

SAMPLE AGREEMENT
TERMS SUBJECT TO CHANGE

ORDINANCE No. _____
CONTRACT No. _____

**AGREEMENT FOR COMMON/SHARED USE PASSENGER PROCESSING SYSTEM
FOR THE HOUSTON AIRPORT SYSTEM**

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

THIS AGREEMENT FOR COMMON/SHARED USE PASSENGER PROCESSING SYSTEM FOR THE HOUSTON AIRPORT SYSTEM ("Agreement") is made on the date countersigned by the City Controller ("Effective Date") by and between the **CITY OF HOUSTON, TEXAS** ("City"), a Texas Home Rule City of the State of Texas principally situated in Harris County, and _____ ("Consultant"), a Texas corporation. City and Consultant are referred to in this Agreement individually as the "Party" or collectively as the "Parties".

The Parties agree as follows:

ARTICLE 1. PARTIES

1.1 ADDRESS

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

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

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1.2.1 This Agreement consists of the following articles and exhibits:

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1.3 PARTS INCORPORATED

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

1.4 CONTROLLING PARTS

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

[SIGNATURE PAGE FOLLOWS]

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1.5 SIGNATURE

1.5.1 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.

CONSULTANT

CITY OF HOUSTON, TEXAS

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

By: _____
Mayor

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

ATTEST/SEAL:
Signed by:

City Secretary

APPROVED:

APPROVED:

Director, Houston Airport System

Chief Procurement Officer

APPROVED AS TO FORM:

COUNTERSIGNED BY:

Sr. Assistant City Attorney
L.D. File No. _____

City Controller

DATE COUNTERSIGNED:

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DEFINITIONS

- 2.1 In addition to the words and terms defined elsewhere in this Agreement, the following terms have the meanings set out below:
- 2.1.1 “Accept” or “Acceptance” means the act of the Director by which the City assumes for itself, approval of specific services, as partial or complete performance of the Agreement.
 - 2.1.2 “Agreement” means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.
 - 2.1.3 “Business Day(s)” mean(s) any day that is not a Saturday, Sunday, or City Holiday. In the event that any deadline set forth in this Agreement falls on a Saturday, Sunday, or City Holiday, the deadline shall automatically be extended to the next day that is not a Saturday, Sunday, or City Holiday.
 - 2.1.4 “Change Order” means either an increase or decrease in the Project Area, the Scope of Work, the locations of Disposal Site or other key elements of the projects.
 - 2.1.5 “City” is defined in the preamble of this Agreement and includes its successors and assigns.
 - 2.1.6 “City Attorney” means the City Attorney of the City or any person designated by the City Attorney to perform one or more of the duties of the City Attorney under this Agreement.
 - 2.1.7 “City Data” means all Documents and/or Information: (i) that the City discloses, supplies, or provides to Contractor under, pursuant to, or in connection with this Agreement, (ii) that Contractor obtains, receives, or collects under, pursuant to, or in connection with this Agreement, and/or (iii) collected, received, entered, stored, archived, retained, maintained, processed, or transmitted in, into, or by the Software. “City Data” does not include the Software, the Object Code, or the Source Code.
 - 2.1.8 “City Holiday” means any official City of Houston holiday as determined each year by the City Council.
 - 2.1.9 “City Personnel” means all City employees, but not elected officials.
 - 2.1.10 “Consultant” is defined in the preamble of this Agreement and includes its successors and assigns. Any reference in this Agreement to Contractor shall mean Consultant.
 - 2.1.11 “CPO” means the City of Houston Chief Procurement Officer of the City of Houston, as set forth in Chapter 15 of the Houston Code of Ordinances.

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- 2.1.12 “Day(s)” or “days” means calendar day, including weekends and legal holidays, whether capitalized or not, unless otherwise specifically provided. In the case of plural “days”, those days will be consecutive.
- 2.1.13 “Deliverable(s)” mean(s) any services, products, goods, software, case management databases and applications, documents, or other tangible item provided by Contractor to the City in connection with this Agreement.
- 2.1.14 “Director” means the Director of the Houston Airport System, or any person designated by the Director to perform one or more of the Director’s duties under this Agreement.
- 2.1.15 “Documents” means all original and non-identical copy of any written, typed, or printed matter, or electronically stored information, of any kind or description.
- 2.1.15.1 The word “documents” includes, but is not limited to, the following: agendas, analyses, audio or video recordings, bulletins, charts, circulars, communications (including any interoffice, social media, and other communications), computations, computer programs, copies, correspondence, data, databases, data compilations, data prototypes, designs, diagrams, diskettes, documents, drafts, drawings, electronic mail (email), electronically stored information, exhibits, facsimiles, forms, graphs, guides, images, information, inventions, items, letters, logs, manuals, maps, materials, memoranda, metadata, microfilm, minutes or meeting minutes, models, notes, notations, notebooks, operating manuals, original tracings of all drawings and plans, other graphic matter (however produced or reproduced), pamphlets, photographs (including any digital or film photographs), plans, printouts, policies, procedures, records, recordings (including any audio, video, digital, film, tape, and other recordings), reports, social media communications, software, specifications, tabulations, telegrams, underlying data, works, worksheets, work products, writings, and any other writings or recordings of any type or nature (and any revisions, modifications, or improvements to them).
- 2.1.16 “Effective Date” means the date the City Controller countersigns the signature page of this Agreement and the Agreement becomes effective and binding.
- 2.1.17 “Holiday” means any day that has been designated as such by City Council.
- 2.1.18 “HAS” means the City of Houston Airport System, the City of Houston’s department of aviation.
- 2.1.19 “Include” and “including”, and words of similar import, shall be deemed to be followed by the words “without limitation”.
- 2.1.20 “Notice to Proceed” means a written communication from the Director to Contractor instructing Consultant to begin performance under this Agreement.
- 2.1.21 “Party” or “Parties” means City and Consultant who are bound by this Agreement, individually or collectively as indicated in the context by which it appears.

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- 2.1.22 “Project” includes all labor, materials equipment and vehicles necessary to complete the services described in Exhibit A of this Agreement.
- 2.1.23 “Services” means all services required by or reasonably inferable from the Agreement and Exhibit A including all labor, materials, tools, supplies, equipment, transportation, mobilization, insurance, subcontracts, supervision, management, reports, incidentals, quality control, and other items necessary or incidental by Consultant to fulfilling Consultant’s obligations.
- 2.1.24 “Term” means the entire period during which this Agreement is in effect, starting on the Effective Date and continuing through the final date of termination or expiration of this Agreement, including any renewals or extensions.
- 2.1.25 “Writing” or “written” shall mean a written communication from one Party to the other, including an electronic communication or e-mail.
- 2.2 When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular include the plural.
- 2.3 The word “*shall*” is always mandatory and not merely permissive.

ARTICLE 3. DUTIES OF CONSULTANT

3.1 SCOPE OF SERVICES

3.1.1 In consideration of the payments specified in this Agreement, Consultant shall provide all labor, material, and supervision necessary and reasonably inferable to perform the Services and furnish the Deliverables described in **Exhibit "A"**.

3.2 COORDINATE PERFORMANCE

3.2.1 Consultant shall coordinate its performance with the Director. Consultant shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

3.3 REPORTS

3.3.1 Consultant shall submit, at a minimum, to the Director, quarterly reports of progress on the project, including status of activity and the status of information requests made by the Director to the Consultant .

3.4 SCHEDULE OF PERFORMANCE

3.4.1 *Time of Performance*

3.4.1.1 The Director shall provide Consultant a written Notice to Proceed specifying a date to begin performance.

3.4.2 *Time Extensions*

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

3.5 PAYMENT OF SUBCONTRACTORS

3.5.1 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 Consultant in the performance of this Agreement.

3.5.2 **CONSULTANT SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONSULTANT'S FAILURE TO MAKE THESE PAYMENTS REGARDLESS OF WHETHER THE NON-PAYMENT IS CAUSED BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), GROSS NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL FAULT OF THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES.**

3.6 CONSULTANT'S PERSONNEL

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

3.7 RELEASE

- 3.7.1 **CONSULTANT 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. CONSULTANT HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.**

3.8 INDEMNIFICATION

3.8.1 INDEMNIFICATION – GENERAL

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

- 3.8.1.1.1 **CONSULTANT 'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONSULTANTS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 3.8.1.1.-3.8.1.3., "CONSULTANT ") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**

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

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

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

3.9 INTELLECTUAL PROPERTY RELEASE AND INDEMNIFICATION

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

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

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

3.10 SUBCONTRACTOR'S INDEMNITY

3.10.1 CONSULTANT SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY

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

3.11 INDEMNIFICATION PROCEDURES

3.11.1 Notice of Claims

3.11.1.1. If the City or Consultant 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:

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

3.11.1.1.2 the basis on which indemnification may be due, and

3.11.1.1.3 the anticipated amount of the indemnified loss.

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

3.11.2. Defense of Claims

3.11.2.1. Assumption of Defense. Consultant may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City Attorney. Consultant 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, Consultant must advise the City as to whether or not it will defend the claim. If Consultant does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

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

3.12 INSURANCE

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

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

3.12.2 *Insurance Coverage.* At all times during the term of this Contract and any extensions or renewals, Consultant 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, Consultant shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Consultant shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Consultant waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Consultant shall also require all subcontractors or Consultants to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

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

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

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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, Consultant shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Contract with a duration of two years after substantial completion.

3.12.5 *Notice.* **CONSULTANT 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, Consultant shall provide other suitable policies in order to maintain the required coverage. If Consultant does not comply with this requirement, the Director, at his sole discretion, may immediately suspend Consultant from any further performance under this Agreement and begin procedures to terminate for default.

3.13 PROFESSIONAL STANDARDS

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

3.14 ACCEPTANCE AND REJECTION

3.14.1. Consultant shall not be entitled to payment and the City shall have no duty to pay Consultant unless the Director has Accepted the Services and other Deliverables as set forth in **Exhibit "A"**.

3.14.2 Consultant shall provide written notice to the Director upon completion and/or delivery of the Services and other Deliverables as set forth in Exhibit A. The Director shall Accept in writing such Services and other Deliverables on or before the 20th Business Day after the date of receipt of such notice by the Director unless, prior to such 20th Business Day, the Director sends written notice to Consultant stating the reason(s) why any Services and other Deliverables have been rejected and not Accepted.

3.14.3 Notwithstanding anything to the contrary in Exhibit A or elsewhere, the Director may, in his sole discretion, approve in writing a partial Acceptance of the Services and other Deliverables set forth in **Exhibit "A"**.

3.14.4 If the Director rejects any Services or other Deliverables, Consultant shall have 10 Business Days after the Director sends written notice of rejection to correct or otherwise replace such Services or other Deliverables as necessary to conform to this Agreement, at no additional cost to the City. Consultant shall provide written notice to the Director upon completion of any such correction(s) or replacement(s) after the receipt of which the Director shall continue to either Accept or reject (as provided under this Section) and Consultant shall continue to make any necessary correction(s) or replacement(s) (as provided under this

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Section) until the Director Accepts in writing all previously rejected Services or other Deliverables.

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

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

3.15 AIRPORT CUSTOMS SECURITY BOND

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

3.16 CONFIDENTIALITY

3.16.1 Consultant , 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. Consultant , its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Consultant shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this Section.

3.17 SENSITIVE SECURITY INFORMATION

3.17.1 Consultant 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 Consultant's possession as a result of this Agreement.

3.18 LICENSES AND PERMITS

3.18.1 Consultant shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance,

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rule, or regulation. Consultant shall immediately notify the Director of any suspension, revocation, or other detrimental action against his license.

3.19 COMPLIANCE WITH LAWS

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

3.20 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE

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

3.21 TITLE VI ASSURANCES

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

3.22 MWBE COMPLIANCE

3.22.1 In its performance under this Agreement, Consultant 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. Consultant shall make good faith efforts to award subcontracts or supply agreements in at least 24% of the value of this Agreement to MWBEs. Consultant acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunities ("OBO") and will comply with them.

3.22.2 Consultant shall maintain records showing:

3.22.2.1. Subcontracts and supply agreements with Minority Business Enterprises,

3.22.2.2. Subcontracts and supply agreements with Women's Business Enterprises, and

3.22.2.3. Specific efforts to identify and award subcontracts and supply agreements to MWBEs.

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

3.22.4 Consultant shall require written subcontracts with all MWBE subcontractors and suppliers.

3.23 DRUG ABUSE DETECTION AND DETERRENCE

- 3.23.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Consultant while on City Premises is prohibited. Consultant shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
- 3.23.2 Before the City signs this Agreement, Consultant shall file with the City Contract Compliance Officer for Drug Testing ("CCODT"):
- 3.23.2.1. a copy of its drug-free workplace policy,
 - 3.23.2.2. the Drug Policy Compliance Agreement substantially in the form set forth in **Exhibit "E"**, together with a written designation of all safety impact positions and,
 - 3.23.2.3. if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in **Exhibit "F"**.
- 3.23.3 If Consultant files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six months during the performance of this Agreement (or on completion of this Agreement if performance is less than six months), a Drug Policy Compliance Declaration in a form substantially similar to **Exhibit "G"**. Consultant shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each six-month period of performance and within 30 days of completion of this Agreement. The first six-month period begins to run on the date the City issues its Notice to Proceed or, if no Notice to Proceed is issued, on the first day Consultant begins work under this Agreement.
- 3.23.4 Consultant also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Consultant's employee work force.
- 3.23.5 Consultant shall require that its subcontractors comply with the Executive Order, and Consultant shall secure and maintain the required documents for City inspection.

3.24 ADDITIONS AND DELETIONS

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

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3.24.2 If a deliverable or service that is subject to this Agreement is deleted, lost, stolen, destroyed, damaged, sold, replaced, or otherwise disposed of, the Director or 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.

3.25 PAY OR PLAY

3.25.1 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. Consultant has reviewed Executive Order No. 1-7, as revised, and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement.

3.26 ANTI-BOYCOTT OF ISRAEL

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

3.27 ZERO TOLERANCE FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES

3.27.1. 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. Consultant 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. Consultant shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Consultant or its subcontractors providing services or goods under this Agreement.

3.28 USE OF PRODUCTS

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

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

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**3.29 CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND
INELIGIBILITY AND VOLUNTARY EXCLUSION**

3.29.1 In accordance with 49 CFR Part 29 the Consultant certifies by acceptance of this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts.

3.30 AIRPORT BADGING AND SECURITY

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

3.30.2 The Transportation Security Administration may assess fines and/or penalties for Consultant's non-compliance with the provisions of 49 CFR Part 1542 entitled "Airport Security," as amended from time to time, or by agencies for noncompliance with laws or regulations applicable to Consultant's operations. Within 10 days after receiving written notice from the Director stating the amount of any fine or penalty, Consultant shall reimburse the City for any fine or penalty assessed against the City because of Consultant's non-compliance with 49 CFR Part 1542 or other applicable laws or regulations.

3.31 AIRPORT SYMBOL

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

3.32 CONFLICTS OF INTEREST

3.32.1 If an actual or potential conflict arises between the City's interests and the interests of other client(s) Consultant represents, Consultant shall immediately notify the Director in writing. The City Controller shall issue a letter of consent or non-consent to Consultant's representation, potential or otherwise, of the other client(s) within 10 Business Days after receipt of Consultant's notice. If the City Controller issues a non-consent letter, Consultant 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.

ARTICLE 4. DUTIES OF CITY

4.1 PAYMENT TERMS

4.1.1 The City shall pay Consultant for its services at the hourly rates, fees and costs set forth in **Exhibit "B"**, which must only be paid from Allocated Funds, as provided below.

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4.2 TAXES

4.2.1. The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Consultant'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 Consultant if requested.

4.3 METHOD OF PAYMENT

4.3.1 *Generally*

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

4.3.2 *Prompt Payment*

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

Payment Time	
Days	Percentage Discount
10	2%
20	1%

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

4.3.3 *Invoicing*

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

City of Houston
Houston Airport System
Finance Division/Accounts Payable
Post Office Box 60106

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Houston, TX 77205-0106

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

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

4.3.3.3 In the event that the City makes written demand upon the Consultant for amounts previously paid by the City as contemplated in this section, the Consultant shall promptly comply with such demand. The City shall have no duty to third parties to withhold payment to the Consultant and shall incur no liability for a failure to withhold funds.

4.3.4 *Disputes*

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

4.4 LIMIT OF APPROPRIATION

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

4.4.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated \$_____ to pay money due under this Agreement (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:

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

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

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

\$ _____

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

4.5 ACCESS TO SITE

4.5.1 Consultant may enter and leave the premises at all reasonable times without charge. Consultant 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 Consultant's personnel. Consultant shall repair any damage caused by it or its employees as a result of its use of the common areas

4.6 CHANGES

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

Consultant 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. Any Change to the scope of activities identified in **Exhibit "A"** shall be mutually agreed to prior to the issuance of a Change Order.

4.6.2 The Director will issue the Change Order in substantially the following form:

<u>CHANGE ORDER</u>	
TO:	[Name of Consultant]
FROM:	City of Houston, Texas (the "City")
DATE:	[Date of Notice]

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SUBJECT: Change Order under the Agreement between the City and
[Name of Consultant] countersigned by the City Controller
on [Date of countersignature of the Contract]

Subject to all terms and conditions of the Contract, the City requests that
Consultant 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 Director]

4.6.3 The Director may issue more than one Change Order, subject to the following
limitations:

4.6.3.1. Council expressly authorizes the Director to approve a Change Orders
up to \$50,000. A Change Order of more than \$50,000 must be approved
by the City Council.

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

4.6.3.3. The Total of all Change Orders issued under this Section may not increase
the Original Agreement amount by more than 25%.

4.6.4 Whenever a Change Order is issued and executed by both Parties, Consultant
shall furnish all material, equipment, and personnel necessary to perform the
work described in the Change Order. Consultant shall complete the work within
the time prescribed. If no time for completion is prescribed, Consultant shall
complete the work within a reasonable time. If the work described in any Change
Order causes an unavoidable delay in any other work Consultant is required to
perform under this Agreement, Consultant may request a time extension for the
completion of the work. The Director's decision regarding a time extension is
final.

4.6.5 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.

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

4.7 ACCESS TO DATA

4.7.1 The City shall, to the extent permitted by law, allow Consultant to access and
make copies of documents (including electronically stored information) in the

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possession or control of the City or available to it that are reasonably necessary for Consultant to perform under this Agreement.

- 4.7.2 The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for Consultant's use.
- 4.7.3 For any raw data created, assembled, used, maintained, collected, or stored by the Consultant for or on behalf of the City, Consultant 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.

4.8 NO QUANTITY GUARANTEE

- 4.8.1 This Agreement does not create an exclusive right in Consultant to perform all services concerning the subject of this Agreement. The City may procure and execute contracts with other consulting firms for the same, similar, or additional services as those set forth in this Agreement or any Scope of Services or Change Order.
- 4.8.2 The City makes no express or implied representations, warranties, or guarantees whatsoever, that any particular quantity, type, task area, or dollar amount of services will be procured or purchased from Consultant through this Agreement or any Scope of Services or Change Order; nor does the City make any express or implied representations, warranties, or guarantees, whatsoever for the amount or value of revenue that Consultant may ultimately derive from or through this Agreement or any Scope of Services or Change Order.

ARTICLE 5. TERM AND TERMINATION

5.1 TERM

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

5.2 RENEWALS

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

5.3 TERMINATION FOR CONVENIENCE BY THE CITY

- 5.3.1 The Director may terminate this Agreement at any time by giving 30 days written notice to Consultant, 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.

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- 5.3.2 On receiving the notice, Consultant 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, Consultant shall submit a final invoice marked "FINAL" showing in detail the Services performed under this Agreement up to the termination date.
- 5.3.3 TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED, IF ANY, ARE CONSULTANT'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONSULTANT WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

5.4 TERMINATION FOR CAUSE BY THE CITY

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

5.5 REMOVAL OF CONSULTANT-OWNED EQUIPMENT AND MATERIALS

- 5.5.1 Upon expiration or termination of this Agreement, Consultant is permitted 10 days within which to remove Consultant -owned material and equipment from the City's premises. The City shall make such material and equipment readily

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available to Consultant . The time period may be extended upon approval by the Director. The Director reserves the right to deny any extension of time.

ARTICLE 6. MISCELLANEOUS

6.1 INDEPENDENT CONTRACTOR

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

6.2 FORCE MAJEURE

6.2.1 Timely performance by both Parties is essential to this 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 Consultant . 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 Consultant, riots, court orders, and the acts of superior governmental or military authority, and which the affected Party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Consultant to any reimbursement of expenses or any other payment whatsoever.

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

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

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

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

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

6.2.5 If the Force Majeure continues for more than five days from the date performance is affected, the Director may terminate this Agreement by giving seven days' written notice to Consultant . This termination is not a default or breach of this Agreement. **CONSULTANT WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE**

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**TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT
UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

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

6.3 SEVERABILITY

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

6.4 ENTIRE AGREEMENT

- 6.4.1 This Agreement 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 this Agreement.

6.5 WRITTEN AMENDMENT

- 6.5.1 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 Consultant. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

6.6 APPLICABLE LAWS

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

6.7 NOTICES

- 6.7.1 Unless otherwise stated in this Agreement, 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, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the Party to whom the notice is given at its address set out in Section 1.1. of this 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.
- 6.7.2 Any notice, demand for payment or communication required or permitted to be given to Consultant by the City under the provisions of this Agreement with respect to correctable and non-correctable contract conditions, violations of this Agreement and assessment(s) of liquidated damages in accordance with

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Exhibit “A” of this Agreement shall be deemed to have been effectively delivered or given to Consultant and received by Consultant on the date emailed, faxed or mailed to Consultant’s Project Manager.

6.8 CAPTIONS

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

6.9 NON-WAIVER

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

6.9.2 An approval by the Director, or by any other employee or agent of the City, of any part of Consultant’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.

6.10 INSPECTIONS AND AUDITS

6.10.1 City representatives may perform, or have performed, (i) audits of Consultant’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 four years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

6.11 ENFORCEMENT

6.11.1 The City Attorney may enforce all legal rights and obligations under this 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.

6.12 AMBIGUITIES

6.12.1 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.

6.13 SURVIVAL

6.13.1 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.

6.14 PUBLICITY

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6.14.1 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.

6.15 RISK OF LOSS

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

6.16 PARTIES IN INTEREST

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

6.17 SUCCESSORS AND ASSIGNS

6.17.1 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 **Section 6.18**. This Agreement does not create any personal liability on the part of any officer or agent of the City.

6.18 BUSINESS STRUCTURE AND ASSIGNMENTS

6.18.1 Consultant shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Consultant shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

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

6.19 DISPUTE RESOLUTION

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

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

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

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

6.20 REMEDIES CUMULATIVE

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

6.21 CONSULTANT DEBT

6.21.1 IF CONSULTANT, 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 CONSULTANT HAS INCURRED A DEBT, THE CITY CONTROLLER SHALL IMMEDIATELY NOTIFY CONSULTANT IN WRITING. IF CONSULTANT 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 CONSULTANT UNDER THIS AGREEMENT, AND CONSULTANT WAIVES ANY RECOURSE THEREFOR. CONSULTANT SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

6.22 ENVIRONMENTAL LAWS

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

6.23 PRESERVATION OF CONTRACTING INFORMATION

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- 6.23.1 The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Consultant agrees that this Agreement can be terminated if the Consultant 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), Consultant 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, Consultant shall provide any Contracting Information related to this Agreement that is in the custody or possession of Consultant. Upon the expiration or termination of this Agreement, Consultant 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 Consultant, 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.
- 6.23.2 If Consultant 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 Consultant and may terminate this Agreement. To effect final termination, the Director must notify Consultant in writing with a copy of the notice to the CPO. After receiving the notice, Consultant shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

6.24 USE OF WORK PRODUCTS

- 6.24.1 Consultant 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 Documents, including Construction Documents, or any modifications or improvements to them, and the copyrights, patents, trademarks, trade secrets, source and object codes, and any other possessory or proprietary rights therein, that are discovered, conceived, developed, written or produced by the Consultant, its agents, employees, contractors and subcontractors pursuant to this Contract (collectively, the "Works"), to have and to hold the same unto the City absolutely. This right of ownership shall include the City's ability to modify, sell, or license all computer programs, including all access to programming codes necessary to do so.

Consultant agrees that neither it nor any of its agents, employees, contractors or subcontractors shall have any right to assert or establish a claim or exercise any of the rights embodied in any copyrights, patents, trademarks, trade, secrets and any other possessory or proprietary rights related to the Works. If requested by

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the Director, Consultant 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.

- 6.24.2 Consultant shall execute all documents required by the Director to further evidence such assignment and ownership. Consultant shall cooperate with 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 Consultant is requested and rendered pursuant to this Section, the City shall reimburse Consultant for all out-of-pocket expenses incurred by Consultant in rendering such assistance subject to the availability of funds. On termination of this Contract or upon request by the Director, Consultant shall deliver all Works to the City. Consultant shall obtain written agreements from its agents, contractors and subcontractors performing work hereunder which bind them to the terms contained in this Section.
- 6.24.3 Consultant may, however, retain copies of such Documents. Consultant shall have the right to use such copies internally, but Consultant may not sell, license or otherwise market such Documents. Upon request by the Director, Consultant shall deliver such Documents to the City.
- 6.24.4 Consultant does not represent that the Documents are or are intended to be suitable for use on other Projects or extensions of this Project to the extent that the Documents are site-specific.

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**EXHIBIT A
SCOPE OF SERVICES**

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EXHBIT B
FEE SCHEDULE**

Consultant shall provide services to City at the rates and prices as specified in the below fee schedule.

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EXHIBIT C
KEY PERSONNEL

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EXHIBIT D**

TITLE VI: NON-DISCRIMINATION

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

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

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EXHIBIT "E"

DRUG POLICY COMPLIANCE AGREEMENT

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

(Name of Company) (Contractor)

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

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

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

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

Date

Contractor Name

Signature

Title

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EXHIBIT "F"

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

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

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

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

in performing _____.
(Project)

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

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "G"

DRUG POLICY COMPLIANCE DECLARATION

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

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

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

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

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

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

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

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

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

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

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

Date

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT “H”

Title VI List of Pertinent Nondiscrimination Acts and Authorities

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

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