engineering suggestions to Director. Whenever the term "Value Engineering" is used in conjunction with this Contract or the Project, it has its commonly accepted meaning within the construction industry and does not imply the practice of professional engineering without a license. If any Value Engineering activities constitute the professional practice of engineering, then such activities shall be performed by an engineer licensed in Texas.

6.26 DESIGN BUILD CONTRACTOR shall give constant attention to the Work to facilitate the progress thereof, and shall cooperate with the Director, inspectors, and with other Contractors in every way possible. The Director shall determine the areas in which the DESIGN BUILD CONTRACTOR and Contractors shall work in the event of a disagreement, and the DESIGN BUILD CONTRACTOR shall cooperate in such processes and decisions. The DESIGN BUILD CONTRACTOR shall have a competent Superintendent and safety professional on the Work at all times when construction is being performed, who is fully authorized as his/her agent on the Work. The Superintendent shall be capable of reading and fully understanding the plans and specifications and schedules, shall receive and fulfill instructions from the Director, and shall be present at the Work site at all times while Work is in progress.

6.27 The City will be performing additional work with other Contractors as well as continuing with its normal airport operations on or near the Work covered by this Contract. When separate contracts are let within the limits of any one project, DESIGN BUILD CONTRACTOR shall conduct its Work so as not to interfere with or hinder the progress or completion of the work being performed by other Contractors. DESIGN BUILD CONTRACTOR shall cooperate with other Contractors, City consultants, design professionals, City employees, and others as directed by the Director. In the event an interference cannot be reasonably avoided, DESIGN BUILD CONTRACTOR shall notify the City before the Work is impacted to resolve the interference.

6.28 DESIGN BUILD CONTRACTOR shall arrange its work and shall place and dispose of the materials being used so as to not interfere with the operations of other Contractors within the limits of the same project. DESIGN BUILD CONTRACTOR shall join its work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

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6.29 Subject to the obligations to cooperate with the City and Contractors with respect to contemporaneous operations and proximity at the Project site including, without limitation, relocating work areas, the DESIGN BUILD CONTRACTOR remains solely responsible for its means, methods, techniques, sequences and procedures and safety programs in connection with its Work.

6.30 DESIGN BUILD CONTRACTOR acknowledges that the Project site is, and at all times during the Work will be, within or around critically important areas of the operational airfield at IAH. DESIGN BUILD CONTRACTOR agrees that at all times when any forces are mobilized to strictly adhere to rules and instructions regarding permitted activities and physical locations on the airfield given by any authorized HAS personnel. Such instructions will include, without limitation, demobilizing from Work areas on minutes' notice to allow aircraft movement; coordination of phased work areas to keep aircraft paths open and operational; vigilant cleaning and removal of all foreign object debris caused by its Work from any areas on which aircraft may travel. DESIGN BUILD CONTRACTOR agrees and warrants that all delays and disruptions within the reasonable contemplation of those knowledgeable of airfield operations (including absolute deference to aircraft operations) caused by such adherence to rules and instructions or coordination for activities as specified herein have been taken into account in preparing the Guaranteed Maximum Price and that DESIGN BUILD CONTRACTOR will not seek any increase in the Guaranteed Maximum Price or the Contract Time on account of such adherence and coordination. DESIGN BUILD CONTRACTOR agrees that the City's needs arising from its ongoing airport operations as described herein has been expressly contemplated by DESIGN BUILD CONTRACTOR and shall not constitute active interference by the City.

6.31 All Subcontracts shall be awarded in accordance with the applicable provisions of *Texas Government Code* Chapter 2269, Subchapter H through a process overseen by the Project Team. DESIGN BUILD CONTRACTOR shall notify Director in advance in writing of the identities of all Subcontractors with which it intends to subcontract. DESIGN BUILD CONTRACTOR shall not subcontract with any Subcontractor to which Director has a reasonable objection in accordance with *Texas Government Code* Chapter 2269, Subchapter G. A notice of intent to employ a particular Subcontractor shall be given by the DESIGN BUILD CONTRACTOR to the City as to permit Director adequate time for review of the prospective Subcontractor without delay to the Project and to allow time for DESIGN BUILD CONTRACTOR to make substitute selections, but in no event shall such notice be given less than 10 days before the intended subcontract date. If Director has a reasonable objection to a proposed Subcontractor, DESIGN BUILD CONTRACTOR shall propose another against whom Director has no reasonable objection. DESIGN BUILD CONTRACTOR. DESIGN BUILD CONTRACTOR shall not be required to subcontract with any Subcontractor to which it has reasonable objection. When DESIGN BUILD CONTRACTOR's Subcontractors for constructing the Work have been identified, they shall not be changed without Director's prior written approval, which shall not be unreasonably withheld. DESIGN BUILD CONTRACTOR shall not incur any Subcontract costs prior to issuance by City of a Notice to Proceed for such Work. If the bidding process does not result in the selection of a subcontractor who is acceptable to the Director, the Director may ask the DESIGN BUILD CONTRACTOR to submit a proposal for the specific portion of work for approval.

6.32 The DESIGN BUILD CONTRACTOR shall (1) submit pricing for any proposed self-performed Work in the same manner as all other Subcontractors (2) perform self-performed Work in accordance with the same terms and conditions as its other Subcontractors, and (3) account for self-performed Work in the same manner as if the Work had been performed by other Subcontractors. In order to afford the City with maximum flexibility and the opportunity to achieve the best value, the

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DESIGN BUILD CONTRACTOR shall not self-perform any work to which the Director has a reasonable objection.

ARTICLE 7. LIQUIDATED DAMAGES

7.1 Liquidated Damages Generally. Additional liquidated damages provisions are set forth in Article 9 of the General Conditions.

7.2 Failure to Achieve Milestones. DESIGN BUILD CONTRACTOR and City agree that failure to achieve the Project milestones in this Section by the dates set forth in the agreed upon Guaranteed Maximum Price proposal will cause damages to City and that actual damages from such harm are difficult to estimate accurately. Therefore, DESIGN BUILD CONTRACTOR and City agree that DESIGN BUILD CONTRACTOR and Surety are liable for and shall pay to City the amounts below per Day, on a cumulative basis, as liquidated damages and not as a penalty, for each and every Day or portion of a Day of delay beyond the milestone dates established in the approved Guaranteed Maximum Price proposal for the Project. DESIGN BUILD CONTRACTOR and City agree that the amounts of liquidated damages fixed in this Section are reasonable forecasts of just compensation for harm to City resulting from DESIGN BUILD CONTRACTOR's failure to achieve the milestones set forth herein. These liquidated damages shall be City's sole remedy for damages from delay by DESIGN BUILD CONTRACTOR except that City shall be entitled to recover all of its actual, direct and consequential damages in the event liquidated damages are determined to be unenforceable, and City shall also be entitled to City's remedies under Article 14 of the General Conditions. Liquidated damages for each of the Project milestones are as follows:

7.2.1 Final Completion of Phase 1 -

7.2.2 Final Completion of Phase 2 -

7.2.3 Final Completion of Phase 3 -.

7.2.4 The maximum aggregate liquidated damages assessed to the DESIGN BUILD CONTRACTOR for Construction Services shall not exceed 100% of the DESIGN BUILD CONTRACTOR's Fee established by the estimated Cost of the Work until a GMP is established and thereafter it shall be 100% of the DESIGN BUILD CONTRACTOR's fee calculated against the GMP.

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- 7.2.5 The maximum aggregate consequential damages (excluding damages for delay, whether liquidated or otherwise) which shall be recoverable against the DESIGN BUILD CONTRACTOR shall not exceed 100% of the DESIGN BUILD CONTRACTOR's Fee established by the estimated Cost of the Work until a GMP is established and thereafter it shall be 100% of the DESIGN BUILD CONTRACTOR's fee calculated against the GMP.
- 7.3 **High Sulfur Diesel Fuel Usage.** The DESIGN BUILD CONTRACTOR and City agree that incidents of high sulfur diesel fuel usage by DESIGN BUILD CONTRACTOR will cause damages to City and that actual damages from such harm are difficult to estimate accurately. Therefore, DESIGN BUILD CONTRACTOR and City agree that DESIGN BUILD CONTRACTOR and Surety are liable for and shall pay to City the amount stipulated in this Section as liquidated damages. DESIGN BUILD CONTRACTOR and City agree that DESIGN BUILD CONTRACTOR and Surety are liable for and shall pay to City, as liquidated damages and not as a penalty, the amount equal to \$----- per diesel operating vehicle or piece of motorized equipment per incidence of high sulfur diesel fuel usage per Day. DESIGN BUILD CONTRACTOR and City agree that the amount of liquidated damages fixed in this Section is a reasonable forecast of just compensation for harm to City resulting from an incident of high sulfur diesel fuel usage. An incident of high sulfur diesel fuel usage as used herein means use of fuel in breach of the General Conditions. DESIGN BUILD CONTRACTOR and City agree that in the event the amount of liquidated damages set forth in this Section are held to be unenforceable for any reason, City shall be entitled to recover its actual direct damages, if any, resulting from incidence of high sulfur diesel fuel usage as may be authorized by the laws of Texas.
- 7.4 **Liquidated Damages for CGMPs and Phased GMP's if authorized.** The Director shall issue a separate Notice to Proceed or Change Order for each phase of Design and Construction and each phase of Design and Construction shall have a separate substantial completion date and a separate liquidated damages amount, as appropriate and detailed herein.

ARTICLE 8. TIME

- 8.1 **Time of the Essence.** Time limits stated in the Contract Documents are of the essence. DESIGN BUILD CONTRACTOR is responsible for schedule development and updating and reporting throughout the Project, including Preconstruction Services and Construction Services. DESIGN BUILD CONTRACTOR shall comply in all regards with requirements set forth in the Contract Documents. The anticipated date for submitting a GMP shall be the date specified in the Preconstruction Services Notice to Proceed. The Contract Time is 210 Calendar Days from Notice to Proceed for Preconstruction Services to Final Completion of the Work, excluding the GMP approval period (which is the time from DESIGN BUILD CONTRACTOR submission of the GMP Submittal to Notice to Proceed for Construction Services unless extended by Change Order).
- 8.1.1 A phase of Construction shall be deemed to commence on the Date of Commencement of the Work specified in a Notice to Proceed for a phase of Construction after approval of the CGMP or GMP proposal.

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8.1.2 DESIGN BUILD CONTRACTOR shall achieve Final Completion of the Work on or before the date agreed to in the GMP Submittal, subject to time extensions granted by Change Order.

8.1.3 THE TIMES SET FORTH FOR COMPLETION OF THE WORK IN THE NOTICE TO PROCEED WITH CONSTRUCTION AND THE GMP SUBMITTAL ARE AN ESSENTIAL ELEMENT OF THIS CONTRACT.

8.2 The DESIGN BUILD CONTRACTOR shall complete all services in accordance with the completion dates set forth in the Preconstruction Services Schedule (Exhibit "E"), as such dates may be adjusted in accordance with the General Conditions. The DESIGN BUILD CONTRACTOR recognizes that the Preconstruction Services Schedule is of the essence and that the City shall be entitled to the recovery of damages from the DESIGN BUILD CONTRACTOR as set forth in Article 7.2.1 for the DESIGN BUILD CONTRACTOR's failure to comply with the Preconstruction Services Schedule, subject to the terms and conditions of the Contract Documents.

ARTICLE 9. CONTRACT COMPENSATION

9.1 General Payment Requirements.

9.1.1 In addition to the payment terms set forth in this Article, the general requirements for payment, including the procedures and timing for the Applications for Payment, for DESIGN BUILD CONTRACTOR's Services are set forth in Article 9 of the General Conditions.

9.1.2 As of the Effective Date, the maximum amount payable to the DESIGN BUILD CONTRACTOR under this Contract is as follows:

Preconstruction and Design Services Price:

Preconstruction Services

DESIGN BUILD CONTRACTOR's Pre-Construction Services Fee: \$ _____

Lump Sum – Design Services from 30% Design Development to 100% Construction Documents \$ _____

Construction Services Price:

Lump Sum – Construction Administration Services Fee \$ _____

Construction Services \$ _____

DESIGN BUILD CONTRACTOR's Fee percentage: _____ %

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Agreed Cost of the Work (including Owner Controlled Contingency and Insurances) ₹

- 9.1.2.1. The DESIGN BUILD CONTRACTOR shall plan and design the Project in such a manner that the Agreed Cost of the Work does not exceed the sum of ₹ ----- without the express written approval of the Director. The Agreed Cost of Work may be increased or decreased by the Director, in his sole discretion.
- 9.1.2.2. The DESIGN BUILD CONTRACTOR shall monitor and participate in updating the Probable Cost of the Work throughout the design process. If at any time the Probable Cost of the Work, for all work designed and specified, exceeds or becomes likely to exceed the updated Agreed Cost of the Work, the DESIGN BUILD CONTRACTOR shall immediately notify the Director. Upon becoming aware that the Probable Cost of the Work will exceed the current Agreed Cost of the Work, the Director, in his sole discretion, may by written notice: (i) increase the Agreed Cost of the Work (ii) reduce the scope, or (iii) require a re-design of the Project by DESIGN BUILD CONTRACTOR until such time as the Probable Cost of the Work is less than or equal to the Agreed Cost of the Work.
- 9.1.2.3. There shall be no increase in the DESIGN BUILD CONTRACTOR's compensation for any such re-design to maintain the Agreed Cost of the Work.
- 9.1.2.4. For purposes of Section 9.1.2, inclusive of all sections therein, no person other than the Director may provide written authorization to change the Agreed Cost of the Work specified herein.

9.1.3 As of the Effective Date, the maximum amount payable to the DESIGN BUILD CONTRACTOR under this Contract is \$X,XXX,XXX.00, which is the total amount for compensation for the performance of Preconstruction Services as set forth in Section 9.2.1 below. Without limiting any term or condition hereunder with respect to payments to the DESIGN BUILD CONTRACTOR, the DESIGN BUILD CONTRACTOR's entitlement to, and the City's obligation to pay, any additional compensation to the DESIGN BUILD CONTRACTOR for the performance of the Work will be dependent upon the execution of a CGMP Amendment and/or the GMP Amendment. The DESIGN BUILD CONTRACTOR recognizes that the City has no obligation hereunder to enter into any such amendment. In the event the Director and DESIGN BUILD CONTRACTOR agree on a GMP and the Director authorizes DESIGN BUILD CONTRACTOR to proceed with Construction Services, DESIGN BUILD CONTRACTOR's compensation shall be calculated under Section 9.3.

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9.2 Preconstruction Services Price – Phase 1 Only.

- 9.2.1 Subject to the City's limit of appropriation for properly performed and completed Preconstruction Services, the City shall pay the DESIGN BUILD CONTRACTOR a lump sum amount of \$X,XXX,XXX.00 for Design Services to 60% Design Development (for GMP) and a lump sum amount for Design Services from 60% Design Development to 100% Construction Documents of \$XXX,XXX.00 for a Total Preconstruction and Design Services amount of \$X,XXX,XXX.00.
- 9.2.2 City will pay DESIGN BUILD CONTRACTOR based on the funding authorized for each Stage of design and based on invoices showing the percentage of services performed during the preceding month for Preconstruction Services based upon the allocation of the Preconstruction Services Price set forth above and per the Stage of design (Concept Design, SD, DD, CD, etc.). After the completion of the Concept Design Stage, the City and Design-Build Contractor will negotiate and agree upon the final design solution and the time allotted for the performance of the design to 60% Design Development stage, preparation of the GMP, and design to 100% Construction Documents. The Preconstruction Services Price shall be full compensation to DESIGN BUILD CONTRACTOR for all Preconstruction Services for design, including all costs, overhead, and profit. The Preconstruction Services Price shall also include full compensation for the DESIGN BUILD CONTRACTOR for all DESIGN BUILD CONTRACTOR Preconstruction Services, including all costs, overhead, and profit.
- 9.2.3 All payment requests for Preconstruction Services shall be submitted on an Application for Payment and Schedule of Values approved by Director and include all required attachments identifying payments to Design-Build Contractor, as well as to all Subcontractors.
- 9.2.4 DESIGN BUILD CONTRACTOR shall not be entitled to an increase in the Preconstruction Services amount set forth in this Section because of Project Schedule extensions or delays, or changes in the scope of the proposed Project, unless such extensions, delays, or changes are material and significant as determined by the Director in his reasonable, sole discretion.
- 9.2.5 During the Preconstruction Services, the Director shall have the right but not the obligation, to negotiate performance incentives, and the City and DESIGN BUILD CONTRACTOR may amend this Contract to incorporate such incentives, if any, provided that the DESIGN BUILD CONTRACTOR has then met all its obligations under this Contract as determined by the Director in his sole discretion.

9.3 Construction Services Payments

- 9.3.1 Pursuant to the terms of this Contract, City shall pay DESIGN -BUILD CONTRACTOR for DESIGN BUILD CONTRACTOR's proper and complete performance of the Construction Services, the Cost of the Work and the DESIGN BUILD CONTRACTOR's Fee, up to the limit of the applicable CGMP or the Guaranteed Maximum Price in accordance with the payment provisions of the General Conditions.

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Payment by City shall be deemed full compensation to DESIGN BUILD CONTRACTOR for the performance of the Construction Services. In the General Conditions, references to adjustments in "cost" or "costs" refer to Costs of the Work as defined below, and references to DESIGN BUILD CONTRACTOR's "home/branch office overhead" and "profit" refer to DESIGN BUILD CONTRACTOR's Fee.

- 9.3.2 DESIGN BUILD CONTRACTOR shall not receive any fee for Work deleted by Modifications. The DESIGN BUILD CONTRACTOR's Fee shall be compensation in full to DESIGN BUILD CONTRACTOR for all overhead and profit and all costs not otherwise recoverable.
- 9.3.3 The sum of the Cost of the Work and DESIGN BUILD CONTRACTOR's Fee is guaranteed by DESIGN BUILD CONTRACTOR not to exceed whatever Guaranteed Maximum Price Director and DESIGN BUILD CONTRACTOR may agree upon in writing, subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by DESIGN BUILD CONTRACTOR without reimbursement by City. No Change Order shall affect the Guaranteed Maximum Price unless the Change Order specifies the exact total change to the Guaranteed Maximum Price.
- 9.3.4 In the event that the DESIGN BUILD CONTRACTOR is required to pay or bear the burden of any new federal, state, or local tax, or of any rate increase of an existing tax (except a tax on income) with respect to its forces and/or its performance of the Work as a result of any statute, court decision, written ruling, or regulation taking effect after the Effective Date of this Contract, the Guaranteed Maximum Price shall be increased by the amount of the new tax or tax increase upon proof satisfactory to the Director that such increase has been applied to DESIGN BUILD CONTRACTOR.
- 9.3.5 If the sum of the Cost of the Work and the DESIGN BUILD CONTRACTOR's Fee for the Construction Services is less than the Guaranteed Maximum Price for such Services, then all such savings shall all be retained by City.
- 9.3.6 Subject to the City's appropriation of funds, in full consideration of DESIGN BUILD CONTRACTOR's Construction Services the City shall pay the DESIGN BUILD CONTRACTOR's Fee of ___% of the Cost of the Work, in addition to a lump sum price of \$X, XXX,XXX.00 for the DESIGN BUILD CONTRACTOR's Preconstruction and Design Services. DESIGN BUILD CONTRACTOR agrees that if the Guaranteed Maximum Price, inclusive of CGMPs, increases or decreases from the amount originally agreed upon, the DESIGN BUILD CONTRACTOR's Fee will increase or decrease based upon the actual Cost of the Work. Notwithstanding anything in the Contract Documents to the contrary, DESIGN BUILD CONTRACTOR shall not earn a fee on the lump sum price of the DESIGN BUILD CONTRACTOR. DESIGN BUILD CONTRACTOR's Fee is inclusive of DESIGN BUILD CONTRACTOR's profit, general overhead and all expenses in connection with maintaining and operating DESIGN BUILD CONTRACTOR's main office and any branch office, including:

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- 9.3.6.1. Salaries of persons employed in the main or branch offices of the DESIGN BUILD CONTRACTOR whose time is devoted to the general conduct of the DESIGN BUILD CONTRACTOR's business for the Project, such as project executives, operations managers, contract administrators, office managers, stenographers, plan clerks, file clerks, and draftsmen except to the extent that their time is actually spent on the Project and are identified on Exhibit "D".
- 9.3.6.2. Outside services and their expenses for estimating, personnel, accounting, budget control, audit and management information systems (other than Preconstruction Services) relating to accounting in DESIGN BUILD CONTRACTOR's office and even if at the Project site, except as specifically identified herein.
- 9.3.6.3. Interest on the DESIGN BUILD CONTRACTOR's capital or on money borrowed by the DESIGN BUILD CONTRACTOR, including the capital employed by the DESIGN BUILD CONTRACTOR in the performance of the Work.
- 9.3.6.4. Amounts required to be paid by DESIGN BUILD CONTRACTOR for Federal and/or State income and franchise taxes.
- 9.3.7 In addition to the payment procedures described in the General Conditions, the following payment procedures shall apply:
- 9.3.7.1. The Schedule of Values may be revised from time to time to adjust allocations of costs to various line items as the costs become better known, but such adjustment shall be subject to the approval of the Director, which shall not be unreasonably withheld. Under no circumstances shall the Schedule of Values exceed a CGMP and/or the GMP for the Project. The DESIGN BUILD CONTRACTOR's Fee, labor and expenses for General Conditions Work, labor and expenses for any self-performed Work, and the contingency shall be shown as separate line items on the Schedule of Values.
- 9.3.7.2. The Schedule of Values submitted shall maintain the originally established value for each work classification line item and shall contain any revisions to costs or cost estimates for each such classification. The format and tracking method of the original Schedule of Values and of all updates thereto shall be subject to the approval of Director.
- 9.3.7.3. Payment for DESIGN BUILD CONTRACTOR's Fee shall be in the same proportion to the total fee as the amount requested for the Cost of the Work relative to the total Cost of the Work used in deriving the Guaranteed Maximum Price, inclusive of any CGMPs.
- 9.3.7.4. DESIGN BUILD CONTRACTOR shall submit a monthly cost breakdown, including cost elements for staff labor and expenses over the duration of the construction period to Director for approval. Payment for DESIGN BUILD CONTRACTOR's General Conditions shall be made on a monthly basis per the approved breakdown.

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- 9.3.7.5. Payment for the Cost of the Work shall be made based on 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, in accordance with the General Conditions.
- 9.3.7.6. Retainage as specified in the General Conditions will be applied to the entire amount requested in the CGMP and/or GMP, as applicable. Retainage will not be held on the cost of the City's standard "pass-through" items, such as building permits, payment and performance bonds, , Preconstruction and Design Services, and insurance costs. Retainage will be reduced for the Project and the Project will be closed out consistent with the relevant provisions of the General Conditions.
- 9.3.7.7. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work shall not exceed the unpaid balance of the Guaranteed Maximum Price (less retainage on Work previously completed).
- 9.3.7.8. Payments to Subcontractors shall be made based on the same percentage of Work completed that is allocable to that Subcontractor for each respective Schedule of Values classification including applicable retainage. Retainage may be released for early performing subcontractors or small and/or minority, disadvantaged businesses as their scope of work is completed in their respective phase.
- 9.3.7.9. With each application for payment, DESIGN BUILD CONTRACTOR shall submit a certified release of all claims, known or that should reasonably be known, and liens against the City, stating "In consideration for the payment requested herein and upon receipt of such payment, DESIGN BUILD CONTRACTOR waives and releases all claims and liens of every sort against City relating to or arising out of the Work performed, except for such claims as have been properly submitted in writing in accordance with the Contract Documents." The final request for payment shall not be made until DESIGN BUILD CONTRACTOR delivers to City a complete release by DESIGN BUILD CONTRACTOR of all claims and liens of any sort arising out of the performance of the Work, affidavits from Subcontractors indicating they have been paid in full, other than amounts remaining to be paid to the DESIGN BUILD CONTRACTOR for Work performed by that Subcontractor (which amounts shall be stated), a complete release of all claims and liens from all Subcontractors (except that, as to amounts remaining to be paid to that Subcontractor, such release may be made contingent upon City making payment to DESIGN BUILD CONTRACTOR) and an affidavit that so far as DESIGN BUILD CONTRACTOR has knowledge or information, the release includes and covers all materials and services over which DESIGN BUILD CONTRACTOR has control for which a lien could be filed, but DESIGN BUILD CONTRACTOR may, if any Subcontractor or consultant refuses to furnish a required affidavit or release, furnish a bond satisfactory to Director to indemnify City against any claim or lien of any sort and any related costs, including attorneys' fees. If any claim or lien of any sort remains unsatisfied after all payments are made, DESIGN BUILD

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- CONTRACTOR shall refund to City all moneys City may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees, and City shall have all remedies at law and in equity.
- 9.3.7.10. The aggregate total of payments to DESIGN BUILD CONTRACTOR shall not exceed the total of the actual Cost of the Work as verified by Director from DESIGN BUILD CONTRACTOR's final accounting plus the applicable DESIGN BUILD CONTRACTOR's Fee as certified for payment in accordance with the Contract, but in no event more than the Guaranteed Maximum Price and approved Change Orders to Guaranteed Maximum Price plus the Preconstruction Services Fee. If payments made to DESIGN BUILD CONTRACTOR exceed that which is due and owing pursuant to this Article 8, then DESIGN BUILD CONTRACTOR shall promptly refund such excess to City.
- 9.3.8 In addition to the City's other rights and any provision hereof to the contrary notwithstanding and to the extent reasonably necessary to protect itself, City shall not be obligated to make any payment (whether a progress payment or final payment) to DESIGN BUILD CONTRACTOR hereunder if any one or more of the following conditions exist:
- 9.3.8.1. The DESIGN BUILD CONTRACTOR is in breach or default under this Contract;
- 9.3.8.2. Any part of such payment is attributable to services, which are not performed in accordance with this Contract; provided, however, such payment shall be made as to the part thereof attributable to services which were performed in accordance with this Contract;
- 9.3.8.3. The DESIGN BUILD CONTRACTOR has failed to make payments promptly to Subcontractors or other third parties used in connection with the services for which City has made payment to DESIGN BUILD CONTRACTOR; or
- 9.3.8.4. If Director determines that the amount remaining under the Guaranteed Maximum Price will not be sufficient to complete the services in accordance with this Contract, no additional payments will be due DESIGN BUILD CONTRACTOR hereunder unless and until DESIGN BUILD CONTRACTOR, at DESIGN BUILD CONTRACTOR's sole cost, performs a sufficient portion of the remaining services so that such portion of the amount remaining under the Guaranteed Maximum Price is determined by City to be sufficient to so complete the then remaining Work.
- 9.3.9 Nothing contained herein shall require the City to pay the DESIGN BUILD CONTRACTOR an aggregate amount exceeding the Guaranteed Maximum Price or to make payment if in the City's belief the cost to complete the Work would exceed the Guaranteed Maximum Price less previous payments to DESIGN BUILD CONTRACTOR.

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- 9.3.10 No partial payment made hereunder shall be, or shall be construed to be, final acceptance or approval of that part of the Work to which such partial payment relates, or a release of DESIGN BUILD CONTRACTOR of any of DESIGN BUILD CONTRACTOR's obligations hereunder or liabilities with respect to such Work.
- 9.3.11 DESIGN BUILD CONTRACTOR shall promptly pay all bills validly due and owing for labor and material performed and furnished by DESIGN BUILD CONTRACTOR-Related Entities in connection with the performance of the Preconstruction and Construction Services.
- 9.3.12 City shall have the right to verify and audit for a period of seven years after final payment for the Construction Services, the details set forth in DESIGN BUILD CONTRACTOR's billings, certificates, accountings, cost data, and statements, including all underlying costs and expenses in the Cost of the Work, either before or after payment therefor, by (1) inspecting the books and records of DESIGN BUILD CONTRACTOR with respect to the Project during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing DESIGN BUILD CONTRACTOR's business employees; (4) visiting the Project site; and (5) other reasonable action. City shall have the right to audit all costs, the basis for those costs, and all underlying expenses relating to DESIGN BUILD CONTRACTOR's performance herein, including but not limited to, the Cost of the Work, particularly, without limitation, labor rates and hourly salary rates set forth in Exhibit "D".
- 9.3.13 Design-Build Contractor shall establish and maintain a reasonable accounting system that enables the City to readily identify Design-Build Contractor's assets, expenses, costs of goods, and use of funds. The City and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Contract kept by or under the control of the Design-Build Contractor, including, but not limited to those kept by the Design-Build Contractor, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.
- 9.3.14 Design-Build Contractor shall, at all times during the term of this Contract and for a period of seven years after the termination or completion of this Contract, maintain such records, together with such supporting or underlying documents and materials. The Design-Build Contractor shall at any time requested by the City, whether during or after completion of this Contract, and at Design-Build Contractor's own expense make such records available for inspection and audit (including copies and extracts of records as required) by the City. Such records shall be made available to the City during normal business hours at the Design-Build Contractor's office or place of

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business and subject to a three-day written notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the City.

9.3.15 Design-Build Contractor shall ensure the City has these rights with Design-Build Contractor's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Design-Build Contractor and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Design-Build Contractor's obligations to the City. Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the City unless the audit identifies overpricing or overcharges (of any nature) by the Design-Build Contractor to the City in excess of one-half of one percent (.5%) of the total contract billings, the Design-Build Contractor shall reimburse the City for the costs of the audit up to the amount of overpricing or overcharges. DESIGN BUILD CONTRACTOR shall be given a reasonable opportunity to review and dispute in writing such findings, and the Director shall consider such information if provided to the City. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the City may recoup the costs of the audit work from the Design-Build Contractor. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Design-Build Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the City's findings to Design-Build Contractor.

9.3.16 The acceptance by DESIGN BUILD CONTRACTOR or DESIGN BUILD CONTRACTOR's successors of final payment under this Contract, shall constitute a full and complete release of City from any and all claims, demands, and causes of action whatsoever which DESIGN BUILD CONTRACTOR or DESIGN BUILD CONTRACTOR's successors have or may have against City under the provisions of this Contract except those previously made in writing and identified by DESIGN BUILD CONTRACTOR as unsettled at the time of the final request for payment in a document captioned "Unsettled Claims" included with DESIGN BUILD CONTRACTOR's final request for payment.

9.4 Cost of the Work.

9.4.1 Definition. The term Cost of the Work, or Cost of Work, are all Direct and Indirect Costs of Construction Services plus any actual costs for CGMP Work which the DESIGN BUILD CONTRACTOR necessarily incurs to properly perform the Work in strict compliance with the Contract Documents. Cost of Work does not include the DESIGN BUILD CONTRACTOR's Fee.

9.4.1.1. Direct Costs are the costs necessary to furnish and install the permanent elements of the project, such as structure, exterior envelope, interior finishes, vertical transportation, mechanical electrical and plumbing systems, etc. Direct costs include, but are not limited to: (i) costs for Subcontract Work self-performed by DESIGN BUILD CONTRACTOR, (ii) subcontractor and supplier,

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and their sub-tier subcontractors and suppliers, costs for labor, equipment, and materials furnished to the Project; (iii) equipment designed, specified, selected, or provided by the Design Consultant and to be incorporated by the DESIGN BUILD CONTRACTOR into the Project; (iv) Alternates; (v) Unit Priced Work; (vi) Contingency; (vii) Miscellaneous Costs; and (viii) Pass-Through Items.

9.4.1.2. Indirect Costs – or General Conditions Costs, are field office overhead and costs normally arising from performing Division 00 and 01 of the Project Manual. All such costs are the costs associated with the jobsite management of the project, including, but not limited to, items such as project management staff, jobsite trailers, telephones, administration, temporary roads, temporary utilities, permits, fees, general hoisting, safety and cleaning, not specifically associated with individual elements being erected. Cost of the Work shall not include costs not incurred, or incurred at higher than permitted rates or amounts. Cost of the Work includes only the items set forth by the Director, which shall all be subject to verification by audit.

9.4.2 General Conditions of the Work

9.4.2.1. Labor Costs.

- a. **Actual hourly wages paid to construction workers directly employed by DESIGN BUILD CONTRACTOR who perform construction of the Work at the Project site or, with the Director's prior written consent, at off-site workshops, when available.** For hourly workers employed by the DESIGN BUILD CONTRACTOR, DESIGN BUILD CONTRACTOR shall provide certified payrolls and any other documentation requested by City to verify wages and hours, and compliance with the City's wage rates identified in Exhibit "H". Actual wages paid may include premium payments for overtime work or night work for time actually spent in the performance of the Work when such premium payments have been demonstrated to be in accordance with the DESIGN BUILD CONTRACTOR's normal business practice and is included in the Guaranteed Maximum Price. Premium time shall not accrue prior to the completion of 40 hours per week of work by any given individual.
- b. Actual wages or salaries (inclusive of Labor Burden) of DESIGN BUILD CONTRACTOR's Key Personnel who are identified on Exhibit "D" together with their Allowable Hourly Rate – but only for documented time when directly involved in performance of the Work. DESIGN BUILD CONTRACTOR shall identify actual wages and salaries of Key Personnel within fourteen (14) Calendar Days from NTP for Preconstruction Services and upon submission of DESIGN BUILD CONTRACTOR's Construction Services Guaranteed Maximum Price proposal and upon submission of CGMP's. Allowable Hourly Rate means the rate for a particular staff classification identified in Exhibit "D", which includes actual wages or salaries (inclusive of Labor Burden). The salaries of DESIGN BUILD CONTRACTOR's supervisory personnel are subject to a not-to-exceed increase of 3% per year; the first year beginning on the date that Director approves DESIGN BUILD CONTRACTOR's

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Construction Services Maximum Guaranteed Price proposal. The 3% increase shall be available to DESIGN BUILD CONTRACTOR each year thereafter not to exceed seven years or at the completion or termination of this Contract, whichever occurs first. The annual not-to-exceed increase of 3% is available hereunder only to the extent it reflects a concurrent and equal increase in the supervisory personnel's salaries or wages. Any increase or portion thereof not used in a given year shall expire and does not "bank" or "accumulate." Notwithstanding, Cost of the Work for purposes of calculating payment for DESIGN BUILD CONTRACTOR's supervisory and administrative personnel when directly involved in performance of the Work shall be based on the "actual hourly pay rate" set forth in Exhibit "D". Projected wage increases should be reflected in the Guaranteed Maximum Price Proposal. Actual wages paid may include premium payments for overtime work or night work for time actually spent in the performance of the Work when such premium payments have been demonstrated to be in accordance with the DESIGN BUILD CONTRACTOR's normal business practice and is included in the Guaranteed Maximum Price. Premium time shall not accrue prior to the completion of 40 hours per week of work by any given individual. Labor Burden for overtime payments shall be eliminated or reduced to equal the DESIGN BUILD CONTRACTOR's actual substantiated cost for such burden. Should DESIGN BUILD CONTRACTOR require employees, other than those listed on Exhibit "D", DESIGN BUILD CONTRACTOR shall provide written notice to the Director setting forth all the information described above. If for any reason, Director reasonably objects to any such employee, DESIGN BUILD CONTRACTOR shall not use that employee to perform on the Project. Failing reasonable objection by the Director, the employee, together with the employee's daily billing rate, shall automatically become a part of Exhibit "D". The Labor Burden rate shall be based on the actual cost of direct wages or salaries of DESIGN BUILD CONTRACTOR's employees incurred in the interest of the Project. For billing purposes only, this rate shall be established annually, subject to verification by the City's auditors based on the DESIGN BUILD CONTRACTOR's Labor Burden for the previous year. The components which comprise the Labor Burden, as set forth in Exhibit "A" – 2.1.78 shall not change throughout the term of the Project. The City shall be allowed to audit the actual cost of labor burden each year, and City shall be entitled to a refund to the extent that it has paid DESIGN BUILD CONTRACTOR more than its actual Labor Burden costs. Initially, the labor burden will be set at ___% subject to verification by the City's auditors. It will be reset each year based on the audited rate for the prior year. Under no circumstances shall the City pay more for labor burden than the percentage established for billing purposes for any given year. Labor Burden for overtime payments shall be eliminated or reduced to equal the DESIGN BUILD CONTRACTOR's actual substantiated cost for such burden.

- c. Actual out of town travel expenses of DESIGN BUILD CONTRACTOR's personnel incurred directly and solely in support of the Project with prior written approval of the Director or specifically identified in the negotiated cost proposal but only to the extent permitted by City's policies on reimbursement

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for travel.

9.4.2.2. Actual costs paid or incurred by DESIGN BUILD CONTRACTOR for labor costs arising out of taxes, insurance, and benefits which are (i) required by law, (ii) required by collective bargaining agreements, (iii) or as otherwise customary so long as such costs are based on the actual wages of construction workers properly included in the Cost of the Work as defined herein and are approved in advance by the Director.

9.4.3 Subcontractor Costs

9.4.3.1. Payments actually made by DESIGN BUILD CONTRACTOR to Subcontractors for prosecution of the Work in accordance with the requirements of their agreements with DESIGN BUILD CONTRACTOR, but only for agreements to the extent they have been specifically consented to in writing by Director. Consent to such agreements shall not create any liability for City and shall not excuse DESIGN BUILD CONTRACTOR from complying with the terms of this Agreement.

9.4.4 Costs of Materials and Equipment Incorporated in the Completed Construction

9.4.4.1. Costs, including transportation, of materials and equipment incorporated or to be incorporated into the Work.

9.4.4.2. Costs of materials described in the preceding subparagraph in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. City shall be entitled to take possession of excess materials not incorporated into the Work, or at Director's option, DESIGN BUILD CONTRACTOR shall sell such materials and deduct the greater of fair market value or gross proceeds from the Cost of the Work Costs of Other Materials and Equipment, Temporary Facilities and Related Items

a. Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by DESIGN BUILD CONTRACTOR at the site and fully consumed in the performance of the Work; and if not fully consumed, then the cost shall be based on the cost of the item less its fair market value. Cost for items previously used by DESIGN BUILD CONTRACTOR shall mean fair market value prior to use on the Project. The cost for hand and small tools shall not exceed 3% of the direct payroll costs for employees of DESIGN BUILD CONTRACTOR.

b. Rental charges for temporary facilities, machinery, equipment, excluding hand tools which are provided at the Project site, whether rented from DESIGN BUILD CONTRACTOR or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. The aggregate rental charges for an item used on this Project (including the rental

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charges for items used to replace it) shall not under any circumstances exceed 75% of the value of that item or 75% of any applicable option purchase price, whichever is lower. Machinery and equipment owned by DESIGN BUILD CONTRACTOR or any person affiliated with or owned or controlled by DESIGN BUILD CONTRACTOR or persons affiliated with DESIGN BUILD CONTRACTOR shall not be charged at more than the market rate for such equipment in the Houston area or 90% of current published rental rates of the Associated Equipment Dealers, for such equipment, whichever is less.

- c. Costs of removal of debris from the Project site.
- d. Costs of postage and parcel delivery charges, standard and reasonable telephone service at the Project site and reasonable petty cash expenses of the Project site office, incurred directly and solely in support of the Work, and all incurred at the Project site.
- e. Area specific site periodic and final clean up, not previously included, and in accordance with all Applicable Laws and regulations.

9.4.4.3. Other Costs

9.4.5 Miscellaneous Costs

- 9.4.5.1. Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which DESIGN BUILD CONTRACTOR is liable. Notwithstanding, City is a home-rule municipal corporation and DESIGN BUILD CONTRACTOR shall avail itself of all exemptions which may exist for such taxes based on City's status.
- 9.4.5.2. Fees and assessments for building permits and for other permits and inspections that DESIGN BUILD CONTRACTOR is required by the Contract Documents to pay for or obtain.
- 9.4.5.3. Premiums for insurance and bonds to the extent directly attributable to this Agreement. Any premium allocation plan to this Project by DESIGN BUILD CONTRACTOR must be approved by the City's Legal Department.
 - a. Testing fees pursuant to the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded.
 - b. Utility company charges including meter fees, tap fees and utility consumption charges.
 - c. Costs of cell phones and vehicles, not otherwise included in the Labor Burden, for those employees approved by the Director.
 - d. Costs of on-site computers, printers, monitors, software, maintenance and other electronic equipment approved in advance and in writing by the

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Director used solely for the Project

9.4.5.4. Payments actually made by DESIGN BUILD CONTRACTOR to Subcontractors for prosecution of the Work, including DESIGN BUILD CONTRACTOR, in accordance with the requirements of their agreements with DESIGN BUILD CONTRACTOR, but only for agreements to the extent they have been specifically consented to in writing by Director. Consent to such agreements shall not create any liability for City and shall not excuse DESIGN BUILD CONTRACTOR from complying with the terms of this Contract.

9.4.5.5. City shall be entitled to take possession of excess materials not incorporated into the Work, or at Director's option, DESIGN BUILD CONTRACTOR shall sell such materials and deduct the gross proceeds from the Cost of the Work.

9.4.6 Alternates as identified in the Contract Documents

9.4.7 Unit Priced Work as identified in the Contract Documents

9.4.8 Contingency allowed by the Contract Documents, and identified as a line item in the Schedule of Values

9.4.8.1. Sales, use, or similar taxes imposed by a governmental authority that are related to the Work and for which DESIGN BUILD CONTRACTOR is liable. Notwithstanding, City is a home-rule municipal corporation and DESIGN BUILD CONTRACTOR shall avail itself of all exemptions which may exist for such taxes based on City's status.

9.4.8.2. Intellectual property royalties and licenses for items specifically required by the Contract Documents which are, or will be, incorporated into the Work. If a particular design, process, or product of a particular manufacturer is required by City, then costs of payments made in accordance with legal judgments against DESIGN BUILD CONTRACTOR resulting from suits for such infringement, payments of settlements made with City's written consent, and reasonable legal fees related to the infringement are eligible as a Cost of the Work and shall not be included in the calculation of DESIGN BUILD CONTRACTOR's Fee or the Guaranteed Maximum Price (but shall still be subject to the limit covered by the Appropriated Funds). Notwithstanding the foregoing, if DESIGN BUILD CONTRACTOR had reason to believe the required design, process, or product is an infringement, such payments and fees shall not be a Cost of the Work and DESIGN BUILD CONTRACTOR shall be responsible for such payments, fees and losses unless DESIGN BUILD CONTRACTOR notifies Director of the potential infringement promptly before proceeding and in writing.

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- 9.4.8.3. That portion of the cost of subcontractor default insurance or similar product for enrolled subcontractors or suppliers, which comprises only the risk transfer premium, and not prefunded deductibles or any other deposits, prepayments or charges of any type, and only as agreed to in advance by the Director following full transparency into the policy and the charges.
 - 9.4.8.4. That portion of the reasonable travel and subsistence expenses of DESIGN BUILD CONTRACTOR's personnel that are consistent with the City's travel policies and incurred while traveling solely in the discharge of duties directly connected with the Work, but not including travel expenses or commuting expenses incurred within Houston and its extra-territorial jurisdiction.
 - 9.4.8.5. Any hazardous materials handling, abatement and disposal cost(s).
 - 9.4.8.6. Other costs approved in advance in writing by Director at Director's sole option and discretion.
 - 9.4.9 Pass Through Items not included in the calculations for the DESIGN BUILD CONTRACTOR's fee.
 - 9.4.9.1. Fees and assessments for building permits and for other permits and inspections that DESIGN BUILD CONTRACTOR is required by the Contract Documents to pay for or obtain.
 - 9.4.9.2. Premiums for insurance and bonds to the extent directly attributable to this Contract, including without limitation professional liability insurance and pollution insurance. Any premium allocation plan to this Project by DESIGN BUILD CONTRACTOR must be approved by the City's Legal Department.
 - 9.4.9.3. Cash Allowances as identified in the Contract Documents.
 - 9.5 Costs Not Included in the Cost of the Work.**
 - 9.5.1 The Cost of the Work shall not include the items listed in this Section:
 - 9.5.1.1. Except as provided in Section 9.4.2, salaries and other compensation of DESIGN BUILD CONTRACTOR's personnel stationed at DESIGN BUILD CONTRACTOR's principal office or offices other than the Project site office.
 - 9.5.1.2. Expenses of DESIGN BUILD CONTRACTOR's principal office and offices other than the Project Site office.

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- 9.5.1.3. Overhead and general expenses.
 - 9.5.1.4. Markup imposed by DESIGN BUILD CONTRACTOR on other direct costs (ODCs) such as reimbursable expenses and pass-through costs from DESIGN BUILD CONTRACTOR and its Subcontractors and Suppliers.
 - 9.5.1.5. DESIGN BUILD CONTRACTOR's capital expenses, including interest on DESIGN BUILD CONTRACTOR's capital employed for the Work.
 - 9.5.1.6. Rental costs of machinery and equipment, except as specifically provided in this Contract.
 - 9.5.1.7. Costs due in whole or in part to the fault or negligence of DESIGN BUILD CONTRACTOR, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to costs of the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property.
 - 9.5.1.8. Costs of entertainment.
 - 9.5.1.9. Costs incurred or that should have been incurred for Preconstruction Phase Services.
 - 9.5.1.10. Any legal, accounting, professional, or other similar costs incurred by DESIGN BUILD CONTRACTOR, including costs incurred in connection with the prosecution or defense of any dispute, mediation, arbitration, litigation, or other proceeding related to or arising from the Project.
 - 9.5.1.11. Any sales, use, income, franchise, and similar taxes paid by DESIGN BUILD CONTRACTOR. Any fines, penalties, sanctions, or other levies assessed by any governmental body against DESIGN BUILD CONTRACTOR.
 - 9.5.1.12. The cost of any and all insurance deductibles and self-insured retentions payable by DESIGN BUILD CONTRACTOR, and all uninsured losses and costs, whether due to the failure of DESIGN BUILD CONTRACTOR or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents, or otherwise.
 - 9.5.1.13. Costs that would cause the Guaranteed Maximum Price to be exceeded.
 - 9.5.1.14. All profit, profit expectations and costs associated with profit sharing plans such as personnel bonuses, incentives, and rewards, company stock options, or any other like expenses of DESIGN BUILD CONTRACTOR.

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- 9.5.1.15. Legal and administrative costs to review and negotiate this Contract and all other Contract Documents.
- 9.5.1.16. Costs incurred by DESIGN BUILD CONTRACTOR resulting from the failure of DESIGN BUILD CONTRACTOR or its Subcontractors to coordinate their work with that of City and its other contractors, if any, after agreeing to schedules therefor.
- 9.5.1.17. Liquidated damages imposed by City.
- 9.5.1.18. Any costs arising out of the intentional acts or negligence of DESIGN BUILD CONTRACTOR, its Subcontractors, or any person or entity for whom any of them may be liable, including, without limitation, costs related to defective, rejected, or nonconforming Work within the Contract Time.
- 9.5.1.19. Costs including, but not limited to, the failure to perform of any Subcontractor or the bankruptcy or insolvency of any Subcontractor.
- 9.5.1.20. Costs for licenses, re-inspections and improperly timed permits and inspections that are the responsibility of the DESIGN BUILD CONTRACTOR to obtain.
- 9.5.1.21. Costs related to warranty work over and above the warranty work indicated in the Contract Documents.
- 9.5.1.22. Costs associated with deferred compensation and bonuses.
- 9.5.1.23. Costs associated with Subcontractor default insurance or similar products, except for the actual risk transfer premium as specifically allowed in Section 9.4.
- 9.5.1.24. Any other cost not specifically and expressly described in this Contract as a Cost of the Work.
- 9.5.1.25. Notwithstanding anything in the Contract Documents to the contrary, the Lump Sum fee for Design-Build Contractor's Preconstruction Phase and Design Services and/or other costs or expenses for Design-Build Contractor's Design Services shall not be included in the Cost of the Work.

9.6 Discounts, Rebates and Refunds of the Cost of the Work. The Cost of the Work to be paid by City shall be credited with the following items:

- 9.6.1 Proceeds of the sale of all tools, surplus materials, construction equipment, and temporary structures which have been charged to the Work other than by way of rental, and remaining after completion, whether such sale is made to the City, the DESIGN BUILD CONTRACTOR, or to some other party; and any such sale, if made to others than the City, shall be at fair market price. Upon completion of the Work or when no longer required, all tools, construction equipment and materials charged to

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the Cost of the Work shall be sold by DESIGN BUILD CONTRACTOR (unless turned-over to the City as set forth above) and the DESIGN BUILD CONTRACTOR shall use its best efforts to obtain the highest price in respect of such sales.

- 9.6.2 If City makes funds available to DESIGN BUILD CONTRACTOR, discounts earned by the DESIGN BUILD CONTRACTOR through advance or prompt payments. DESIGN BUILD CONTRACTOR shall provide sufficient advance notice of available discounts and the need for funds to be available to the City for the City to obtain the benefit of the discounts. The DESIGN BUILD CONTRACTOR shall obtain all possible trade and time discounts on bills for material furnished and shall pay said bills within the highest discount periods. The DESIGN BUILD CONTRACTOR shall purchase materials for this Project in such quantities as will provide the most advantageous prices to the City.
- 9.6.3 Reasonable market value as approved by the Director at the time of removal of all materials, tools, and equipment actually purchased for the Work and charged as a Cost of the Work and which is retained by the DESIGN BUILD CONTRACTOR upon completion of the Work.
- 9.6.4 Rebates, discounts, or commissions allowed to and collected by the DESIGN BUILD CONTRACTOR from suppliers of materials or from Subcontractors, together with all other refunds, returns, or credits received for return of materials, or on bond premiums, dividends or other compensation received from the surety or insurance and sales taxes.
- 9.6.5 DESIGN BUILD CONTRACTOR shall reimburse City for deposits made by City and not returned to City due to the negligent or intentional acts of the DESIGN BUILD CONTRACTOR. Should DESIGN BUILD CONTRACTOR not promptly so reimburse City upon demand, City shall be entitled to recover said amount from DESIGN BUILD CONTRACTOR, including, but not limited to, by deducting the amount from payments due the DESIGN BUILD CONTRACTOR.
- 9.7 Limit of Appropriation.**
- 9.7.1 The City's duty to pay money to the DESIGN BUILD CONTRACTOR for any purpose under this Contract is limited in its entirety by the provisions of this Section.
- 9.7.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has allocated the sum of **\$X,XXX,XXX,XX** for Preconstruction Phase and Design Services for the GMP and **\$XX,XXX,XXX** for Advance Packages as Appropriated Funds to pay money due under this Contract for Work, as may be required (the "Original Appropriation"). The executive and legislative officers of the City, in their sole discretion, may appropriate additional funds for this Contract (the "Supplemental Appropriation"), but they are not obligated to do so.
- 9.7.3 The aggregate of all sums duly authorized by the City to be allocated to pay money due under this Contract, including the Original Appropriation and all Supplemental

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Appropriations, constitute the Appropriated Funds. The City shall never be obligated to pay any money under this Contract in excess of the Appropriated Funds. The DESIGN BUILD CONTRACTOR must assure itself that sufficient Appropriated Funds have been made to pay for services it provides. If Appropriated Funds are exhausted, the DESIGN BUILD CONTRACTOR's only remedy is suspension or termination of its performance under this Contract and the DESIGN BUILD CONTRACTOR has no other remedy in law or in equity against the City and no right to damages of any kind.

- 9.7.4 The DESIGN BUILD CONTRACTOR shall closely monitor expenditures under this Contract and shall notify the Director when amounts payable by the City hereunder for authorized Work are equal to % of the Appropriated Funds, even if such amounts payable have not yet been billed to the City. At such point, if additional amounts payable by the City hereunder for the DESIGN BUILD CONTRACTOR's continued performance of the authorized Work would exceed the amount of remaining Appropriated Funds, the DESIGN BUILD CONTRACTOR has the right to suspend performance of the authorized Work by seven days' advance written notice to the Director describing the cause and the DESIGN BUILD CONTRACTOR's planned suspension. Once Appropriated Funds have been increased, the DESIGN BUILD CONTRACTOR shall resume performance of the authorized Work and may be entitled to equitable adjustment in accordance with the applicable provisions of the Contract Documents. If after more than 180 days Appropriated Funds have not been increased, the DESIGN BUILD CONTRACTOR shall have the right to terminate its performance in accordance with the applicable provisions of the Contract Documents. However, termination shall not relieve DESIGN BUILD CONTRACTOR of its continuing obligations to the City already incurred. The City shall not under any circumstances be obligated to seek a Supplemental Appropriation.

ARTICLE 10. REPRESENTATIONS AND WARRANTIES

- 10.1 Representations and Warranties of the City.** The City represents and warrants that:
- 10.1.1 The City is a home-rule city in the State of Texas, with full legal right, power and authority to enter into and to perform its obligations under this Contract.
- 10.1.2 This Contract has been duly authorized, executed and delivered by all necessary action of the City and constitutes a legal, valid, and binding obligation of the City, enforceable against the City in accordance with its terms, except to the extent that its enforceability may be limited by the Bankruptcy Code and by equitable principles of general application.
- 10.2 Representations and Warranties of the DESIGN BUILD CONTRACTOR.** In addition to any other representations and warranties made by the DESIGN BUILD CONTRACTOR hereunder, the DESIGN BUILD CONTRACTOR represents and warrants that:
- 10.2.1 The DESIGN BUILD CONTRACTOR is a limited liability company, duly organized, validly existing, and in good standing under the laws of Texas. The DESIGN BUILD CONTRACTOR has the authority to do business in the State of Texas and in any state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Contract.
- 10.2.2 This Contract has been duly authorized, executed and delivered by all necessary corporate action of the DESIGN BUILD CONTRACTOR and constitutes a legal, valid

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and binding obligation of the DESIGN BUILD CONTRACTOR, enforceable against the DESIGN BUILD CONTRACTOR in accordance with its terms, except to the extent that its enforceability may be limited by the Bankruptcy Code or by equitable principles of general application.

- 10.2.3 To the best of its knowledge after due inquiry, neither the execution nor delivery by the DESIGN BUILD CONTRACTOR of this Contract nor the performance by the DESIGN BUILD CONTRACTOR of its obligations in connection with the transactions contemplated hereby nor the fulfillment by the DESIGN BUILD CONTRACTOR of the terms or conditions hereof: (a) conflicts with, violates, or results in a breach of any constitution, law, governmental regulation, by-laws, or certificates of incorporation applicable to the DESIGN BUILD CONTRACTOR; or (b) conflicts with, violates or results in a breach of any order, judgment, or decree, or any contract, agreement, or instrument to which the DESIGN BUILD CONTRACTOR is a party or by which the DESIGN BUILD CONTRACTOR or any of its properties or assets are bound, or constitutes a default under any of the foregoing.
- 10.2.4 No approval, authorization, order or consent of, or declaration, registration, or filing with, any Governmental Authority is required for the valid execution and delivery of this Contract by the DESIGN BUILD CONTRACTOR except as such have been duly obtained or made.
- 10.2.5 Except as disclosed in writing to the City, there is no legal proceeding, at law or in equity, before or by any court, arbitral tribunal, or other Governmental Authority pending or, to the best of the DESIGN BUILD CONTRACTOR's knowledge after due inquiry, overtly threatened or publicly announced against the DESIGN BUILD CONTRACTOR, in which an unfavorable decision, ruling, or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Contract by the DESIGN BUILD CONTRACTOR or the validity, legality, or enforceability of this Contract against the DESIGN BUILD CONTRACTOR, or any other agreement or instrument entered into by the DESIGN BUILD CONTRACTOR in connection with the transactions contemplated hereby, or on the ability of the DESIGN BUILD CONTRACTOR to perform its obligations hereunder or under any such other agreement or instrument.
- 10.2.6 Except as disclosed in writing to the City, there are no material and adverse claims or demands based in environmental, contract, or tort law pending or threatened against the DESIGN BUILD CONTRACTOR or any of its Affiliates with respect to any facilities designed or constructed by the DESIGN BUILD CONTRACTOR or any of its Affiliates that would have a material and adverse effect upon the ability of the DESIGN BUILD CONTRACTOR to perform the Work.
- 10.2.7 Neither the DESIGN BUILD CONTRACTOR nor any of its Affiliates has any knowledge of any material violation of any law, order, rule, or regulation with respect to any facilities designed or constructed by the DESIGN BUILD CONTRACTOR or any of its Affiliates.
- 10.2.8 The information supplied, and representations and warranties made by the DESIGN BUILD CONTRACTOR in all submittals made in response to the RFQ with respect to the DESIGN BUILD CONTRACTOR (and to its knowledge, all information supplied in such submittals with respect to any Affiliate or DESIGN BUILD CONTRACTOR-Related Entity) are true, correct, and complete in all material respects.
- 10.2.9 The DESIGN BUILD CONTRACTOR is under no obligation, commitment or impediment of any kind, whether contractual or otherwise, that will limit or prevent

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performance of its obligations under this Contract.

10.2.10 The DESIGN BUILD CONTRACTOR is financially secure and no action relating to the Bankruptcy Code or suspension of payments by the DESIGN BUILD CONTRACTOR or any Affiliate has, to the best of its knowledge after due inquiry, been taken or is threatened.

10.2.11 The DESIGN BUILD CONTRACTOR:

10.2.11.1. has examined, carefully studied, and thoroughly understands the Contract Documents;

10.2.11.2. has visited the Project site and has become familiar with and is satisfied as to the general, local, and Project Site conditions that may affect cost, progress, and performance of the Work;

10.2.11.3. is familiar with and is satisfied as to all Applicable Laws that may affect cost, progress, and performance of the Work;

10.2.11.4. has carefully studied all information concerning the Project site and the performance of the Work which have been identified or made available by the City prior to the Effective Date; and

10.2.11.5. is prepared to perform the Work in accordance with Contract Standards and subject to the terms and conditions of the Contract Documents.

ARTICLE 11. MWBE COMPLIANCE

11.1 DESIGN BUILD CONTRACTOR shall comply with the City's Minority, Women and Small Business Enterprise ("MWSBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. DESIGN BUILD CONTRACTOR shall make good faith efforts to award subcontracts or supply agreements to MWSBEs as follows: **XX% M/WBE** for design and professional services; **XX% MBE** for Phase 2 Construction Services; and **XX% WBE** for Phase 2 Construction Services. The Design Build Contractor may substitute SBE participation of no more than 4% of the MBE and/or WBE goal of the construction portion of the contract. DESIGN BUILD CONTRACTOR acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunity and will comply with them.

ARTICLE 12. BONDS AND INSURANCE

12.1 Within 10 days of the date the DESIGN BUILD CONTRACTOR executes this Contract, DESIGN BUILD CONTRACTOR shall provide performance and payment bonds on forms prescribed by City in **Exhibit "G"**, unless in the discretion of the Director, the DESIGN BUILD CONTRACTOR furnishes a security bond acceptable to the Director to ensure that the DESIGN BUILD CONTRACTOR will furnish the required performance and payment bonds when a CGMP or the GMP is established. The penal sum of the payment and performance bonds shall be equal to the construction budget, as specified in the request for qualifications, or as otherwise specified by the Director.

12.2 DESIGN BUILD CONTRACTOR shall cause its design professional(s) to purchase and maintain professional liability, worker's compensation, automobile liability, commercial general

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liability and excess insurance, covering the Preconstruction Phase Services and Construction Phase Services provided under this Contract, as is acceptable to and approved by the Director. The insurance shall have minimum policy limits set forth in Article 11 of the General Conditions. The premium for the insurance will be at no expense to the City. DESIGN BUILD CONTRACTOR shall cause its design professional(s) to maintain the insurance throughout the course of the Work and for a minimum of two years following the Date of Substantial Completion. Each design professional's professional liability insurance policy is required to be furnished to the Director prior to performance. No policy providing the insurance shall be cancelled, materially altered, or allowed to expire without 30 days' prior written notice to Director.

12.3 Prior to commencing the Work, DESIGN BUILD CONTRACTOR shall be required to purchase and maintain the insurance coverages set forth in Article 11 of the General Conditions; provided however, that DESIGN BUILD CONTRACTOR may delay purchase and maintenance of Owner's and Contractor's Protective Liability, Installation Floater, and Property and Casualty Coverage until no later than 10 days of the date the Director accepts a CGMP and/or the GMP Submittals, as applicable. The DESIGN BUILD CONTRACTOR shall not commence Construction Services unless all insurance coverages set forth in Article 11 of the General Conditions are in full force and effect.

12.4 DESIGN BUILD CONTRACTOR shall not request payment, and City shall not be required to pay for DESIGN BUILD CONTRACTOR's additional general liability insurance, builder's all risk insurance or any other form of insurance coverage that is in excess of the required coverage amounts specified in this Contract and in Article 11 of the General Conditions, and City shall be entitled to repayment of any amounts paid in excess of what City is required to pay. The additional costs for coverages in addition to those coverages specifically required by this Contract shall be the sole responsibility of DESIGN BUILD CONTRACTOR.

12.5 City reserves the right to review the insurance requirements set forth in this Article and the General Conditions during the effective period of the Contract and to make reasonable adjustments to the insurance coverages and their limits when deemed necessary and prudent by City based upon changes in statutory law, court decisions, or the claims history of the industry or DESIGN BUILD CONTRACTOR. DESIGN BUILD CONTRACTOR shall use its best efforts to comply with City's requests hereunder, and a Change Order shall be issued compensating DESIGN BUILD CONTRACTOR for the increased costs of insurance premiums incurred as a result thereof.

12.6 City shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the Parties or the underwriter of any of such policies or to the extent that such deletion, revision, or modification results in increased costs for insurance premiums and City does not agree to compensate DESIGN BUILD CONTRACTOR for such increased costs after receiving notice from DESIGN BUILD CONTRACTOR of such increased costs. To the extent the losses should have been covered by insurance required by the Contract Documents that DESIGN BUILD CONTRACTOR failed to provide, then actual losses not covered by insurance as required by this Article shall be paid by the DESIGN BUILD CONTRACTOR.

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12.7 DESIGN BUILD CONTRACTOR shall also procure Pollution Liability Insurance as authorized and approved by the Director, to provide insurance coverage for DESIGN BUILD CONTRACTOR with respect to its obligations, if any, whether included in the GMP, directed or agreed to by change order for hazardous materials abatement, handling and disposal. The actual limits will be reviewed and mutually agreed upon as part of the establishment of the GMP.

12.8 City shall have the option of obtaining its own insurance coverage for part or all of the TSA-HPD Bunker & K-9 Facility project. In the event City's insurance provides coverage for some or all of DESIGN BUILD CONTRACTOR's obligations under this Contract, City shall have the option of replacing all or part of DESIGN BUILD CONTRACTOR's insurance with the City's insurance.

12.9 City intends to establish an Owner Controlled Insurance Program ("OCIP") for this Project. In the event City procures an OCIP, DESIGN BUILD CONTRACTOR may participate in the OCIP. If and when the OCIP is established, the Director shall send notice to DESIGN BUILD CONTRACTOR and DESIGN BUILD CONTRACTOR must respond within 10 days either opting into or out of the OCIP. If DESIGN BUILD CONTRACTOR opts into the OCIP, the insurance requirements described in Sections 12.3 through 12.6 shall be eliminated. If DESIGN BUILD CONTRACTOR opts out of the OCIP, all insurance requirements described herein remain mandatory.

ARTICLE 13. TERMINATION AND SUSPENSION

13.1 Termination rights shall be as provided in the General Conditions and Applicable Laws.

13.2 The City's termination of this Contract shall not relieve the DESIGN BUILD CONTRACTOR or any of its employees of liability for violations of this Contract, any act or omission, or negligence of the DESIGN BUILD CONTRACTOR.

13.3 As of the date of termination of this Contract, the DESIGN BUILD CONTRACTOR shall furnish to Director all statements, accounts, reports and other materials as are required hereunder or as have been prepared by the DESIGN BUILD CONTRACTOR in connection with the DESIGN BUILD CONTRACTOR's responsibilities hereunder. City shall have the right to use the ideas and designs therein contained for the completion of the services described by this Contract, and for completion of the Project, or otherwise. All drawings, plans, specifications, renderings and models, etc., prepared by the DESIGN BUILD CONTRACTOR are the property of City. They are not to be used by any person or entity other than City on other projects unless expressly authorized by City in writing prior to such use.

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ARTICLE 14 MISCELLANEOUS PROVISIONS

- 14.1 Exhibits.** All exhibits hereto are hereby incorporated herein by reference.
- 14.2 Successors and Assigns:** 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 Texas Business Code. This Agreement does not create any personal liability on the part of any officer or agent of the City.
- 14.3 Assignments.** This Contract is a personal service contract for the services of DESIGN BUILD CONTRACTOR, and DESIGN BUILD CONTRACTOR's interest in this Contract, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party, except as provided by the Texas Business and Commerce Code.
- 14.3.1** DESIGN BUILD 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 under Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, DESIGN BUILD CONTRACTOR shall immediately furnish the Director and CPO 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.
- 14.3.2** DESIGN BUILD CONTRACTOR shall not delegate any portion of its performance under this Agreement without the Director's prior written consent.
- 14.4 Entire Contract; Modifications; Conflicts.** This Contract supersedes all prior agreements, written or oral, between DESIGN BUILD CONTRACTOR and City and shall constitute the entire Contract and understanding between the parties with respect to the subject matter hereof. This Contract and each of its provisions shall be binding upon the Parties and may not be waived, modified, amended, or altered except by a writing signed by City and DESIGN BUILD CONTRACTOR. If there is a conflict between these Articles and the General Conditions of the Contract, then the provision which provides the greatest benefit to City shall govern.
- 14.5 Captions.** The captions of paragraphs in this Contract are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. DESIGN BUILD CONTRACTOR and City shall both be deemed equally to be the drafters of the Contract Documents, and the Contract Documents shall not be construed against City or DESIGN BUILD CONTRACTOR as the drafter.
- 14.6 Governing Law.** This Contract and all of the rights and obligations of the Parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. Exclusive venue for litigation shall be located in Harris County, Texas.
- 14.7 Non-Waiver.** If either Party fails to require the other to perform a term of this Contract, that failure does not prevent the Party from later enforcing that term and all other terms. If either Party waives the others' breach of a term, that waiver does not waive a later breach of this Contract. An approval or direction by the Director, or by any other employee or agent of the City, of any part of DESIGN BUILD CONTRACTOR's performance does not waive compliance with this Contract or establish a standard of performance other than that required by this Contract and by law.

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14.8 Binding Effect. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

14.9 Appointment. City hereby expressly reserves the right from time to time to designate by notice to DESIGN BUILD CONTRACTOR one or more representatives to act partially or wholly for City in connection with the performance of City's obligations hereunder. DESIGN BUILD CONTRACTOR shall act only upon instructions from such representatives unless otherwise specifically notified to the contrary.

14.10 Notices. All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as set forth in the preamble or to such other person or address as may be given in writing by either party to the other in accordance with the aforesaid and, in accordance with Paragraph 13.4 of the General Conditions.

14.11 Severability. In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid or unenforceable provision had not been included herein.

14.12 Independent Contractor. DESIGN BUILD CONTRACTOR recognizes that it is engaged as an independent contractor and acknowledges that City will have no responsibility to provide transportation, insurance, or other fringe benefits normally associated with employee status. DESIGN BUILD CONTRACTOR, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer, partner, employee, or agent of City by reason hereof, and that it will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of City, including, but not limited to, unemployment insurance benefits, social security coverage, or retirement benefits. DESIGN BUILD CONTRACTOR hereby agrees to make its own arrangements for any of such benefits as it may desire and agrees that it is responsible for all income taxes required by Applicable Law.

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

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14.14 Compliance with certain state law requirements.

- 14.14.1 **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.
- 14.14.2 **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.
- 14.14.3 **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.
- 14.14.4 **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.
- 14.14.5 **Human Trafficking.** 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. The DESIGN BUILD 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 Effective Date. The DESIGN BUILD CONTRACTOR shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the DESIGN BUILD CONTRACTOR or its subcontractors providing services or goods under this Contract.
- 14.14.6 **Confidentiality:** DESIGN BUILD CONTRACTOR, its agents, employees, contractors, and Subconsultants shall hold all City information, data, and Documents (collectively, the "Information") that they receive, or to which they have access, in strictest confidence. DESIGN BUILD CONTRACTOR, its agents, employees, contractors, and Subconsultants shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. DESIGN BUILD CONTRACTOR shall obtain written agreements from its agents, employees, contractors, and Subconsultants which bind them to the terms in this Section in substantially the same form as shown in Exhibit K.
- 14.14.7 **Sensitive Security Information:** The DESIGN BUILD 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 the DESIGN BUILD CONTRACTOR's possession as a result of this Contract.
- 14.14.8 **Airport Security and Badging:**

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- 14.14.8.1 DESIGN BUILD 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 DESIGN BUILD 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 DESIGN BUILD CONTRACTOR's operations. Within 10 days of notification in writing, DESIGN BUILD CONTRACTOR shall reimburse the City for any fine or penalty assessed against the City because of DESIGN BUILD CONTRACTOR's non-compliance with 49 CFR 1540 and 1542 or other applicable laws or regulations.
- 14.14.8.2 DESIGN BUILD 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.

14.15 Airport Symbols: DESIGN BUILD 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.

14.16 Title VI Assurances: DESIGN BUILD 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, DESIGN BUILD 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 "J," attached and incorporated herein.

14.17 Remedies Cumulative: 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 that exist now or in the future. Neither Party may terminate its duties under this Agreement except in accordance with its provisions.

14.18 Publicity: DESIGN BUILD 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.

14.19 Parties in Interest: This Agreement does not bestow any rights upon any third party, but binds and benefits the City and DESIGN BUILD CONTRACTOR only.

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

14.21 Airport Security Customs 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

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at George Bush Intercontinental Airport (IAH) and William P. Hobby Airport (HOU).

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

14.23 Non-Exclusivity. This Contract does not create an exclusive right for Design Consultant to perform all architecture, engineering, and other professional services concerning this Project. The City may procure and execute contracts with other architecture, engineering, or other professional firms for the same, similar, or additional services as those set forth in this Contract.

14.24 Compliance with Equal Opportunity Ordinance. Design Consultant shall comply with the City's Equal Employment Opportunity Ordinance set out in Section 15-17 of the Houston Code of Ordinances.

14.25 Preservation of Contracting Information

14.25.1 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.

14.25.2 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.

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EXHIBIT "A"

DEFINED TERMS

ARTICLE 1. INTERPRETATION

- 1.1 This Contract, including all Contract Documents, will be interpreted in accordance with the following:
- 1.1.1 **General.** The interpretation and miscellaneous provisions of the General Conditions apply to all Contract Documents and Work. References to sections, paragraphs, articles or other provisions shall be deemed to mean those contained in this main body of the Contract unless specified otherwise.
 - 1.1.2 **Entire Contract.** This Contract, including all Contract Documents, contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Contract. Without limiting the generality of the foregoing, this Contract shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions, including those contained in the RFQ (if any), the submittal made by the DESIGN BUILD CONTRACTOR in response thereto, the RFP, the proposal made by the DESIGN BUILD CONTRACTOR in response thereto, and any amendments or supplements to any such documents.
 - 1.1.3 **Gender and Plurality.** Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.
 - 1.1.4 **Headings.** The table of contents and any headings preceding the text of the articles, sections and subsections of this Contract shall be solely for convenience of reference and shall not affect its meaning, construction or effect.
 - 1.1.5 **References to Hereto.** The terms "hereto," "hereby," "hereof," "herein," "hereunder" and any similar terms refer to this Contract.
 - 1.1.6 **References to Including.** The words "include," "includes" and "including" are to be construed as meaning "include without limitation," "includes without limitation" and "including without limitation," respectively.
 - 1.1.7 **References to Statutes.** Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.
 - 1.1.8 **References to Governmental Authorities.** Each reference to the City or a Governmental Authority is deemed to include a reference to any successor to the City or such Governmental Authority or any organization or entity which has taken over the functions or responsibilities of the City or such Governmental Authority.

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Each reference to a private Person that is not an individual is deemed to include a reference to its successors and permitted assigns.

- 1.1.9 **References to Documents and Standards.** Each reference to an agreement, document, standard, principle or other instrument includes a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.
- 1.1.10 **Delivery of Documents in Digital Format.** In this Contract, the DESIGN BUILD CONTRACTOR is obligated to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The DESIGN BUILD CONTRACTOR agrees that all such documents shall be submitted to the City both in printed form (in the number of copies indicated) and, at the City's request, in digital form. Digital copies shall consist of computer readable data submitted in any standard interchange format which the City may reasonably request to facilitate the administration and enforcement of this Contract. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.
- 1.1.11 **Severability.** If any provision of this Contract is held to be invalid, unenforceable or illegal to any extent, such provision may be severed, and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Contract. If any such provision of this Contract is held to be invalid, unenforceable or illegal, the Parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Contract as nearly as possible to its original intent and effect.
- 1.1.12 **Drafting Responsibility.** The Parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Contract to the effect that ambiguous or conflicting terms or provisions should be construed against the Party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.
- 1.1.13 **Counterparts.** This Contract may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Contract.
- 1.1.14 **Governing Law.** This Contract and all of the rights and obligations of the Parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. Exclusive venue for litigation shall be located in Harris County, Texas.

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ARTICLE 2. DEFINITIONS

DEFINITIONS

In addition to the words and terms defined elsewhere in this Agreement, the following terms have the meanings set out below. 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. The words "shall," "will," and "must" are always mandatory and not merely permissive.

- 2.1.1 **"Acceptable"** means that proposed services, equipment and performance meet or exceed the requirements of this Agreement.
- 2.1.2 **"Acceptance"** means when the Director determines that the unit or work specified under this Agreement is complete and acceptable.
- 2.1.3 **"Acceptable Equivalent"** means any equipment, part, or product that complies with existing industry or Houston Airport System (HAS) standard governing its manufacture or use, and that is a functional equivalent of any equipment, part, product or specification described herein, or, which functionally satisfies an approved, negotiated or specified use made a part hereof.
- 2.1.4 **"Agreement"** means this contract between the parties, including all Exhibits and written amendments authorized by City Council and Contractor.
- 2.1.5 **"Air Operations Area (AOA)"** means any area of the airport used or intended to be used for the landing, takeoff, or surface maneuvering of aircraft. An air operations area shall include such paved and unpaved areas that are used or intended to be used for unobstructed movement of aircraft in addition to its associated runway, taxi-way or apron.
- 2.1.6 **"Airport"** means George Bush Intercontinental Airport Houston (IAH)
- 2.1.7 **"APM"** - Automated People Mover (also referenced as Skyway) means the entire Automated People Mover System from Terminal A to the Federal Inspection Services (FIS) Station, including, without limitation, the maintenance facility and all appurtenances and equipment related to the APM.
- 2.1.8 **"ATC"** means Automatic Train Control
- 2.1.9 **"ATO"** means Automatic Train Operations
- 2.1.10 **"ATP"** means Automatic Train Protection
- 2.1.11 **"Basic Services"** means those services described in Exhibit "A" of the Agreement.
- 2.1.12 **"Central Control Room"** means the area where the main computers and electronic control and communications equipment are located.
- 2.1.13 **"City"** is defined in Article I of this Agreement and includes its successors and assigns.
- 2.1.14 **"Contract"** means this contract between the parties, including all Exhibits and written amendments authorized by City Council and Contractor
- 2.1.15 **"Contractor"** is defined in Article I of this Agreement and includes its successors and assigns.
- 2.1.16 **"Contract Documents"** or **"Documents"** includes, but is not limited to, the following: scope of work, Construction Documents, General Conditions, agendas, analyses, audio or video recordings, bulletins, charts, circulars,

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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).

2.1.17 **“Corrective Maintenance (CM)”** means the repair of equipment and systems with parts, materials, and labor to restore performance to the designed function in the event of Skyway systems breakdown where any part of the Skyway systems unable to perform its designed function. CM includes repairs and replacement of related components, parts and appurtenances that have failed, no longer perform reliably, or have worn beyond safe tolerances.

2.1.18 **“Director”** means the Director of the Houston Airport System or the person he or she designates.

2.1.19 **“Downtime Event (Delay)”** means any event in which one or more route or system-related problems causes an interruption of the normally scheduled service mode. Time for such events shall be measured from the beginning of the interruption until all trains stopped on the guideway are restarted and normal operation in the scheduled mode is restored.

2.1.20 **“Dual Shuttle Mode”** – means the mode in which one Skyway train operates back and forth on both guideways (north and south, for a total of two operational trains).

2.1.21 **“Enterprise Asset Management System (EAMS)”** means the Houston Airport System identified computerized maintenance management system utilized to track and maintain HAS Assets.

2.1.22 **“Emergency Services Request”** – means a request from the Director to Contractor to perform Corrective maintenance or other work services due to a Major Failure or services deemed necessary by the Director. Contractor shall respond to in accordance with the Response Times in the Scope of Work.

2.1.23 **“Expendable Items”** means those items normally required during scheduled maintenance. The items are either consumed during use, used up during repeated use, or are not reusable after one usage. They typically include, but are not limited to, oils, lubricants, filters, gaskets, cleaning agents, paints, brooms, brushes, light bulbs, etc.

2.1.24 **“Fully Functional Vehicle”** means a vehicle that is completely operational and free of any malfunctions that may compromise system safety or that would provide an unacceptable level of passenger service, including, but not limited to, the following malfunctions:

- Train over-speed or improperly high acceleration rate.
- Service or emergency-brake failure.
- Unscheduled train door unlocking or opening, including emergency door/exit.
- Parted train.
- Unauthorized train motion.
- Loss of ATC signals or alarms.
- Propulsion power subsystem trip on a vehicle.
- Failure of any active sources of power for service and/or emergency braking.
- Loss of active power source for emergency brakes, such as vehicle air compressor or hydraulic system dysfunction or low battery in the case of the use of track brakes.
- Loss of presence detection for any vehicle or any uncertainty regarding its location.
- Emergency brake application.
- Loss of vehicle emergency radio.

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- Violation of any other ATP controlled condition.
- Vehicle suspension system failure, including deflated airbags and flat tires.
- Parking brake failure.
- Loss of ground brush connection to the ground rail.
- Failure of doors.
- Train/station alignment tolerance exceeded.
- Vehicle batteries low or battery charger fault.
- Loss of public address in vehicle.
- Vehicle Heating Ventilation Air Conditioning (HVAC) failure or temperature over 76 degrees Fahrenheit.
- Failure of vehicle emergency exit mechanism.

2.1.25 **“Furnish”** except as otherwise defined in greater detail, the term “furnish” means supply and deliver to Project Site, ready for unloading, unpacking, assembly, installation, use, etc., as applicable in each instance.

2.1.26 **“General Conditions”** means the General Conditions of the Contract identified as the 00700 Documents (“Exhibit J”) which may include terms and conditions that are substantially the same as those found in this Contract and therefore shall be read together and interpreted by City and Contractor to eliminate conflict between the two. However, should a conflict exist, after City Engineer and Contractor have used best efforts to reconcile the conflict, the provision most favorable to the City shall prevail.

2.1.27 **“Hours of Operation”** – Refer to XXXXXX

2.1.28 **“Houston Airport System (HAS)”** means the property and facilities of the City of Houston Department of Aviation which include, but are not limited to, George Bush Intercontinental Airport/Houston (IAH), William P. Hobby Airport (HOU), Ellington Airport (EFD), and the Houston Airport System Administration Buildings.

2.1.29 **“IAH”** means George Bush Intercontinental Airport/Houston.

2.1.30 **“Key Performance Indicator (KPI)”** means a measurement of the APM system performance level achieved by the Contractor as defined by the contract.

2.1.31 **“Loop Mode”** means the Normal mode of operation in which Skyway trains travel in pinched loop movement.

2.1.32 **“Maintenance Service”** means Preventive Maintenance (PM), Corrective Maintenance (CM) and Quality Assurance (QA).

2.1.33 **“Manufacturer”** means the original manufacturer or producer of a part or component.

2.1.34 **“Materials/Equipment”** means tangible materials, parts, tools, equipment, supplies, expendable or consumable inventory, or other similar items of personal property necessary to perform any of the Services required by the Contract.

2.1.35 **“Modernization”** means an alteration to the APM system or component that extends or restarts its service life.

2.1.36 **“Notice to Proceed”** or **“NTP”** means a written communication from the Director or the Chief Procurement Officer (CPO) to Contractor instructing Contractor to begin performance.

2.1.37 **“OEM”** means the Original Equipment Manufacturer or its successor of the APM System or one of its sub-components.

2.1.38 **“Obsolete Part”** means any part or piece of equipment that is proven by the Contractor to be out of production by the OEM where a similar part cannot be obtained to provide the same function, or whose operation has been discontinued due to regulatory requirements, or whose continued operation constitutes a hazard to safety.

2.1.39 **“Operation or Operational”** means that the APM is maintained at the level necessary to ensure that it is in a

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state of readiness for its intended use or full functional status and maintained in such condition for the use for which it is intended.

2.1.40 **“Other Service Request (OSR)”** means the form used to request Other Work/Services within the scope of this Agreement.

2.1.41 **“Other Work/Services”** means those services described in the Scope of Work of this Agreement as Other Work/Services and other services related to operations and maintenance services of the APM, other than Basic Services. Such services are only provided upon the Director's written request.

2.1.42 **“Preventative Maintenance (PM)”** means planned actions undertaken to retain an item at a specified level of performance by providing repetitive scheduled tasks which prolong system operation and useful life; i.e., inspection, cleaning, lubrication and part replacement.

2.1.43 **“PDS”** means Power Distribution System

2.1.44 **“Provide”** means furnish and install, complete, and ready for intended use, as applicable in each instance, except as otherwise defined in greater detail.

2.1.45 **“Rebuilt Parts”** mean used parts that have been dismantled and reconstructed as necessary; all internal parts are cleaned and free from rust and corrosion; all impaired, defective, or substantially worn parts are restored to a sound condition or replaced with new, rebuilt, or unimpaired used parts; all missing components are replaced with new, rebuilt or unimpaired used parts; and such other operations are performed as necessary to put the product in sound working condition. Rebuilt Parts must meet or exceed original manufacturer's specifications.

2.1.46 **“Reliability”** means the probability that the APM system will perform its intended function for a specific period expressed as a percentage.

2.1.47 **“Repair”** means to restore to good or sound working condition.

2.1.48 **“Replacement Equipment”** means equipment of similar capacity to existing equipment provided when the primary equipment is out of service.

2.1.49 **“Replacement Parts”** mean any item which by its installation becomes part of the APM.

2.1.50 **“Services”** means all the services to be provided under this Contract by Contractor or any of its subcontractors/sub-consultants, at any tier, including, without limitation, all the administrative, manufacturing and supply, programming, Licenses, installation, check-out, testing, verification, acceptance, operations and maintenance, management, documentation, and other duties and services of the Contractor to provide the System Availability as specified in this Contract.

2.1.51 **“Service Availability”** - See the Section of Scope entitled “SYSTEM AVAILABILITY, DELAYS, AND ADHERENCE TO MAINTENANCE SCHEDULES.”

2.1.52 **“Single Shuttle Mode”** means the mode in which Skyway trains operate back and forth on one side of guideway rather than in a loop.

2.1.53 **“Skyway”** (also referenced as **APM** - Automated People Mover) – means the entire Automated People Mover System from Terminal A to the Federal Inspection Services (FIS) Facility Station, including, without limitation, the maintenance facility and all appurtenances and equipment related to the APM.

2.1.54 **“Standard Operating Procedures (SOPs)”** - Standard Operating Procedures regarding the operation of the Skyway, as may be promulgated by Contractor and City's Representative from time to time, pursuant to this Contract. The SOPs are referenced herein and shall be considered part of the entire Contract.

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2.1.55 **“System Availability”** - See Section entitled “SYSTEM AVAILABILITY, DELAYS, AND ADHERENCE TO MAINTENANCE SCHEDULES”.

2.1.56 **“Station”** means the area where passengers embark and disembark the Skyway system.

2.1.57 **“System Reliability”** means the percentage of time the APM System is in normal public service during a reporting period versus the maximum amount of time during the reporting period.

2.1.58 **“Third Party Damage”** means destruction or damage to the APM system caused by a person or party who is not an agent or employee of the Contractor.

2.1.59 **“TIP”** – Tenant Improvement Project means the process the Contractor must follow to obtain all project requests. TIP process directions are found on airport website: fly2houston

2.1.60 **“Vandalism”** means an act of deliberate destruction or damage, or intent to cause deliberate destruction or damage to the APM system by any individual or group of individuals.

2.1.61 **“Upgrade”** means to modify or replace existing equipment in order to achieve a specified objective or the latest state-of-the-art configuration or both.

2.1.62 **“Work Area Notice (WAN)”** means a request to notify stakeholders that work will be performed in a specified area. This notice can only be released after a TIP has been approved.

2.1.63 **“Work”** means all services to be provided by the Contractor as defined by this Agreement including Exhibit A and any specifications herein.

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**EXHIBIT “B”
SCOPE OF SERVICES**

SAMPLE

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EXHIBIT “C”

Document 00700

GENERAL CONDITIONS (DESIGN BUILD)

SAMPLE

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EXHIBIT “D”

KEY PERSONNEL STAFF CLASSIFICATION AND RATES

DESIGNATED REPRESENTATIVE

On – Site Staff	Role	Rate
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Off – Site Staff	Role	Rate
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EXHIBIT “E”

PRECONSTRUCTION SERVICES SCHEDULE

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EXHIBIT “F”

COMPONENT AND GUARANTEED MAXIMUM PRICE PROPOSAL FORMS

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**EXHIBIT “G”
FORMS OF BONDS**

The following documents are incorporated by reference (See Division 00):

- City of Houston Standard Document No. 00610 – Performance Bond
- City of Houston Standard Document No. 00611 – Statutory Payment Bond
- City of Houston Standard Document No. 00612 – One-Year Maintenance Bond
- City of Houston Standard Document No. 00613 – One- Year Surface Correction Bond

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EXHIBIT “H”

CITY’S WAGE RATES

(See Division 00)

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**EXHIBIT "I"
PROJECT SCHEDULE**

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Exhibit J
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 nondiscrimination 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.

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FEDERAL CONTRACT PROVISIONS

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 sub-tier 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 List of Pertinent Nondiscrimination Acts and Authorities

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

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- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq)

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**Exhibit K
Intellectual Property Confidentially Agreement**

SUBCONTRACTOR'S ASSIGNMENT OF COPYRIGHT

**THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §**

1. Design Consultant has entered into a Contract with the **CITY OF HOUSTON, TEXAS** ("City") to provide _____

as well as related support and consulting services ("Services").

2. Subcontractor is or will be providing services for Design Consultant related to its Contract with the City.

3. In the course of Subcontractor's work for Design Consultant related to the provision of Services to the City, Contract Documents and other work products will be produced by Subcontractor for the benefit of the City for which Subcontractor will be compensated by Design Consultant.

4. Contract Documents include but are not limited to reports, charts, analyses, maps, letters, tabulations, computer programs, exhibits, notes, models, photographs, the original transparencies of all drawings, all graphic and written information prepared or assembled by Subcontractor and all other work products obtained or prepared by Subcontractor as part of its services for Design Consultant.

5. For and in consideration of the foregoing, the Subcontractor shall grant and assign and hereby does grant and assign to the City all right, title, interest and full ownership worldwide in and to any work, invention and all Contract Documents, or any modifications or improvements to them, and the copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights therein, that are discovered, conceived, developed, written or produced by the Subcontractor, its agents and employees pursuant to its contract with Design Consultant (collectively "Works"), to have and to hold the same unto the City absolutely.

6. The Subcontractor agrees that neither it nor any of its agents and employees shall have any right to assert or establish a claim or exercise any of the rights embodied in any copyrights,

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patents, trademarks, trade secrets and any other possessory or proprietary rights related to the Works. If requested by the Design Consultant, the Subcontractor shall place a conspicuous notation upon any such Works which indicates that the copyright, patent, trademark or trade secret thereto is owned by the City of Houston.

7. The Subcontractor shall execute all documents required by the Design Consultant and the Director of the Houston Airport System (“Director”) to further evidence such assignment and ownership. The Subcontractor shall cooperate with the Design Consultant and the City in registering, creating or enforcing any copyrights, patents, trademarks, trade secrets or other possessory or proprietary rights arising hereunder. If any assistance by the Subcontractor is requested and rendered pursuant to this Section, the City shall reimburse the Subcontractor for all out-of-pocket expenses incurred by the Subcontractor in rendering such assistance, subject to the availability of funds. On termination of the Subcontractor’s contract with Design Consultant or upon request by the Director, the Subcontractor shall deliver all Works to the City. The Subcontractor agrees that its agents and employees performing work hereunder are bound by the terms of this Exhibit.

IN WITNESS HEREOF, Subcontractor has executed this Assignment as of this _____ day of _____, 20_____.

Subcontractor

By:
Title:

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Exhibit "L"
Drug Quality Compliance Agreement

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

(Name of Company) (Consultant)

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

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

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

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"Exhibit M"

Design Consultant's Certification of NO Safety Impact Positions in Performance
of a City Contract

I, _____,
(Name) (Title)

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

have authority to bind the Design Consultant with respect to its bid, and hereby certify that Architect/Engineer has no employee safety impact positions, as defined in §5.18 of Executive Order No. 1-31, that will be involved in performing _____.
(Project)

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

(Date)

(Typed or Printed Name)

(Signature)

(Title)

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"Exhibit N"

Drug Policy Compliance Declaration

DRUG POLICY COMPLIANCE DECLARATION

I, _____ as an owner or
 _____ (Name) (Print/Type) _____ (Title)
 officer of _____ (Consultant) (Name of Company), have personal knowledge and full
 authority to make the following declarations:

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

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

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

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

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

From _____ to _____ the following test has occurred
 (Start date) (End date)

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

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

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

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

 (Date)

 (Typed or Printed Name)

 (Signature)

 (Title)

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EXHIBIT P – CONTRACT EXCEPTION CHART

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List of Changes:

- 02-04-2005: Added new Paragraph 3.25.1.3 concerning strict liability. Edited Paragraph 3.25.1.1 accordingly. Edited Paragraph 9.6.1.4 to remove the words "retainage of".*
- 08-15-2006: Revised many references to Section(s) to read Paragraph(s). Added Small Business Enterprise (SBE) requirement to Paragraphs 3.5.3, 3.5.3.1, 3.5.3.2 and 3.5.3.3.*
- 08-17-2006: Added new Paragraphs 5.2.4, 5.2.5, 9.2.1 and 9.4.2 concerning prompt payment provisions.*
- 10-10-2006: Added new Paragraphs 9.7.1.8, 9.7.1.9 concerning prompt payment provisions. Changed 9.8.1 to "20 days", and added language to 9.8.2 concerning "7 calendar days" and payment disputes.*
- 03-10-2008: Revised Table 1 after 11.2.11 (Installation Floater), and expanded Paragraph 11.5.1 on Maintenance Bonds.*
- 09-10-2008: Revised 5.2.5[sic] on page 17 to read 5.2.4.*
- 10-24-2008: Revised many sections to include or amend numbering.*
- 08-01-2009: Amended 1.1.6., definition of City Engineer. Amended 2.2 to say "Duties" and added 2.2.2 stating that the contract imposes no implied duty on City. Added 3.5.4 concerning Contractor Participation in the Pay or Play Program. Added 3.28 pertaining to Contractor Debt. Amended 4.1.2 to prohibit the City Engineer from delegating signature authority under 4.4. Amended 4.1.11 stating that City owes no duty to Contractor not stated in contract. Amended 4.3.2 to delete second sentence concerning City Engineers decision as a condition precedent to litigation. Amended 4.6 to require both parties to wave claims, attorney fees, and interest. Amended 11.2.6 to require Contractor to notify the City of any Insurance Policy cancelation or modification. Amended 11.2.8 to exempt Workers' Compensation coverage from certain documentation requirements. Amended Table 1 after 11.2.11 to specify automobile coverage requirements. Added 11.3.3 to address content requirements on Certificates of Insurance. Added 13.3.2 to extend joint and several liability to any series, affiliate, subsidiary, or successor to which Contractor assigns or transfers assets. Amended throughout to standardize references to Sections (x.x), Paragraphs (x.x.x), and Subparagraphs (x.x.x.x and below).*
- 01-15-2010: Amended Sections 4.4 and 4.6 concerning written decisions, findings of fact, and hearings by the City engineer, precedent to litigation, and interest under Chapter 2251 of the Texas Local Government Code. Removed Section 4.5 NON-BONDING MEDIATION and renumbered and renamed Section 4.6 as 4.5 CONDITION PRECEDENT TO SUIT; WAIVER OF ATTORNEY FEES AND INTEREST.*
- 05-01-2010: Amended Subsection 1.1.5 to change "municipal corporation" to "home rule municipality". Amended Subsection 3.9.1.1 to reflect change from Low Sulfur Diesel Fuel (500 ppm) to Ultra Low Sulfur Fuel (15 ppm).*
- 12-07-2010: Amended Section 14.1.1.5 to mirror change in Section 3.9.1.1; Low Sulfur Diesel Fuel was changed to Ultra Low Sulfur Fuel.*
- 12-09-2010: Amended Section 4.5 (and Table of Contents) by adding "Interim Payment Waiver & Release" language from Document 00850. Amended Subsection 11.3 to include new insurance requirements.*
- 12-10-2010: Inserted phrase into definition of Claim (§1.1.7) defining what a Claim can constitute.*

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- 01-14-2011: *Insertion of terms "Business Enterprise" and "Business Enterprise Policy" into definition section (§1.1) and insertion of those terms in §3.5, as appropriate, and deletion of old §3.5.3*
- 01-18-2011: *Renaming of §4.5; renumbering of Table of Contents due to introduction of "Interim Payment Waiver & Release" as a separate section (§4.6)*
- 01-31-2011: *Edit of Section 4.6, Interim Payment Waiver & Release" to reflect language suggestions of Litigation Division of Legal Dept.*
- 02-09-2011: *Edit of language in definitions of "Business Enterprise" and "Business Enterprise Policy"*
- 10-12-2011: *Amended Section 8.2, related to delays and extensions of time, to strengthen language suggested in 2011 Construction Law CLE.*
- 10-19-2011: *General reformatting of entire document for consistency; updating of header re: date; insertion of "Mayor's Office of Business Opportunity", as appropriate, to reflect name change*
- 10-27-2011: *Added a definition for "Mayor's Office of Business Opportunity"; amended Section 8.2.2 to refer to Section 4.3.6.2; replaced MWBE with "Business Enterprise", where appropriate; added "persons, or entities" to Section 5.1 to broaden applicable provisions; updated issue date to proposed Issue date of November 1, 2011.*
- 10-31-2011: *edited definition of "Business Enterprise"*
- 07-01-2013: *Edited Section 3.5.3 to remove the binding arbitration requirement for contractor and subcontractor claims, per change in Office of Business Opportunity policy.*
- 07-25-2013: *Removed Section 4.5.1, regarding conditions precedent to suit.*
- 11-01-2014: *Changed Section 3.5.2 to reflect a move away from arbitration to mediation to resolve subcontractor disputes; removed requirement for City Engineer's decision before a suit may be brought from Section 4.5.2; included language in Section 5.1.3 requiring submission of written contracts with Subcontractors within 30 days of Notice to Proceed issuance; changed Section 11.2 to reflect required insurance coverages updated for new fiscal year; added more explicit language regarding the City's Additional Insured status in Section 11.2.4 ("Insured Parties") and the City's waiver of subrogation requirement in Section 11.2.7 ("Subrogation").*
- 01-01-2015: *Changed the Automobile Insurance requirement from \$2,000,000 to \$1,000,000.*
- 07-01-2015: *Changed language in Article 11 to reflect new insurance requirements.*
- 07-10-2015: *Edited Section 9 and Section 14 to make electronic submission of certified payrolls mandatory.*
- 08-14-2015: *Edited Section 11 to reflect new standard insurance language for City contracts.*
- 07-01-2016: *Edited Section 3.5.4 to bring Pay or Play provisions up to date; updated Section 11 to make current required insurance coverages for FY2017.*
- 05-19-2017: *Reinserted Section 4.5.1, regarding conditions precedent to suit, and retitled Section 4.5, "Condition Precedent to Suit; Waiver of Attorney Fees and Interest".*
- 11-27-2017: *Inserted new Section 13.13, "Anti-Boycott of Israel", as per Texas House Bill 89, effective September 1, 2017. Inserted new Section 13.14, "Zero Tolerance for Human Trafficking and Related Activities", as per City of Houston Executive Order 1-56, "Zero Tolerance for Human Trafficking in City Service Contracts and Purchasing", effective immediately upon signature in October, 2017.*
- 05-10-2019: *Amended the "Governing Laws" provision to reflect new Legal Department language.*
- 12-31-2019: *Added new Section 3.29 to add Senate Bill 943-mandated contract provision, and renumbered as required.*
- 03-30-2021: *Amended Section 11.2 to update the required insurance amounts.*
- 08-10-2021: *Amended Section 14.2 to further delineate the need to explicitly submit and substantiate a Claim. Amended Article 13 to introduce new "Compliance with Certain State Law Requirements" section.*

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ARTICLE 1 - 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 II.

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.

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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

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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.

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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*

2.1.1 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.

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2.4 THE CITY'S RIGHT TO STOP THE WORK

2.4.1 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

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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*

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 applicable Business Enterprise Policy set out in this Agreement and in the Supplementary Conditions, as set out in Chapter 15, Article V of the City of Houston Code of Ordinances.

3.5.3 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. Contractor acknowledges that it has reviewed the requirements for Good Faith Efforts on file with the City's Office of Business Opportunity and shall comply with them.

3.5.3.1 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.

3.5.3.2 Contractor shall ensure that subcontracts with Business Enterprise firms are clearly labeled **"THIS CONTRACT MAY BE SUBJECT TO MEDIATION ACCORDING TO THE TEXAS ALTERNATIVE DISPUTE RESOLUTION ACT"** and contain the following terms:

3.5.3.2.1 (Business Enterprise) may not delegate or subcontract more than 50 percent of work under this subcontract to any other subcontractor without the express written consent of the City's OBO Director (the "Director").

3.5.3.2.2 (Business Enterprise) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the Subcontractors and Suppliers, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. (Business Enterprise) shall keep the books and records available for this 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.

3.5.3.2.3 Within five business days of execution of this subcontract, Contractor and (Business Enterprise) 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 the agent.

3.5.4 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**

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<p>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.</p> <p>3.6 <i>PREVAILING WAGE RATES</i></p> <p>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.</p> <p>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:</p> <p style="margin-left: 20px;">3.6.2.1 Federal Wage Rate General Decisions</p> <p style="margin-left: 40px;">3.6.2.1.1 Highway Rates</p> <p style="margin-left: 40px;">3.6.2.1.2 Building Rates</p> <p style="margin-left: 40px;">3.6.2.1.3 Heavy Construction Rates</p> <p style="margin-left: 40px;">3.6.2.1.4 Residential Rates</p> <p style="margin-left: 20px;">3.6.2.2 City Prevailing Wage Rates</p> <p style="margin-left: 40px;">3.6.2.2.1 Building Construction Rates</p> <p style="margin-left: 40px;">3.6.2.2.2 Engineering Construction Rates</p> <p style="margin-left: 40px;">3.6.2.2.3 Asbestos Worker Rates</p> <p>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.</p> <p>3.7 <i>LABOR CONDITIONS</i></p> <p>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.</p> <p>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.</p>	<p>3.8 <i>DRUG DETECTION AND DETERRENCE</i></p> <p>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.</p> <p>3.8.1.1 The Executive Order applies to the City's contracts for labor or services except the following:</p> <p style="margin-left: 20px;">3.8.1.1.1 contracts authorized by Emergency Purchase Orders,</p> <p style="margin-left: 20px;">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,</p> <p style="margin-left: 20px;">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,</p> <p style="margin-left: 20px;">3.8.1.1.4 contracts with non-profit organizations providing services at no cost or reduced cost to the public, and</p> <p style="margin-left: 20px;">3.8.1.1.5 contracts with federal, state, or local governmental entities.</p> <p>3.8.1.2 Prior to execution of the Contract, Contractor shall have filed with the City:</p> <p style="margin-left: 20px;">3.8.1.2.1 a Drug Policy Compliance Agreement form (Attachment "A" to the Executive Order), and</p> <p style="margin-left: 20px;">3.8.1.2.2 a copy of Contractor's drug free workplace policy, and</p> <p style="margin-left: 20px;">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).</p>
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- 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.
- 3.9.3.1 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.

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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

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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

3.14.1 Unless otherwise provided in the Contract, Contractor shall secure and pay for all construction permits, licenses, and inspections:

3.14.1.1 necessary for proper execution and completion of the Work; and

3.14.1.2 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.

3.17.2 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

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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.

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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*

3.22.1 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*

3.24.1 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;

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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

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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.

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.

3.28 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.

3.29.2 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.

3.29 PRESERVATION OF CONTRACTING INFORMATION

ARTICLE 4 - ADMINISTRATION OF THE CONTRACT

4.1 CONTRACT ADMINISTRATION

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

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.

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The City does not have control over or charge of and is not responsible for acts or omissions of Contractor, Subcontractors, or Suppliers.

testing of work in accordance with Paragraphs 13.6.3 and 13.6.4, whether such work is fabricated, installed, or completed.

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.

4.2 *COMMUNICATIONS IN ADMINISTRATION OF THE CONTRACT*

4.2.1 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.

4.1.4 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.

4.3 *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.

4.1.6 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.

4.3.2 *Decision of City Engineer:* Upon submission of Claim by Project Manager or Contractor, City Engineer will resolve Claims in accordance with Section 4.4.

4.1.7 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.

4.3.3 *Time Limits on Claims:* Claims by Contractor must be made within 90 days after occurrence of event giving rise to the Claim.

4.1.8 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.

4.3.4 *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.

4.1.9 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.

4.3.4.1 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.

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

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

4.1.11 When City Engineer considers it necessary to implement the intent of the Contract, City Engineer may require additional inspection or

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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

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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

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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**

6.1.1 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

6.4.1 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.

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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.

- 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

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request for the data by City Engineer shall constitute waiver of a Claim.

	Overhead	Profit
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

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.

7.3.2.2 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

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

7.4.1 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

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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

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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*

9.3.1 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

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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.

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- 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

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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

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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*

10.1.1 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

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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*

10.4.1 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

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Engineer in City Engineer's sole discretion as to conformance with these requirements.

premium requirements hereunder and the City is not obligated to pay any premiums.

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.

11.2.11 *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.

11.2.6 *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.

11.2.12 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.

11.2.7 *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.

11.2.13 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.

11.2.8 *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

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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

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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
1. Workers' Compensation	<ul style="list-style-type: none"> • Texas Statutory Limits for Workers' Compensation
2. 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)
3. 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
4. Owner's and Contractor's Protective Liability	<ul style="list-style-type: none"> • \$1,000,000 each Occurrence/ aggregate
5. 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
6. 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
7. 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

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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

11.4.1 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

11.5.1 *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

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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

11.7.1 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

12.1.1 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

12.3.1 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.

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ARTICLE 13 - MISCELLANEOUS PROVISIONS

13.1 *GOVERNING LAW AND VENUE*

13.1.1 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*

13.2.1 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.

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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*

13.7.1 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*

13.8.1 The Contract does not bestow any rights upon any third party, but binds and benefits the Parties only.

13.9 *ENTIRE CONTRACT*

13.9.1 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*

13.10.1 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*

13.12.1 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*

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

ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 *TERMINATION BY THE CITY FOR CAUSE*

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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.

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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.

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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]

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SAMPLE AGREEMENT SUBJECT TO CHANGE

**AGREEMENT FOR OPERATIONS AND MAINTENANCE SERVICES FOR THE HOUSTON
AIRPORT SYSTEM**

ARTICLE 1. PARTIES

THIS AGREEMENT FOR OPERATIONS AND MAINTENANCE SERVICES (this "Agreement") is made on the date countersigned by the City Controller between the **CITY OF HOUSTON, TEXAS** (the "City"), a home-rule city of the State of Texas principally situated in Harris County and _____ ("Contractor"), a corporation doing business in Texas.

1.01 ADDRESS:

1.01.1 The initial addresses of the Parties, which one Party may change by giving written notice 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

CONTRACTOR
ADDRESS
CITY, ZIP
Attention:
Phone:

The Parties agree as follows:

1.02 TABLE OF CONTENTS

1.02.1 This Agreement consists of the following sections:

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Exhibit B-2 Pricing List and Not to Exceed Pricing
Exhibit B-3 Performance Bond
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- "D" CERTIFICATION OF NO SAFETY IMPACT POSITIONS
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- "G" FEDERAL PROVISIONS

1.03 **DEFINITIONS**

1.03.1 Certain terms used in this Agreement are defined in Exhibit "A".

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1.04 SIGNATURES

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

CITY OF HOUSTON, TEXAS

Signed by:

name
title
[email](#)
Federal Tax ID Number:

Mayor

ATTEST/SEAL:

COUNTERSIGNED BY:

City Secretary

City Controller

APPROVED:

COUNTERSIGNATURE DATE:

Director, Houston Airport System

APPROVED AS TO FORM:

Assistant City Attorney
L.D. File No. _____

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ARTICLE 2. DUTIES OF CONTRACTOR

2.01 SCOPE OF SERVICES

2.01.1 In consideration of the payments specified in this Agreement, Contractor shall provide all supervision, labor, tools, equipment, permits, parts, expendable items, material, and supplies necessary to perform the services described in Exhibit "B".

2.02 COORDINATE PERFORMANCE

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

2.03 TIME EXTENSIONS

2.03.1 If Contractor requests an extension of time to complete its performance, then the Director, in consultation with the CPO, may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

2.03.2 If the Director requests an extension of time to complete Contractor's performance, then the CPO may, upon consultation with the Director involved, extend the time so long as the extension does not exceed 90 calendar days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

2.04. REPORTS

2.04.1 Contractor shall submit all reports and progress updates required by the Director or CPO.

2.05 PAYMENT OF SUBCONTRACTORS

2.05.1 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.

2.05.2 **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**

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LIABILITY OF THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES.

2.05.3 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.

2.06 RELEASE

2.06.1 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.

2.07 INDEMNIFICATION

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

2.07.1.1 CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED SUBPARAGRAPHS 2.07.1.1 THROUGH 2.07.1.3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

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

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

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2.07.2 CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

2.08 SUBCONTRACTOR'S INDEMNITY

2.08.1 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.

2.09 INDEMNIFICATION PROCEDURES

2.09.1 Notice of 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 30 days. The notice must include the following:

2.09.1.1 a description of the indemnification event in reasonable detail;

2.09.1.2 the basis on which indemnification may be due; and

2.09.1.3 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 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.

2.09.2 Defense of Claims

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

2.09.2.2 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.

2.10 INSURANCE

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

<u>COVERAGE</u>	<u>LIMIT OF LIABILITY</u>
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	<ul style="list-style-type: none"> • Bodily Injury by Accident \$500,000 (each accident) • Bodily Injury by Disease \$500,000 (policy limit) • Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence, and \$2,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit for: (i) Any Auto; or (ii) All Owned, Hired, and Non-Owned Autos
Professional Liability (if applicable)	\$1,000,000 per occurrence; \$2,000,000 aggregate
Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability and Automobile Liability	\$10,000,000
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

2.10.2 **Insurance Coverage.** At all times during the term of this Agreement and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the Agreement requirements. 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 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.

2.10.3 **Form of insurance.** The form of the insurance shall be approved by the

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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 Agreement. The policy issuer shall: (i) have a Certificate of Authority to transact insurance business in Texas; or (ii) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide.

2.10.4 Required Coverage. The City shall be an Additional Insured under this Agreement, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other Agreement provisions. Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement. 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 Agreement with a duration of two years after substantial completion. 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.

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

2.10.6 Other Insurance. If requested by the Director, Contractor shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Contractor's operations under this Agreement.

2.11 WARRANTIES

2.11.1 Contractor warrants that it shall perform all work in a good and workmanlike

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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.

2.11.2 With respect to any parts and goods it furnishes, Contractor warrants:

2.11.2.1 that all items are free of defects in title, design, material, and workmanship;

2.11.2.2 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;

2.11.2.3 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 (when the replaced item was new); and

2.11.2.4 that no item or its use infringes any patent, copyright, or proprietary right.

2.12 CONFIDENTIALITY

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

2.13. USE OF WORK PRODUCTS

2.13.1 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.

2.13.2 Contractor warrants that it owns the copyright to the Documents.

2.13.3 Contractor shall deliver the original Documents to the Director on request. Within five working days after this Agreement terminates, Contractor shall deliver to the Director the original Documents, and all other files and materials Contractor produces or gathers during its performance under this Agreement.

2.14 LICENSES AND PERMITS

2.14.1 Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates

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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.

2.15 COMPLIANCE WITH LAWS

2.15.1 Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances in its performance under this Agreement.

2.16 COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY ORDINANCE

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

2.17 MWBE COMPLIANCE

2.17.1 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. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least % of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunities ("OBO") and will comply with them.

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

[Name of 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 Office of Business Opportunity Director (the "Director").

[Name of 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 4 years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

Within five Business Days of execution of this subcontract, 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.

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

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by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

2.18. DRUG ABUSE DETECTION AND DETERRENCE

- 2.18.1 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 (the "Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
- 2.18.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):
- 2.18.2.1 a copy of its drug-free workplace policy;
 - 2.18.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "C", together with a written designation of all safety impact positions; and
 - 2.18.2.3 if applicable (e.g., no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "D".
- 2.18.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "E". 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.
- 2.18.4 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.
- 2.18.5 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

2.19 CONFLICTS OF INTEREST

- 2.19.1 If an actual or potential conflict arises between the City's interests and the interests of other client(s) Contractor represents, Contractor shall immediately notify the Director in writing. The City Controller shall issue a letter of consent or non-consent to Contractor's representation, potential or otherwise, of the other client(s)

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within 10 Business Days after receipt of Contractor's notice. If the City Controller issues a non-consent letter, Contractor shall immediately terminate its representation, potential or otherwise, of the other client(s) whose interests are or may be in conflict with those of the City.

2.20. PAY OR PLAY

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

2.21. CONTRACTOR'S PERFORMANCE

2.21.1 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.

2.22. ADDITIONS AND DELETIONS

2.22.1 Additional Products and Services. Subject to the allocation of funds, the CPO may add similar equipment, supplies, services, or locations, within the scope of this Agreement, to the list of equipment, supplies, services, or locations to be performed or provided by giving written notification to Contractor. For purposes of this Section, the "Effective Date" means the date specified in the notification from the CPO. As of the Effective Date, each item added is subject to this Agreement, as if it had originally been a part, but the charge for each item starts to accrue only on the Effective Date. In the event the additional equipment, supplies, services, or locations are not identical to the items(s) already under this Agreement, the charges therefor will then be Contractor's normal and customary charges or rates for the equipment, supplies, services, or locations classified in the Fees and Costs (Exhibit "F").

2.22.2 Exclusion of Products and Services. If a deliverable or service that is subject to this Agreement is deleted, lost, stolen, destroyed, damaged, sold, replaced, or otherwise disposed of, the CPO may exclude it from the operation of this Agreement by notifying Contractor in writing. The notice takes effect immediately on its receipt by Contractor. More than one notice may be given. When a notice is received, Contractor shall delete the charge for the excluded deliverable or service from the sum(s) otherwise due under this Agreement.

2.22.3 The total charges for additions and deletions to this Agreement must never exceed 25% of the original contract amount unless:

2.22.3.1 The additions are exempt from the competitive bidding or proposal requirements set forth in Tex. Local Govt. Code Chapter 252; or

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2.22.3.2 The City acquires the additions from Contractor through a competitive bid or competitive proposal.

2.23. CHANGES

2.23.1 At any time during the Agreement Term, the CPO may issue a Change Order to increase or decrease the scope of services or change plans and specifications as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.

2.23.2 The CPO will issue the Change Order in substantially the following form:

<u>CHANGE ORDER</u>	
TO:	[Name of Contractor]
FROM:	City of Houston, Texas (the "City")
DATE:	[Date of Notice]
SUBJECT:	Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]
Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:	
[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]	
Signed:	[Signature of CPO]

2.23.3 The CPO may issue more than one Change Order, subject to the following limitations:

2.23.3.1 The City Council expressly authorizes the CPO to approve a Change Orders up to \$50,000. A Change Order of more than \$50,000 over the approved contract amount must be approved by the City Council.

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

2.23.3.3 The total of all Change Orders issued under this section may not increase the original contract amount by more than 25%.

2.23.4 Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed.

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If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The CPO's decision regarding a time extension is final.

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

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

2.24 ENVIRONMENTAL LAWS

2.24.1 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:

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

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

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

2.24.1.4 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;

2.24.1.5 the Toxic Substances Control Act, 15 U.S.C., Section 2601 et seq.;

2.24.1.6 the Clean Air Act as amended, 42 U.S.C. 7401 et seq.;

2.24.1.7 the Clean Water Act, 33 U.S.C., Section 1251, et seq.;

2.24.1.8 the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801 et seq.;

2.24.1.9 the Resources Conservation and Recovery Act, 42 U.S.C., Section 6901 et seq.;

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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").

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.

Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to or from the Airport, 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,:

- 2.24.1.10 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,
 - 2.24.1.11 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
 - 2.24.1.12 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.
- 2.24.2 The Airport is subject to the National Pollution Discharge Elimination System Program (ANPDES"), 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.
- 2.24.3 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 "ABest 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.

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- 2.24.4 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.
- 2.24.5 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.
- 2.24.6 If either party asks, the other party shall provide any non-privileged information submitted to a government entity(ies) under applicable NPDES stormwater regulations.
- 2.24.7 Contractor appoints the City as its agent to negotiate with the appropriate governmental entity(ies) any modifications to the City's permit.
- 2.24.8 Contractor shall participate in any City organized task force or other work group established to coordinate stormwater activities at the Airport.
- 2.24.9 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.
- 2.24.10 The City's remedies with regard to Environmental Requirements are cumulative and survive termination of this Agreement.
- 2.24.11 **WITH NO INTENT TO LIMIT CONTRACTOR'S INDEMNIFICATION TO THE CITY SET FORTH IN SECTION [REDACTED], 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:**
- 2.24.11.1 ANY INVESTIGATION, MONITORING, CLEANUP, CONTAINMENT, REMOVAL, STORAGE, OR RESTORATION WORK PERFORMED BY THE CITY OR A THIRD PARTY DUE TO CONTRACTOR'S , ITS EMPLOYEES', OR AGENTS' USE OR PLACEMENT OF HAZARDOUS MATERIALS (OF WHATEVER KIND OR NATURE, KNOWN OR UNKNOWN) ON THE AIRPORT PREMISES, OR ANY OTHER AREAS IMPACTED BY THIS AGREEMENT;

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- 2.24.11.2 ANY ACTUAL, THREATENED, OR ALLEGED HAZARDOUS MATERIALS CONTAMINATION OF THE AIRPORT PREMISES BY CONTRACTOR, ITS EMPLOYEES, OR AGENTS;
- 2.24.11.3 THE DISPOSAL, RELEASE, OR THREATENED RELEASE OF HAZARDOUS MATERIALS BY CONTRACTOR, ITS EMPLOYEES, OR AGENTS AT THE AIRPORT THAT AFFECTS THE SOIL, AIR, WATER, VEGETATION, BUILDINGS, PERSONAL PROPERTY, OR PERSONS;
- 2.24.11.4 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 AIRPORT; OR
- 2.24.11.5 ANY VIOLATION BY CONTRACTOR, ITS EMPLOYEES, OR AGENTS OF ANY ENVIRONMENTAL LAWS.
- 2.24.11.6 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.

2.25 ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES

2.25.1 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.

2.26 PRESERVATION OF CONTRACTING INFORMATION

2.26.1 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

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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.

- 2.26.2 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.

2.27 **PERSONNEL OF CONTRACTOR**

2.27.1 Contractor shall replace any of its personnel or subcontractors whose work product is deemed unsatisfactory by the Director.

ARTICLE 3. DUTIES OF CITY

3.01 **PAYMENT TERMS**

- 3.01.1 Subject to all terms and conditions of this Agreement, the City agrees to pay for the services described in Exhibit "B" that are rendered by Contractor based upon monthly invoices showing the number of individual tasks and related services performed at the rates set forth in Exhibit "F". The fees must only be paid from Allocated Funds as provided below.
- 3.01.2 Early Payment Discount. The City of Houston's standard payment term is to pay 30 days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Tex. Gov't Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from Contractor as follows:

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

- 3.01.3 If the City fails to make a payment according to the early payment schedule above,

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

3.02 TAXES

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

3.03 METHOD OF PAYMENT

3.03.1 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.

3.04 LIMIT OF APPROPRIATION

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

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

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

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NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

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

\$ _____

3.04.2.2 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.

3.05 ACCESS TO SITE

3.05.1 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.

3.06 ACCESS TO DATA

3.06.1 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.

3.06.2 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.

3.06.3 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 4. TERM AND TERMINATION

4.01. AGREEMENT TERM

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4.01.1 This Agreement is effective on the Countersignature Date and shall remain in effect for _____ (XX) months, unless sooner terminated under this Agreement (the "Initial Term").

4.02. NOTICE TO PROCEED

4.02.1 Contractor shall begin performance under this Agreement on the date specified in a Notice to Proceed from the CPO or Director.

4.03. RENEWALS

4.03.1 Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for one successive six month term 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.

4.04. TERMINATION FOR CONVENIENCE BY CITY

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

4.04.2 On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in this Agreement unless the fees exceed the allocated funds remaining under this Agreement.

4.04.3 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.

4.05. TERMINATION FOR CAUSE BY CITY

4.05.1 If Contractor defaults under this Agreement, the Director may terminate this Agreement after providing Contractor written notice and an opportunity to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies that exist now or in the future. Default by Contractor occurs if:

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- 4.05.1.1 Contractor fails to perform any of its material duties under this Agreement;
- 4.05.1.2 Contractor becomes insolvent;
- 4.05.1.3 all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
- 4.05.1.4 a receiver or trustee is appointed for Contractor.

4.05.2 If a default occurs and the Director determines that the City wishes to terminate the Agreement, then the Director must deliver a written notice to Contractor describing the default and the proposed termination date, with a copy of the notice to the CPO. The date must be at least 30 days after Contractor receives notice. The Director, at his or her sole option, may extend the termination date to a later date. If Contractor cures the default before the proposed termination date, then the proposed termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate this Agreement on the termination date, at no further obligation of the City.

4.05.3 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.

4.06 TERMINATION FOR CAUSE BY CONTRACTOR

4.06.1 Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date. The date must be at least 30 days after the Director receives the notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date

4.07. REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS

4.07.1 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 5. MISCELLANEOUS

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5.01 INDEPENDENT CONTRACTOR

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

5.02 FORCE MAJEURE

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

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

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

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

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

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

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

5.03 SEVERABILITY

5.03.1 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.

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5.04 ENTIRE AGREEMENT

5.04.1 This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties with respect to this 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.

5.05 WRITTEN AMENDMENT

5.05.1 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.

5.06 GOVERNING LAW AND VENUE

5.06.1 This Agreement 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 Agreement shall lie exclusively in Harris County, Texas.

5.07 NOTICES

5.07.1 All notices to either Party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, UPS, or any other national overnight express delivery service. The notice must be addressed to the Party to whom the notice is given at its address set out in Article 1 of this Agreement or other address the receiving Party has designated previously by proper notice to the sending Party. Postage or delivery charges must be paid by the Party giving the notice.

5.08 CAPTIONS

5.08.1 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.

5.09 NON-WAIVER

5.09.1 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.

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

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5.10 INSPECTIONS AND AUDITS

5.10.1 City representatives may perform, or have performed: (i) audits of Contractor's books and records; and (ii) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least three 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.

5.11 ENFORCEMENT

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

5.12 AMBIGUITIES

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

5.13 SURVIVAL

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

5.14 PUBLICITY

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

5.15 PARTIES IN INTEREST

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

5.16 SUCCESSORS AND ASSIGNS

5.16.1 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.

5.17 BUSINESS STRUCTURE AND ASSIGNMENTS

5.17.1 Contractor shall not assign this Agreement at law or otherwise or dispose of all or

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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 under Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the Director and CPO 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.

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

5.18 REMEDIES CUMULATIVE

5.18.1 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 that exist now or in the future. Neither Party may terminate its duties under this Agreement except in accordance with its provisions.

5.19 CONTRACTOR DEBT

5.19.1 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, HE OR SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

5.20 TITLE VI ASSURANCES

5.20.1 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.

5.21 AIRPORT SYMBOLS

5.21.1 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.

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5.22 AIRPORT SECURITY AND BADGING

5.22.1 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.

5.22.2 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.

5.23 SENSITIVE SECURITY INFORMATION

5.23.1 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.

5.24 AIRPORT CUSTOMS SECURITY BOND

5.24.1 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).

5.25 DISPUTE RESOLUTION

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

5.25.2 Except as may otherwise be provided by law, a dispute that (1) does not involve a question of law; (2) arises during the performance of this Agreement; and (3) is not resolved between the Project Administrator and Contractor must be handled as described below:

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

5.25.2.2 If Contractor desires to appeal a decision of the Project Administrator, Contractor must submit a written appeal to the

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Director. Contractor must file its written appeal within 7 working days following receipt of the Project Administrator's original decision. The Director shall provide Contractor with a written response to the appeal within 14 working days following its receipt. The decision of the Director is final.

5.26 COMPLIANCE WITH CERTAIN STATE LAW REQUIREMENTS

- 5.26.1 **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.
- 5.26.2 **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.
- 5.26.3 **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.
- 5.26.4 **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.

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EXHIBIT "A"

DEFINITIONS

In addition to the words and terms defined elsewhere in this Agreement, the following terms have the meanings set out below. 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. The words "shall," "will," and "must" are always mandatory and not merely permissive.

- 1.1.1 **"Acceptable"** means that proposed services, equipment and performance meet or exceed the requirements of this Agreement.
- 1.1.2 **"Acceptance"** means when the Director determines that the unit or work specified under this Agreement is complete and acceptable.
- 1.1.3 **"Acceptable Equivalent"** means any equipment, part, or product that complies with existing industry or Houston Airport System (HAS) standard governing its manufacture or use, and that is a functional equivalent of any equipment, part, product or specification described herein, or, which functionally satisfies an approved, negotiated or specified use made a part hereof.
- 1.1.4 **"Agreement"** means this contract between the parties, including all Exhibits and written amendments authorized by City Council and Contractor.
- 1.1.5 **"Air Operations Area (AOA)"** means any area of the airport used or intended to be used for the landing, takeoff, or surface maneuvering of aircraft. An air operations area shall include such paved and unpaved areas that are used or intended to be used for unobstructed movement of aircraft in addition to its associated runway, taxi-way or apron.
- 1.1.6 **"Airport"** means George Bush Intercontinental Airport Houston (IAH)
- 1.1.7 **"APM"** - Automated People Mover (also referenced as Skyway) means the entire Automated People Mover System from Terminal A to the Federal Inspection Services (FIS) Station, including, without limitation, the maintenance facility and all appurtenances and equipment related to the APM.
- 1.1.8 **"ATC"** means Automatic Train Control
- 1.1.9 **"ATO"** means Automatic Train Operations
- 1.1.10 **"ATP"** means Automatic Train Protection
- 1.1.11 **"Basic Services"** means those services described in Exhibit "A" of the Agreement.
- 1.1.12 **"Central Control Room"** means the area where the main computers and electronic control and communications equipment are located.
- 1.1.13 **"City"** is defined in Article I of this Agreement and includes its successors and assigns.
- 1.1.14 **"Contract"** means this contract between the parties, including all Exhibits and written amendments authorized by City Council and Contractor

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1.1.15 “**Contractor**” is defined in Article I of this Agreement and includes its successors and assigns.

1.1.16 “**Contract Documents**” or “**Documents**” includes, but is not limited to, the following: scope of work, Construction Documents, General Conditions, 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).

1.1.17 “**Corrective Maintenance (CM)**” means the repair of equipment and systems with parts, materials, and labor to restore performance to the designed function in the event of Skyway systems breakdown where any part of the Skyway systems unable to perform its designed function. CM includes repairs and replacement of related components, parts and appurtenances that have failed, no longer perform reliably, or have worn beyond safe tolerances.

1.1.18 “**Director**” means the Director of the Houston Airport System or the person he or she designates.

1.1.19 “**Downtime Event (Delay)**” means any event in which one or more route or system-related problems causes an interruption of the normally scheduled service mode. Time for such events shall be measured from the beginning of the interruption until all trains stopped on the guideway are restarted and normal operation in the scheduled mode is restored.

1.1.20 “**Dual Shuttle Mode**” – means the mode in which one Skyway train operates back and forth on both guideways (north and south, for a total of two operational trains).

1.1.21 “**Enterprise Asset Management System (EAMS)**” means the Houston Airport System identified computerized maintenance management system utilized to track and maintain HAS Assets.

1.1.22 “**Emergency Services Request**” – means a request from the Director to Contractor to perform Corrective maintenance or other work services due to a Major Failure or services deemed necessary by the Director. Contractor shall respond to in accordance with the Response Times in the Scope of Work.

1.1.23 “**Expendable Items**” means those items normally required during scheduled maintenance. The items are either consumed during use, used up during repeated use, or are not reusable after one usage. They typically include, but are not limited to, oils, lubricants, filters,

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gaskets, cleaning agents, paints, brooms, brushes, light bulbs, etc.

1.1.24 **“Fully Functional Vehicle”** means a vehicle that is completely operational and free of any malfunctions that may compromise system safety or that would provide an unacceptable level of passenger service, including, but not limited to, the following malfunctions:

- Train over-speed or improperly high acceleration rate.
- Service or emergency-brake failure.
- Unscheduled train door unlocking or opening, including emergency door/exit.
- Parted train.
- Unauthorized train motion.
- Loss of ATC signals or alarms.
- Propulsion power subsystem trip on a vehicle.
- Failure of any active sources of power for service and/or emergency braking.
- Loss of active power source for emergency brakes, such as vehicle air compressor or hydraulic system dysfunction or low battery in the case of the use of track brakes.
- Loss of presence detection for any vehicle or any uncertainty regarding its location.
- Emergency brake application.
- Loss of vehicle emergency radio.
- Violation of any other ATP controlled condition.
- Vehicle suspension system failure, including deflated airbags and flat tires.
- Parking brake failure.
- Loss of ground brush connection to the ground rail.
- Failure of doors.
- Train/station alignment tolerance exceeded.
- Vehicle batteries low or battery charger fault.
- Loss of public address in vehicle.
- Vehicle Heating Ventilation Air Conditioning (HVAC) failure or temperature over 76 degrees Fahrenheit.
- Failure of vehicle emergency exit mechanism.

1.1.25 **“Furnish”** except as otherwise defined in greater detail, the term "furnish" means supply and deliver to Project Site, ready for unloading, unpacking, assembly, installation, use, etc., as applicable in each instance.

1.1.26 **“General Conditions”** means the General Conditions of the Contract identified as the 00700 Documents (“Exhibit J”) which may include terms and conditions that are substantially the same as those found in this Contract and therefore shall be read together and interpreted by City and Contractor to eliminate conflict between the two. However, should a conflict exist, after City Engineer and Contractor have used best efforts to reconcile the conflict, the provision most favorable to the City shall prevail.

1.1.27 **“Hours of Operation”** – Refer to Attachment II to Exhibit A

1.1.28 **“Houston Airport System (HAS)”** means the property and facilities of the City of Houston Department of Aviation which include, but are not limited to, George Bush Intercontinental Airport/Houston (IAH), William P. Hobby Airport (HOU), Ellington Airport (EFD), and the Houston Airport System Administration Buildings.

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1.1.29 **"IAH"** means George Bush Intercontinental Airport/Houston.

1.1.30 **"Key Performance Indicator (KPI)"** means a measurement of the APM system performance level achieved by the Contractor as defined by the contract.

1.1.31 **"Loop Mode"** means the Normal mode of operation in which Skyway trains travel in pinched loop movement.

1.1.32 **"Maintenance Service"** means Preventive Maintenance (PM), Corrective Maintenance (CM) and Quality Assurance (QA).

1.1.33 **"Manufacturer"** means the original manufacturer or producer of a part or component.

1.1.34 **"Materials/Equipment"** means tangible materials, parts, tools, equipment, supplies, expendable or consumable inventory, or other similar items of personal property necessary to perform any of the Services required by the Contract.

1.1.35 **"Modernization"** means an alteration to the APM system or component that extends or restarts its service life.

1.1.36 **"Notice to Proceed"** or **"NTP"** means a written communication from the Director or the Chief Procurement Officer (CPO) to Contractor instructing Contractor to begin performance.

1.1.37 **"OEM"** means the Original Equipment Manufacturer or its successor of the APM System or one of its sub-components.

1.1.38 **"Obsolete Part"** means any part or piece of equipment that is proven by the Contractor to be out of production by the OEM where a similar part cannot be obtained to provide the same function, or whose operation has been discontinued due to regulatory requirements, or whose continued operation constitutes a hazard to safety.

1.1.39 **"Operation or Operational"** means that the APM is maintained at the level necessary to ensure that it is in a state of readiness for its intended use or full functional status and maintained in such condition for the use for which it is intended.

1.1.40 **"Other Service Request (OSR)"** means the form used to request Other Work/Services within the scope of this Agreement.

1.1.41 **"Other Work/Services"** means those services described in the Scope of Work of this Agreement as Other Work/Services and other services related to operations and maintenance services of the APM, other than Basic Services. Such services are only provided upon the Director's written request.

1.1.42 **"Preventative Maintenance (PM)"** means planned actions undertaken to retain an item at a specified level of performance by providing repetitive scheduled tasks which prolong system operation and useful life; i.e., inspection, cleaning, lubrication and part replacement.

1.1.43 **"PDS"** means Power Distribution System

1.1.44 **"Provide"** means furnish and install, complete, and ready for intended use, as

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applicable in each instance, except as otherwise defined in greater detail.

1.1.45 **“Rebuilt Parts”** mean used parts that have been dismantled and reconstructed as necessary; all internal parts are cleaned and free from rust and corrosion; all impaired, defective, or substantially worn parts are restored to a sound condition or replaced with new, rebuilt, or unimpaired used parts; all missing components are replaced with new, rebuilt or unimpaired used parts; and such other operations are performed as necessary to put the product in sound working condition. Rebuilt Parts must meet or exceed original manufacturer's specifications.

1.1.46 **“Reliability”** means the probability that the APM system will perform its intended function for a specific period expressed as a percentage.

2.1.47 **“Repair”** means to restore to good or sound working condition.

2.1.48 **“Replacement Equipment”** means equipment of similar capacity to existing equipment provided when the primary equipment is out of service.

1.1.49 **“Replacement Parts”** mean any item which by its installation becomes part of the APM.

1.1.50 **“Services”** means all the services to be provided under this Contract by Contractor or any of its subcontractors/sub-consultants, at any tier, including, without limitation, all the administrative, manufacturing and supply, programming, Licenses, installation, check-out, testing, verification, acceptance, operations and maintenance, management, documentation, and other duties and services of the Contractor to provide the System Availability as specified in this Contract.

1.1.51 **“Service Availability”** - See the Section of Scope entitled “SYSTEM AVAILABILITY, DELAYS, AND ADHERENCE TO MAINTENANCE SCHEDULES.”

1.1.52 **“Single Shuttle Mode”** means the mode in which Skyway trains operate back and forth on one side of guideway rather than in a loop.

1.1.53 **“Skyway”** (also referenced as **APM - Automated People Mover**) – means the entire Automated People Mover System from Terminal A to the Federal Inspection Services (FIS) Facility Station, including, without limitation, the maintenance facility and all appurtenances and equipment related to the APM.

1.1.54 **“Standard Operating Procedures (SOPs)”** - Standard Operating Procedures regarding the operation of the Skyway, as may be promulgated by Contractor and City's Representative from time to time, pursuant to this Contract. The SOPs are referenced herein and shall be considered part of the entire Contract.

1.1.55 **“System Availability”** - See Section entitled “SYSTEM AVAILABILITY, DELAYS, AND ADHERENCE TO MAINTENANCE SCHEDULES”.

1.1.56 **“Station”** means the area where passengers embark and disembark the Skyway system.

1.1.57 **“System Reliability”** means the percentage of time the APM System is in normal public service during a reporting period versus the maximum amount of time during the reporting

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period.

1.1.58 **“Third Party Damage”** means destruction or damage to the APM system caused by a person or party who is not an agent or employee of the Contractor.

1.1.59 **“TIP”** – Tenant Improvement Project means the process the Contractor must follow to obtain all project requests. TIP process directions are found on airport website: fly2houston

1.1.60 **“Vandalism”** means an act of deliberate destruction or damage, or intent to cause deliberate destruction or damage to the APM system by any individual or group of individuals.

1.1.61 **“Upgrade”** means to modify or replace existing equipment in order to achieve a specified objective or the latest state-of-the-art configuration or both.

1.1.62 **“Work Area Notice (WAN)”** means a request to notify stakeholders that work will be performed in a specified area. This notice can only be released after a TIP has been approved.

1.1.63 **“Work”** means all services to be provided by the Contractor as defined by this Agreement including Exhibit A and any specifications herein.

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EXHIBIT "B"

SCOPE OF SERVICES

SAMPLE

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Exhibit B-1
SCOPE OF WORK

SAMPLE

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**EXHIBIT "B-2"
PRICING**

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EXHIBIT "B-3"
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 _____ 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_____

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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

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EXHIBIT "C"

DRUG POLICY COMPLIANCE AGREEMENT

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

as an owner or officer of _____ (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 the City of Houston; and that by making this Agreement, I affirm that the 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 the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the 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 the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the 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 the City and may result in non-award or termination of the contract by the City of Houston.

Date

Contractor Name

Signature

Title

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EXHIBIT "D"

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

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

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

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

Contractor agrees and covenants that it shall immediately notify the 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)

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EXHIBIT "E"

DRUG POLICY COMPLIANCE DECLARATION

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

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

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

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

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

_____ From _____ [Start date] to _____ [End date] the following test has occurred:
Initials

	<u>Random</u>	<u>Reasonabl e Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number Employees Tested	_____	_____	_____	_____
	-	-	-	-
Number Employees Positive	_____	_____	_____	_____
	-	-	-	-
Percent Employees Positive	_____	_____	_____	_____
	-	-	-	-

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

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

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

(Date) _____ (Typed or Printed Name) _____

_____ (Signature) _____

_____ (Title) _____

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**EXHIBIT "F"
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

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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.

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**EXHIBIT "G"
FEDERAL PROVISIONS**

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.

SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
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ATTACHMENT C
SAMPLE O&M CONTRACT

SAMPLE AGREEMENT SUBJECT TO CHANGE

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

SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
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- 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).

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
ATTACHMENT D
PROHIBITED FIRM(S)**

LIST OF PROHIBITED FIRMS:

- 1.**
- 2.**
- 3.**

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT A – OFFER AND SUBMITTAL**

OFFER AND SUBMITTAL

NOTE: SUBMITTAL/PROPOSAL MUST BE SIGNED AND NOTARIZED BY AN AUTHORIZED REPRESENTATIVE(S) OF THE RESPONDENT, WHICH MUST BE THE ACTUAL LEGAL ENTITY THAT WILL PERFORM THE CONTRACT IF AWARDED AND THE TOTAL FIXED PRICE CONTAINED THEREIN SHALL REMAIN FIRM FOR A PERIOD OF ONE-HUNDRED EIGHTY (180) DAYS.

"THE RESPONDENT WARRANTS THAT NO PERSON OR SELLING AGENCY HAS BEEN EMPLOYED OR RETAINED TO SOLICIT OR SECURE THIS CONTRACT UPON AN AGREEMENT OR UNDERSTANDING FOR A COMMISSION, PERCENTAGE, BROKERAGE, OR CONTINGENT FEE, EXCEPTING BONA FIDE EMPLOYEES. FOR BREACH OR VIOLATION OF THIS WARRANTY, THE CITY SHALL HAVE THE RIGHT TO ANNUL THIS AGREEMENT WITHOUT LIABILITY OR, AT ITS DISCRETION, TO DEDUCT FROM THE CONTRACT PRICES OR CONSIDERATION, OR OTHERWISE RECOVER THE FULL AMOUNT OF SUCH COMMISSION, PERCENTAGE, BROKERAGE OR CONTINGENT FEE."

Respectfully Submitted:

(Print or Type Name of Contractor – Full Company Name)

City of Houston Vendor No. (If already doing business with City): _____

Federal Identification Number: _____

By: _____ (

Signature of Authorized Officer or Agent)

Printed Name: _____

Title: _____

Date: _____

Address of Contractor: _____
Street Address or P.O. Box

City – State – Zip Code

Telephone No. of Contractor: (_____) _____

Signature, Name and title of Affiant: _____

(Notary Public in and for)

Texas _____ County,

My Commission Expires: _____ day of _____ 20_____

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT B – BIDDERS STATEMENT OF MBE/WBE /PDBEDBE/SBE STATUS**

BIDDER'S STATEMENT OF MBE/WBE/PDBE/DBE/SBE STATUS

This certifies that the status of the Bidder, _____, in
(Bidder's Name)

regard to the City of Houston Code of Ordinances, Chapter 15, Article V, relating to City-wide percentage goals for contracting with Minority and Women-owned Business Enterprises (MWBE) and Disadvantaged Business Enterprises (DBE), Chapter 15, Article VI, relating to City-wide percentage goals for contracting with Persons with Disabilities Business Enterprises (PDBE) and Chapter 15, Article IX, relating to City-wide percentage goals for contracting with a Small Business Enterprise (SBE) is as follows:

1. Bidder (individual, partnership, corporation) is is not a Minority Business Enterprise as certified by the Affirmative Action and Contract Compliance Division.
2. Bidder (individual, partnership, corporation) is is not a Women-owned Business Enterprise as certified by the Affirmative Action and Contract Compliance Division.
3. Bidder (individual, partnership, corporation) does does not declare itself to be a Persons with Disabilities Business Enterprise as defined above.
4. Bidder (individual, partnership, corporation) does does not declare itself to be a Disadvantaged Business Enterprise as defined above.
5. Bidder (individual, partnership, corporation) does does not declare itself to be a Small Business Enterprise as defined above.

Signature: _____

Title: _____

Date: _____

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT C – AFFIDAVIT OF NON-INTEREST**

AFFIDAVIT OF NON-INTEREST

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, who

Affiant

being by me duly sworn on his/her oath stated that he/she is _____, of

Title

Name of Firm

the firm named and referred to and in the foregoing; and that he/she knows of no officer, agent, or employee of the City of Houston being in any manner interested either directly or indirectly in such Contract.

Affiant's Signature

SWORN AND SUBSCRIBED before me on _____.

Date

Notary Public in and for the State of TEXAS

Print or type name

My Commission Expires: _____

Expiration Date

SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT D – CONSOLIDATED OWNERSHIP INFORMATION FORMS

CONSOLIDATED OWNERSHIP INFORMATION FORMS

The City of Houston Ownership Information Form is used to gather information to comply with:

- a. The City of Houston Contractor Ownership Disclosure Ordinance ([Chapter 15 of the Code of Ordinances, Article VIII. City Contracts; Indebtedness to City](#));
- b. The City of Houston Fair Campaign Ordinance ([Chapter 18 of the Code of Ordinances](#)); and,
- c. The State of Texas Statement of Residency Requirements ([Tex. Govt. Code Chapter 2252](#)).

Please complete the form, in its entirety, and submit it with the Official Bid or Proposal Form. Except as noted below regarding the Statement of Residency, failure to provide this information may be just cause for rejection of your bid or proposal.

NOTICE OF AFFIRMATIVE ACCEPTANCE OF THE CITY OF HOUSTON FAIR CAMPAIGN ORDINANCE

By submitting a bid or proposal to the City of Houston for a Contract in excess of \$50,000 or for which a request is presented to City Council for approval, all respondents agree to comply with the Chapter 18 of the Code of Ordinances.

Further, pursuant to Section 18-36 of the Code of Ordinances, it shall be unlawful either for any person who submits a bid or proposal to contribute or offer any contribution to a candidate or for any candidate to solicit or accept any contribution from such person for a period commencing at the time of posting of the City Council Meeting Agenda including an item for the award of the Contract and ending upon the 30th day after the award of the Contract by City Council.

INSTRUCTIONS

1. Please **type** or **legibly print in dark ink** responses. Individuals and entities should disclose their full, legal names (not initials) and all required corporate letters (“Inc”, “LLP”, etc.).
 - a. If a firm is operating under an assumed name, the following format is recommended:
Corporate/Legal Name DBA Assumed Name.
2. Full addresses are required, including street types (“St”, “Rd”, etc.) and unit number.
3. Individuals or entities with 10% or more ownership of the corporation, partnership, or joint venture (including persons who own 100%) are required to be disclosed with their full name and full address. All officers and directors are also required to be disclosed with their full name and full address.

SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT D – CONSOLIDATED OWNERSHIP INFORMATION FORMS

PROJECT AND BID/PROPOSAL PREPARER INFORMATION

Project or Matter Being Bid: _____

Bidder's complete firm/company business information

Name: _____

Business Address [No./Street] _____

City / State / Zip Code _____

Telephone Number _____

Bidder's email address

Email Address: _____

STATEMENT OF RESIDENCY

(THE STATEMENT OF RESIDENCY PORTION OF THIS DOCUMENT IS **NOT APPLICABLE** IF THE SOLICITATION INDICATES FEDERAL FUNDS WILL BE USED)

TEX. GOV'T CODE §2252.001(4) defines a "**Resident bidder**" as a bidder whose principal place of business* is in this state, and includes a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

TEX. GOV'T CODE §2252.001(3) defines a "**Nonresident bidder**" as a bidder who is not a resident in this state.

* Principal Place of Business in Texas means that the business entity:

- has at least one permanent office located within the **State of Texas**, from which business activities other than submitting bids to governmental agencies are conducted and from which the bid is submitted; and
- has at least one employee who works in the Texas office.

Based on the definitions above, your business is a:

TEXAS RESIDENT BIDDER

NONRESIDENT BIDDER

If you are a Nonresident Bidder, does your home state have a statute giving preference to resident bidders? If so, you must attach a copy of the statute to this Document.

A copy of the State of _____ statute is attached.

NOTE: The state of residency of a bidder is not used in the decision-making criteria for the award of contracts for projects receiving federal funding, whether in whole or in part.

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT D – CONSOLIDATED OWNERSHIP INFORMATION FORMS**

CONTRACTING ENTITY ORGANIZATIONAL ENTITY TYPE

FOR PROFIT ENTITY:

NON-PROFIT ENTITY:

- SOLE PROPRIETORSHIP
- CORPORATION
- PARTNERSHIP
- LIMITED PARTNERSHIP
- JOINT VENTURE
- LIMITED LIABILITY COMPANY
- OTHER (*specify in space below*)

- NON-PROFIT CORPORATION
- UNINCORPORATED ASSOCIATION

LISTING OF ADDRESSES

List all current and prior addresses where the bidder does/has done business or owns property (real estate and/or business personal property) in the city of Houston (“Houston”) in the past three years from the date of submittal of this form. If within the past three years from the date of submitting this form, the bidder does not and has not done business and has not or does not own property (real estate and/or business personal property) in Houston, please state “None” on the first line below.

Address

Address

Address

ATTACH ADDITIONAL SHEETS AS NEEDED.

SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT D – CONSOLIDATED OWNERSHIP INFORMATION FORMS

LISTING OF OFFICERS

LIST ALL OFFICERS OF THE ENTITY, REGARDLESS OF THE AMOUNT OF OWNERSHIP (IF NONE STATE "NONE")

<u>Name</u>		<u>Address</u>
Officer		
<u>Name</u>		<u>Address</u>
Officer		
<u>Name</u>		<u>Address</u>
Officer		
<u>Name</u>		<u>Address</u>
Officer		
<u>Name</u>		<u>Address</u>
Officer		
<u>Name</u>		<u>Address</u>
Officer		

LISTING OF DIRECTORS OR MEMBERS

LIST ALL DIRECTORS OF THE ENTITY, REGARDLESS OF THE AMOUNT OF OWNERSHIP (IF NONE STATE "NONE")

<u>Name</u>		<u>Address</u>
Director or Member		
<u>Name</u>		<u>Address</u>
Director or Member		
<u>Name</u>		<u>Address</u>
Director or Member		
<u>Name</u>		<u>Address</u>
Director or Member		
<u>Name</u>		<u>Address</u>
Director or Member		

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT D – CONSOLIDATED OWNERSHIP INFORMATION FORMS**

DISCLOSURE OF OWNERSHIP (OR NON-PROFIT OFFICERS)

Bidders are required to disclose all owners of 10% or more of the Contracting Entity. For non-profit entities, please provide the complete information for the President, Vice-President, Secretary, and Treasurer.

IN ALL CASES, USE FULL NAMES, LOCAL BUSINESS AND RESIDENCE ADDRESSES, AND TELEPHONE NUMBERS. DO NOT USE POST OFFICE BOXES FOR ANY ADDRESS. INCLUSION OF EMAIL ADDRESSES IS OPTIONAL, BUT RECOMMENDED.

ATTACH ADDITIONAL SHEETS AS NEEDED.

Contracting Entity:

Name: _____
Business Address [No./Street] _____
City / State / Zip Code _____
Telephone Number _____
Email Address: _____

DISCLOSURE OF OWNERSHIP (OR NON-PROFIT OFFICERS) *continued.*

Owner(s) of 10% or More (IF NONE, STATE "NONE."):

Name: _____
Business Address [No./Street] _____
City / State / Zip Code _____
Telephone Number _____
Email Address: _____
Residence Address [No./Street] _____
City / State / Zip Code _____

Owner(s) of 10% or More (IF NONE, STATE "NONE."):

Name: _____
Business Address [No./Street] _____
City / State / Zip Code _____
Telephone Number _____
Email Address: _____
Residence Address [No./Street] _____
City / State / Zip Code _____

ATTACH ADDITIONAL SHEETS AS NEEDED.

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT D – CONSOLIDATED OWNERSHIP INFORMATION FORMS**

OPTIONAL: TAX APPEAL INFORMATION

If the firm/company or an owner/officer is actively protesting, challenging, or appealing the accuracy and/or amount of taxes levied with a tax appraisal district, please provide the following information:

Debtor (Firm or Owner Name):	
Tax Account Nos.:	
Case or File Nos.:	
Attorney/Agent Name:	
Attorney/Agent Phone No.:	
Tax Years:	

Status of Appeal [**DESCRIBE**]:

If an appeal of taxes has been filed on behalf of your company, please include a copy of the official form received by the appropriate agency.

REQUIRED: UNSWORN DECLARATION

I certify that I am duly authorized to submit this form on behalf of the firm, that I am associated with the firm in the capacity noted below, and that I have personal knowledge of the accuracy of the information provided herein. I affirm that all the information contained herein is true and correct to the best of my knowledge. I understand that failure to submit accurate information with my submission may result in my submission being considered non-responsive and non-responsible.

Preparer's Signature

Date

Printed name

Title

NOTE: This form constitutes a governmental record, as defined by Section 37.01 of the Texas Penal Code. Submission of a false government record and falsification of a governmental record are crimes, punishable as provided in Section 37.10 of the Texas Penal Code.

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT E – FAIR CAMPAIGN ORDINANCE (FORM A)**

FAIR CAMPAIGN ORDINANCE

Form A

**CONTRACTOR SUBMISSION LIST
CITY OF HOUSTON CAMPAIGN FINANCE ORDINANCE**

By submitting a bid or proposal to the City of Houston for a Contract in excess of \$50,000 or for which a request is presented to City Council for approval, all respondents agree to comply with Chapter 18 of the Code of Ordinances.

Pursuant to Section 18-36 of the Code of Ordinances, it is unlawful either for any contractor to contribute or offer any contribution to a candidate, or for any candidate to solicit or accept any contribution from a contractor for a period commencing at the time of posting of the City Council Meeting Agenda including an item for the award of the Contract and ending upon the 30th day after the award of the Contract by City Council, or a determination by City Council of the Mayor that the contract will not be awarded to a contractor.

The term “contractor” means any person who has received the award of a contract, has submitted a bid or proposal in any form for the award of a contract, or has been proposed to be awarded the contract in an item placed upon the City Council agenda, including any other person who seeks the award of the contract and is contesting, appealing, or protesting the award of the contract as proposed.

This list is submitted under the provisions of Section 18-36(b) of the City of Houston Code of Ordinances in connection with the attached Bid/Proposal of:

Firm or Company Name: _____

Firm or Company Address: _____

The firm/company is organized as indicated below. Check one as applicable and attach additional pages if needed to supply the required names and addresses.

SOLE PROPRIETOR

Name _____
Proprietor Address

A PARTNERSHIP

LIST EACH PARTNER HAVING EQUITY INTEREST OF 10% OR MORE OF PARTNERSHIP (IF NONE STATE “NONE”)

Name _____
Partner Address

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT E – FAIR CAMPAIGN ORDINANCE (FORM A)**

Name _____
Partner Address

[] A LIMITED LIABILITY COMPANY

LIST EACH MEMBER OR MANAGER (IF NO MEMBERS) HAVING EQUITY INTEREST OF 10% OR MORE IN THE LIMITED LIABILITY COMPANY (IF NONE, STATE "NONE")

Name _____
Manager/Member Address

Name _____
Manager/Member Address

Name _____
Manager/Member Address

[] A CORPORATION

LIST ALL DIRECTORS OF THE CORPORATION (IF NONE STATE "NONE")

Name _____
Director Address

Name _____
Director Address

Name _____
Director Address

LIST ALL OFFICERS OF THE CORPORATION (IF NONE STATE "NONE")

Name _____
Officer Address

Name _____
Officer Address

Name _____
Officer Address

LIST ALL INDIVIDUALS OWNING 10% OR MORE OF OUTSTANDING SHARES OF STOCK OF THE CORPORATION (IF NONE STATE "NONE")

Name _____
Owner Address

Name _____
Owner Address

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT E – FAIR CAMPAIGN ORDINANCE (FORM A)**

Name _____
Owner _____ Address _____

I certify that I am duly authorized to submit this list on behalf of the firm, that I am associated with the firm in the capacity noted below, and that I have knowledge of the accuracy of the information provided herein.

Signature

Printed Name

Title

Note: This list constitutes a government record as defined by § 37.01 of the Texas Penal Code.

SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT F – DRUG DETECTION AND DETERRENCE PROCEDURES

DRUG DETECTION AND DETERRENCE PROCEDURES

- (a) It is the policy of the City to achieve a drug-free workforce 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 the manufacture, distribution, dispensation, possession, sale or use of illegal drugs or alcohol by contractors while on City premises is prohibited. By executing this Contract, Contractor represents and certifies that it meets and shall comply with all the 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 ("Executive Order"), both of which are on file in the Office of the City Secretary.
- (b) Confirming its compliance with the Mayor's Policy and Executive Order, Contractor, as a condition precedent to City's obligations under this Contract, will have filed with the Contract Compliance Officer for Drug Testing ("CCODT"), prior to execution of this Contract by the City; (i) a copy of its drug-free workplace policy; (ii) the Drug Policy Compliance Agreement substantially in the format set forth in Attachment "A" to the Executive Order, together with a written designation of all safety impact positions; and (iii) if applicable (e.g., no safety impact positions), the Certification of No Safety Impact Positions, substantially in the format set forth in Attachment "C" to the Executive Order. If Contractor files written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six (6) months during the performance of this Contract or upon the completion of this Contract if performance is less than six (6) months, a Drug Policy Compliance Declaration in a form substantially similar to Attachment "B" to the Executive Order. The Drug Policy Compliance Declaration shall be submitted to the CCODT within thirty days (30) of completion of this Contract. The first six (6) month period shall begin to run on the date City issues its notice to proceed hereunder or, if no notice to proceed is issued, on the first day Contractor begins work under this Contract.
- (c) Contractor shall have the continuing obligation to file with the CCODT written designations of safety impact positions and Drug Policy Compliance Declarations at any time during the performance of this Contract that safety impact positions are added if initially no safety impact positions were designated. Contractor also shall have the continuing obligation to file updated designations of safety impact positions with the CCODT when additional safety impact positions are added to Contractor's employee work force.
- (d) The failure of Contractor to comply with the above Sections shall be a breach of this Contract entitling City to terminate in accordance with Article IV.

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT F – DRUG DETECTION AND DETERRENCE PROCEDURES**

ATTACHMENT A - DRUG POLICY COMPLIANCE AGREEMENT

I, _____, _____,
Name Title

of _____
Contractor

have authority to bind Contractor with respect to its Bid, Proposal, or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, 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 the 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 an HHS-certified drug-testing laboratory to perform drug tests.
3. Monitor and keep records of drug tests given and results; and upon request from the 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 the City of Houston,

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

_____ Contractor	_____ Title
_____ Signature	_____ Date

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT F – DRUG DETECTION AND DETERRENCE PROCEDURES**

ATTACHMENT B – DRUG POLICY COMPLIANCE DECLARATION

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

(Name of Company) (Contractor)

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

This reporting period covers the preceding six months from _____ to _____,
19____.

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

_____Written drug testing procedures have been implemented in conformity with the Mayor's Drug Initials
Detection and Deterrence Procedures for Contractors, Executive Order 1-31. Employees have been
notified of such procedures.

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

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

_____From _____ to _____ the following testing has occurred:
Initials (start date) (end date)

		Reasonable Post			
		Random	Suspicion	Accident	Total
Number of Employees Tested	_____	_____	_____	_____	_____
Number of Employees Positive	_____	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____	_____

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

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

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

Date

Contractor Name

Signature

Title

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT F – DRUG DETECTION AND DETERRENCE PROCEDURES**

ATTACHMENT “C”

I, _____
(Name) (Print/Type) (Title)

as an owner or officer of _____ (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has no employee safety impact positions as defined in §5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Contractor agrees and covenants that it shall immediately notify the City's Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

Date Contractor Name

Signature

Title

**CONTRACTOR'S CERTIFICATION OF NON-APPLICATION OF
CITY OF HOUSTON DRUG DETECTION AND DETERRENCE PROCEDURES
FOR CONTRACTORS**

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT F – DRUG DETECTION AND DETERRENCE PROCEDURES**

ATTACHMENT “D”

I _____ as an owner or officer of
(NAME) (PRINT/TYPE)

_____ (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has fewer than fifteen (15) employees during any 20-week period during a calendar year and also certify that Contractor has no employee safety impact positions as defined in 5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Safety impact position means a Contractor's employment position involving job duties that if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health or safety of the employee, co-workers, and/or the public.

DATE

CONTRACTOR'S NAME

SIGNATURE

TITLE

SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT G – PAY OR PLAY ACKNOWLEDGEMENT FORM



City of Houston
Pay or Play Program Requirements



I. Pay or Play Program Overview

A. Purpose

The Pay or Play Program was established with Ordinance 2007-534 on July 1, 2007 and is governed by Executive Order 1-7. The Pay or Play Program (POP Program) creates a more level playing field and enhances fairness in the bid process between competing contractors that choose to offer health benefits to their workforce and those who do not. The program also recognizes and accounts for the fact that there are cost associated with health care of the uninsured citizens of the Houston and Harris County area.

B. Program Elements

1. Covered contracts:

- I.) Advertised after July 1, 2007 or which is executed on or after the effective date of this Executive Order.
- II.) Contracts valued at or above \$100,000.00 (contract) and \$200,000.00 (sub-contract) including contingencies, amendments, supplemental terms and/or change orders.
- III.) Professional Service, Construction, and Service type contracts.

2. Contracts not covered:

- I.) Any contract in which the primary purpose is procurement of property, goods, supplies, and or equipment.
- II.) An inter-governmental contract, inter-governmental agreement or purchasing cooperative.

3. Covered employees: This program applies to employees of a covered contractor or subcontractor, including contract labor, who are over age 18, work at least 30 hours per week and work any amount of time under a covered city contract or subcontract.

4. Pay or Play Option:

- I.) "Pays" by contributing \$1.00 per covered employee per regular hour for work performed under the contract with the City; or
- II.) "Plays" by providing health benefits to covered employees. Health benefits must meet or exceed the following standards:
 - The **employer will contribute no less than \$150 per covered employee per month** toward the total premium cost.
 - The **employee contribution, if any amount, will be no greater than 50% of the monthly premium cost and no more than \$150 per month.**

****Note: (1)A contractor is deemed to have complied with section 5.4 of E.O. 1-7 with respect to a covered employee who is not provided health benefits if the employee refuses the benefits and the employee's contribution to the premium is no more than \$40 per month. (2) If applicable the contractor has the option to both Pay and Play.***

SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT G – PAY OR PLAY ACKNOWLEDGEMENT FORM



City of Houston
Pay or Play Program Requirements



- 5. Exemptions/Waivers:** The City of Houston will award a contract to a contractor that neither Pays nor Plays only if the contractor has received an approved waiver (Form POP-4 requested by City departments only).
- 6. Administration:** Contractor performance in meeting Pay or Play program requirements will be managed by the contracting department. The Office of Business Opportunity (OBO) has administrative oversight of the program, including audit responsibilities (department compliance). Questions about the program should be referred to the Department POP Liaison an updated contact list is available on <http://www.houstontx.gov/obo/popforms.html> or call Gracie Orr with the Office of Business Opportunity at 832-393-0633.

II. Documentation and Reporting Requirements

A. Document that must be signed and returned to administering department with the bid/proposal.

- 1.) City of Houston Pay or Play Program Acknowledgment Form (Form POP-1) acknowledges bidder/proposers' knowledge of the program and its requirements, and the intention to comply.

B. Documents that must be signed and returned to administering department within a period designated by the department's Contract Administrator, upon notification of low bidder or successful proposer status:

- 1.) Certification of Compliance with Pay or Play Program (Form POP-2)

****Note - Contractors that opt to "play" must provide proof of coverage, including document from insurance provider, and names of covered employees.***

- 2.) List of Subcontractors (Form POP-3)

****Note- Review the affidavit statement at the bottom of this form for further important POP Compliance information.***

C. Contractors reporting requirements:

- 1.) Contractors that opt to Pay
Provide monthly reports to administering department, detailing names of employees, hours worked, exemptions (if any) and amount owed. (Form POP-5)
- 2.) Contractors that opt to Play
Provide periodic reports to the contract administrator showing proof of coverage (insurance premium invoice or insurance card) reporting schedule will be determined by administering department based on length of contract. (Form POP-7)

SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT G – PAY OR PLAY ACKNOWLEDGEMENT FORM



City of Houston
Pay or Play Program Requirements



3.) Employee Waiver Request

Contractor may request POP program waiver by submitting the request on POP-8 if the employee is less than 18 years old, employee has other health coverage such as through spouse or parents, or Medicare/Medicaid.

****Note proof of coverage must be provided in the form of a copy of the employee's insurance card. (Remove social security numbers if applicable)***

- 4.) Contractors shall submit an initial report with the second invoice to the department. Payments based on monthly reports are due to the contracting department with submission of the following month's invoice. Payments may be made out to the City of Houston preferably via cashier check or business check.

III. Compliance and Enforcement

The Office of Business Opportunity will audit program compliance. Contractors willfully violating or misrepresenting POP program compliance will be subject to corrective and/or punitive action, including but not limited to the assessment of fines and penalties and/or debarment. The Pay or Play Program Requirements Form and all other POP Forms are available for downloading from the City of Houston's Website at <http://www.houstontx.gov/obo/popforms.html>

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT H – ANTI-COLLUSION STATEMENT**

ANTI-COLLUSION STATEMENT

The undersigned, as Proposer, certifies that the only person or parties interested in this Proposal as principals are those named herein; that the Proposer has not, either directly or indirectly entered into any Agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the award of this Contract.

Date

Proposer Signature

SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT I – CONFLICT OF INTEREST QUESTIONNAIRE

CONFLICT OF INTEREST QUESTIONNAIRE

Document 00457

Conflict of Interest Questionnaire

Chapter 176 of the Local Government Code requires every Vendor or Contractor with the City of Houston (“City”) to file a Conflict of Interest Questionnaire with the City Secretary of the City of Houston by the **seventh** business day after:

- (1) any contract discussions or negotiations begin, or

- (2) submitting an application, responses to requests for proposals, bids, correspondence, or any writing related to a potential Agreement with the City.

The Conflict of Interest Questionnaire is available for downloading from the Texas Ethics Commission's website at <http://www.ethics.state.tx.us/forms/CIQ.pdf>. The completed Conflict of Interest Questionnaires will be posted on the City Secretary's website. There will also be a list of the City's Local Government Officers on the City of Houston's website.

Additionally, each Vendor or Contractor must file updated questionnaires no later than **September 1** of each year that the Vendor or Contractor seeks to contract with the City, or the **seventh** business day after the date of an event that would render the questionnaire incomplete or inaccurate.

However, a Vendor or Contractor is not required to file a new questionnaire in any year if the vendor has completed a questionnaire between June 1 and September 1 of that year, unless the previous questionnaire is incomplete or inaccurate.

Original Conflict of Interest Questionnaire shall be filed with Houston's Records Administrator (Ms. Anna Russell, City Secretary, 900 Bagby, First Floor, Houston, Texas 77002). Vendors and Contractors shall include a copy of the form that was submitted to the City Secretary as part of the Bid Package. Any questions about filling out this form should be directed to your attorney.

Failure of any Vendor or Contractor to comply with this law is a Class-C misdemeanor.

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT I – CONFLICT OF INTEREST QUESTIONNAIRE**

CONFLICT OF INTEREST QUESTIONNAIRE		FORM CIQ
For vendor or other person doing business with local governmental entity		
<p>This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.</p> <p>A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.</p>	<p>OFFICE USE ONLY</p> <hr/> <p>Date Received</p>	
<p>1 Name of person who has a business relationship with local governmental entity.</p> 		
<p>2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire.</p> <p>(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)</p>		
<p>3 Name of local government officer with whom filer has employment or business relationship.</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Name of Officer</p> <p>This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>D. Describe each employment or business relationship with the local government officer named in this section.</p>		
<p>4</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Signature of person doing business with the governmental entity</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Date</p>		

Adopted 06/29/2007

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT J - RFQ STATEMENT OF QUALIFICATION/RFQ ADDENDUM ACKNOWLEDGEMENT**

**RFQ Statement of Qualification / RFQ ADDENDUM ACKNOWLEDGEMENT
(TO BE INCLUDED IN ENVELOPE #2)**

[Respondent's Letterhead]

City of Houston
Houston Airport System – Addendum Acknowledgment

Respondent: _____

Date: _____

Buyer
Title
Strategic Procurement Division
901 Bagby, Suite B300
Houston, TX 77002

In response to the Request for Qualifications (RFQ) for the Design-Build of the Project dated _____, 2021, the undersigned hereby declares that I have carefully read and examined the response documents and hereby submit all elements of the STATEMENT OF QUALIFICATIONS as required in the subject Request for Qualifications. The undersigned Respondent acknowledges the right of Houston Airport System (HAS) to waive informalities in the responses, to reject any or all responses submitted, and to re-advertise for responses. The undersigned acknowledges receipt and consideration of the following addenda to the response documents:

Addenda Number: _____ Dated: ___/___/___

Addenda Number: _____ Dated: ___/___/___

Addenda Number: _____ Dated: ___/___/___

I, the undersigned, certify that I have examined and am fully familiar with the response documents and that I have satisfied myself with the respect to any questions I had regarding the RFQ. I further certify and declare that the information stated in this response is true and correct. I declare under penalty of perjury under the laws of the State of Texas, that the foregoing is correct.

Respondent:

[Enter Legal Name of Respondent, Primary Address, and Responsible Response]

(Signature)
(Type or Print Name)
(Title)

Phone Number:

E-mail Address:

By: Respondent's Business Address

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT K – SURETY LETTER OF INTENT**

**[SURETY LETTERHEAD]
[Respondent's Letterhead]**

City of Houston
Houston Airport System – SURETY LETTER OF INTENT

RESPONDENT: _____ DATE: _____

Buyer
Title
Strategic Procurement Division
901 Bagby, Suite B300
Houston, TX 77002

SURETY LETTER OF INTENT

Re: REQUEST FOR QUALIFICATIONS INFRASTRUCTURE FOR SKYWAY APM SYSTEM REPLACEMENT

Dear Madam:

Surety understands that Contract will be for an estimated amount of \$260,000,000.00.

By executing this letter, Surety acknowledges that it has reviewed the information in this letter and in the RFQ and, with knowledge of that information, intends to issue the **required Proposal Guaranty** to the Respondent, and should the Respondent be awarded the Contract, promptly deliver a Performance Bond and Payment Bond for 100% of the Contract Price for the Design-Build Work.

(Signature)
(Type or Print Name)
(Title)

Phone Number:

E-mail Address:

By: Respondent's Business Address

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT L – REQUIRED SUBMITTAL CHECKLIST**

REQUIRED SUBMITTAL CHECKLIST

Item #	SOQ Required Submittal Checklist	Check (√)
1.	Table of Contents	
2.	Introduction Letter	
3.	Executive Summary	
4.	Letter of Transmittal	
5.	Project Approach	
6.	Firm(s) Qualifications	
7.	Project Team Qualifications	
8.	Design and Construction Phase Services	
9.	Management and Staffing Plan	
10.	Project Controls	
11.	Proposed Operating System	
12.	Financial Capabilities	
13.	Experience Modification Rate	
14.	OSHA Records	
15.	Claims History	
16.	EXHIBIT A – Offer and Submittal	
17.	EXHIBIT B – Bidder's Statement of MBE/WBE/PDBE/DBE/SBE Status	
18.	EXHIBIT C -- Affidavit of Non-Interest (00454)	
19.	EXHIBIT D – Consolidated Ownership Information Forms	
20.	EXHIBIT E – Fair Campaign Ordinance (Form A)	
21.	EXHIBIT F – Drug Detection and Deterrence Procedures	
22.	EXHIBIT G – Pay or Play Acknowledgement Form	
23.	EXHIBIT H – Anti-Collusion Statement	
24.	EXHIBIT I – Conflict of Interest Questionnaire	
25.	EXHIBIT J – RFQ Statement of Qualification/RFQ Addendum Acknowledgement	
26.	EXHIBIT K – Surety Letter of Intent	
27.	EXHIBIT L – Required Submittal Checklist	
28.	EXHIBIT M – Respondent Contact Directory Form	
29.	EXHIBIT N – Reference Verification Form	
30.	EXHIBIT O – Schedule of M/WBE Participation	
31.	EXHIBIT P – Minimum Required Experience	
32.	EXHIBIT Q – CONTRACT EXCEPTION CHART	

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT M – RESPONDENT CONTACT DIRECTORY FORM**

RESPONDENT CONTACT DIRECTORY FORM

NAME	POSITION/TITLE	MAILING ADDRESS	PHONE NUMBER	FAX NUMBER	EMAIL ADDRESS

The purpose of the Respondent Contact Directory is to provide the City with a centralized, easily identified source of important contacts and other information regarding each of the business entities constituting a Respondent. This Respondent Contact Directory should include the names, positions/titles, firms, mailing addresses, phone and fax numbers and e-mail addresses for each of the following as it pertains to each of the firms in a Proposer's team:

1. At least two individuals, one primary the other(s) secondary, authorized to represent the firm for purposes of this RFQ; and
2. Respondent Key Personnel (as appropriate) listed in the Submittal.

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT N – REFERENCE VERIFICATION FORM**

REFERENCE VERIFICATION FORM

REFERENCES

- 1.1 Contractor must be able to demonstrate that they have sufficient expertise, qualified personnel experience and that their company has done or is currently providing the services of similar size as specified in the statement of work. Contractor must have been actively engaged as an actual business entity in the activities described in the bid document for at least the five (5) years immediately prior to the submittal of their bid.
- 1.2 The reference(s) must be included in the space provided below. Additional pages may be added if necessary. References must be included at the time of bid submittal.

LIST OF CURRENT/PREVIOUS CUSTOMERS

1. Company Name: _____
Contact Person/Title: _____ Phone No.: _____
E-mail Address: _____
Address: _____
Contract Award Date: _____ Contract Completion Date: _____
Contract Name/Title: _____
Project Description: _____

2. Company Name: _____
Contact Person/Title: _____ Phone No.: _____
E-mail Address: _____
Address: _____
Contract Award Date: _____ Contract Completion Date: _____
Contract Name/Title: _____
Project Description: _____

3. Company Name: _____
Contact Person/Title: _____ Phone No.: _____
E-mail Address: _____
Address: _____
Contract Award Date: _____ Contract Completion Date: _____
Contract Name/Title: _____
Project Description: _____

SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT O – SCHEDULE OF M/WBE PARTICIPATION

DATE OF REPORT: _____

SOLICITATION NO.: _____

FORMAL RFQ TITLE: _____

NAME OF M/WBE SUBCONTRACTOR	OFFICE OF BUSINESS OPPORTUNITY CERTIFICATION NO.	STREET ADDRESS AND CITY, STATE, ZIP CODE	TELEPHONE NO.	SCOPE OF WORK	AGREED PRICE
TOTAL					\$ _____
M/WBE PARTICIPATION AMOUNT					\$ _____%
TOTAL BID AMOUNT					\$ _____

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT P – MINIMUM REQUIRED EXPERIENCE**

IF YOU HAVE USED YOUR BEST EFFORTS TO CARRY OUT THE CITY'S M/WBE POLICY BY SEEKING SUPPLY AGREEMENTS WITH DISADVANTAGE BUSINESS ENTERPRISES YET FAILED TO MEET THE S OF THIS BID DOCUMENT, LIST BELOW YOUR GOOD FAITH EFFORTS FOR COMPLIANCE (DEFINITION BE OBTAINED THROUGH THE OFFICE OF BUSINESS OPPORTUNITY AT (713) 837-9000.

THE UNDERSIGNED WILL ENTER INTO A FORMAL AGREEMENT WITH THE DISADVANTAGE BUSINESS SUBCONTRACTORS AND SUPPLIERS LISTED IN THIS SCHEDULE CONDITIONED UPON AWARD OF A C

NOTE:
ALL FIRMS LISTED ABOVE MUST BE CERTIFIED (OR ELIGIBLE FOR CERTIFICATION) BY THE OFFICE OF BUSIN
THIS SCHEDULE OF M/WBE PARTICIPATION SHOULD BE RETURNED, IN DUPLICATE, WITH THE BID FORM.

BIDDER COMPANY NAME

SIGNATURE OF AUTHORIZED OFFICER OR AGENT OF BIDDER

NAME (TYPE OR PRINT)

TITLE

MINIMUM REQUIRED EXPERIENCE

Verify all contacts prior to submittal. Do not leave any spaces blank. Responses such as "N/A" are not acceptable. If not applicable, state "Not Applicable" and explain why. If none, state "NONE."

PROJECT AND TEAM INFORMATION	
Project Name:	
Project Location:	
Project Delivery Method (Design-Build, etc.):	
OWNER INFORMATION	

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT P – MINIMUM REQUIRED EXPERIENCE**

Owner's Name:	
Address:	
Contact (Name & Title):	
Telephone:	
Email:	

CONTRACT INFORMATION (TIME & COST)	
Project Start Date:	
Scheduled Completion Date:	
Actual Completion Date:	
Days Extended Due to Unexcused Delays:	
Base Contract Amount:	\$
Adjustment Due to Owner Requested Changes:	\$
Adjustment Due to Other Change Orders:	\$
Final (or Current if Incomplete) Change Amount:	\$

**SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE
RFQ NO.: H27-SKYWAY-2022-005
EXHIBIT P – MINIMUM REQUIRED EXPERIENCE**

GENERAL PROJECT DETAILS	
Was the Project for a Public Owner? (Yes or No):	
List major subcontractors:	

COMPARABLE PROJECT COMPONENTS (AIRPORT AND NON-AIRPORT): Did the project include the following (YES/ NO)	
A final price that was the less than or same as the bid amount	
Underground (live and operational) utility relocation	
Work around and / or connecting to existing operational / occupied space	
Energy Savings (Life Cycle Cost Analysis)	

SKYWAY APM SYSTEM REPLACEMENT AND OPERATIONS AND MAINTENANCE

RFQ NO.: H27-SKYWAY-2022-005

EXHIBIT Q – CONTRACT EXCEPTION CHART

CONTRACT EXCEPTION CHART

The Contract Exception Chart MUST be included with the RFQ response or the RFQ will not be considered. Below, is an example Exception Chart, which is included for illustrative purposes only.

Item No.	CONTRACT SECTION	CONTRACT LANGUAGE ¹	REVISED LANGUAGE IN RED-LINE FORMAT ²	EXPLANATION
1	Monthly Invoice	Contractor shall submit weekly invoices to the City for Products and Services in accordance with the requirements specified in this Section.	Contractor shall submit monthly invoices to the City for Products and Services in accordance with the requirements specified in this Section.	Respondent's system is set up to bill on a monthly basis.
2	Contract Term	This Agreement is effective on the Countersignature Date and remains in effect for 2 years unless sooner terminated under this Agreement ("Initial Term").	This Agreement is effective on the Countersignature Date and remains in effect for 3 years unless sooner terminated under this Agreement ("Initial Term")	Respondent's proposal will require 3 years to complete.

Unless a Respondent agrees with and can fulfill all the conditions and requirements in a contract clause, Respondent must state the exceptions to the clause in this chart and suggest proposed modifications to the specific contract language with which the Respondent disagrees or for which Respondent is unable to satisfy the condition or requirement, including an explanation of the revision (if any). If Respondent does not list an item as a contract exception on this chart, the City reserves the right to hold the Respondent accountable to perform in strict compliance with the proposed contract, if awarded to Respondent.

Explanation Box: Respondent should include an explanation to accompany the exception (e.g. the revised language), unless the revision is self-explanatory. Explanations may address a variety of matters, including but not limited to”

- Distinguishing attributes or benefits associated with the response;
- Rationale for Respondent’s revisions;
- Limitations, special conditions or deviations requested by Respondent;
- Additional descriptive information;

¹NOTE THAT THIS LANGUAGE IS MERELY ILLUSTRATIVE AND DOES NOT NECESSARILY REPRESENT ANY ACTUAL LANGUAGE IN THE RFP OR TERMS AND CONDITIONS RELATED TO THE RFP. PROPOSER SHALL INCLUDE THE EXACT LANGUAGE FROM THE RFP OR THE TERMS AND CONDITIONS IN THIS COLUMN.

²THE EXAMPLES OF REDLINED LANGUAGE ARE MERELY ILLUSTRATIVE AND DO NOT INDICATE LANGUAGE THAT THE CITY WOULD OR WOULD NOT ACCEPT OR BE WILLING TO AGREE TO.