

**CONTRACT FOR ON CALL ASSET MANAGEMENT CONSULTING SERVICES**

**PROJECT NO. \_\_\_\_\_**

**THIS CONTRACT FOR ON CALL ASSET MANAGEMENT CONSULTING SERVICES** (“Contract”) is made on the Countersignature Date by and between the **CITY OF HOUSTON, TEXAS** (“City”), a municipal corporation and home-rule city principally situated in Harris County, and \_\_\_\_\_ (“Consultant”), a \_\_\_\_\_ authorized to do business in the State of Texas.

**ARTICLE 1. PARTIES**

1.1. **ADDRESS.** 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:

| <b>City</b>  | <b>Consultant</b> |
|--|-------------------|
| _____<br>Director, Houston Airport System<br>or designee<br>City of Houston<br>PO Box 601106<br>Houston, TX 77205-0106 | _____             |

**With Copy To**  
\_\_\_\_\_  
City Attorney  
City of Houston  
PO Box 368  
Houston, TX 77001

1.2 **TABLE OF CONTENTS.** The City and Consultant hereby agree to the terms and conditions of this Contract. This Contract consists of the following sections:

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- 1.3 PARTS INCORPORATED.** The exhibits are attached and incorporated into this Contract.
- 1.4 CONTROLLING PARTS.** If there is a conflict or inconsistency between the provisions of the articles or exhibits, the articles control over the exhibits.

**[SIGNATURE PAGE FOLLOWS]**

**SAMPLE CONTRACT  
SUBJECT TO CHANGE**

**1.5 SIGNATURES.** The City and Consultant have signed this Contract in multiple copies, each of which is an original.

**CONSULTANT:**

-----

By: \_\_\_\_\_

Name:

Position:

**ATTEST/SEAL (if a corporation):**

**WITNESS (if not a corporation):**

\_\_\_\_\_  
Name:

Tax Identification No.: -

**CITY:**

**CITY OF HOUSTON, TEXAS**

By: \_\_\_\_\_

Mayor

**ATTEST/SEAL:**

\_\_\_\_\_  
City Secretary

**APPROVED:**

\_\_\_\_\_  
Director, Houston Airport System

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Senior Assistant City Attorney

L.D. File No. -

**COUNTERSIGNED BY:**

\_\_\_\_\_  
City Controller

**DATE COUNTERSIGNED:**

\_\_\_\_\_  
("Countersignature Date")

## **ARTICLE 2. DEFINITIONS**

- 2.1 As used in this Contract, the following terms have the meanings given below:
- 2.1.1 "*Billing Rate(s)*" means the all-inclusive rates set forth in **Exhibit "B"** for each job category of personnel providing services. It includes salary cost, labor overhead, general and administrative overhead and profit. The charge for Consultant's services shall be computed separately for each employee who performs services by multiplying the number of hours the employee performs services by the hourly Billing Rate applicable to that employee's job category. Subject to possible Billing Rate increases in the option years (if exercised) described in **Section 5.1**, from the Countersignature Date through the end of the Term, Consultant shall charge City the Billing Rates set forth in **Exhibit "B"**. If an option year(s) is exercised by the Director, an increase may be added to some or all of the Billing Rates set forth in **Exhibit "B"** at the sole discretion of the Director. At such time, the increased Billing Rates will automatically become a part of **Exhibit "B"**. If at any time, additional employee categories are required to accomplish services herein, the Director may authorize in writing the additional employee category which will automatically become a part of **Exhibit "C"** and the corresponding Billing Rate which will automatically become a part of **Exhibit "B"**. Consultant shall establish the Billing Rates in accordance with FAA AC 150/5100-14D, as amended, and shall otherwise comply with all FAA Advisory Circulars, as relevant.
- 2.1.2 "*City*" means the City of Houston, Texas, and includes its successors and assigns.
- 2.1.3 "*City Attorney*" means the City Attorney of the City of Houston or any person designated by the City Attorney to perform one or more of the duties of the City Attorney under this Contract.
- 2.1.4 "*Contract*" means this document including all exhibits and amendments by written agreement of the parties.
- 2.1.5 "*Countersignature Date*" means the date this Contract becomes effective by the countersignature of the City Controller.
- 2.1.6 "*Director*" means the Director of the Houston Airport System of the City or any person designated by the Director to perform one or more of the duties of the Director under this Contract.
- 2.1.7 "*Documents*" means reports, charts, analyses, maps, letters, tabulations, exhibits, notes, computer programs, operating manuals, models, photographs, specifications, the original tracings of all drawings and plans, and other work products obtained by or prepared by the Consultant for a Project pursuant to a Letter of Authorization in accordance with the Contract.

- 2.1.8 “*DOT*” means the United States Department of Transportation or its successor agency or agencies.
- 2.1.9 “*EPA*” means the United States Environmental Protection Agency or its successor agency or agencies.
- 2.1.10 “*FAA*” means the Federal Aviation Administration as presently constituted as a division of the United States Department of Transportation or its successor agency or agencies.
- 2.1.11 “*Fixed Lump Sum*” means the method of payment based upon Consultant’s estimate of allowable costs such as salary, overhead, and Reimbursable Expenses, plus a reasonable margin of profit, all expressed as a single lump sum. A lump sum proposal shall be accompanied by the Consultant’s estimate. The estimate should detail the direct labor costs by categories of employees, work hours, and hourly rate; overhead; Reimbursable Costs; and profit.
- 2.1.12 “*HAS*” means the Houston Airport System, the City’s department of aviation.
- 2.1.13 “*Letter of Authorization*” or “*LOA*” means the document the Director sends to the Consultant authorizing certain services to be performed in accordance with this Contract.
- 2.1.14 “*Project*” means the services to be performed as authorized by individual Letters of Authorization in accordance with the Contract. The work described in each Letter of Authorization is an individual Project.
- 2.1.15 “*Project Schedule Chart*” means a schedule of Project activities and events, showing initiation point, duration, and ending points. The schedule indicates time allowed for reviews by the City staff. The Project Schedule Chart is drafted by the Consultant, in consultation with the City staff. It must be approved in writing by the Director.
- 2.1.16 “*Reimbursable Expenses*” means (i) identifiable communication expenses including reasonable costs of copying and printing (other than for the Consultant’s internal use) postage, message and delivery services other than for general correspondence, long-distance telephone charges incurred by the Consultant in the course of its performance under this Contract; (ii) upon prior written approval of the Director, the ordinary and reasonable costs of travel to, from and within the City of Houston by Consultant’s employees or subcontractors, not to exceed the amount established under the City’s then current travel reimbursement policy for its employees, including automobile mileage reimbursement, common carrier coach or economy fares, ground transportation expenses, and, for overnight trips, the cost of lodging and meals if such travel is reasonably necessary to accomplish a task directly related to the Project, and reservations are made as far in advance as feasible; (iii) sales tax related to the Consultant’s services under this Contract which

it is legally required to pay; and (iv) as set forth in **Exhibit “B”**. It shall be the Consultant’s responsibility to inform itself of the City’s travel reimbursement policies.

- 2.1.17 “*Subcontract Cost*” means the ordinary and reasonable cost of subcontracts made by the Consultant and approved in advance and in writing by the Director for services rendered under this Contract plus a fixed payment not to exceed 5% of Subcontract Cost to compensate Consultant for administering the subcontract, assumption of responsibility for the subcontractor’s services, and performance risk related to the subcontracts. Invoices for Subcontract Cost must be accompanied by appropriate documentation detailing the subcontractor’s performance contributions for the period of time being invoiced. Any additional documentation required by the Director also shall be provided by Consultant. Consultant shall require subcontractors to provide appropriate documentation of costs and expenses incurred in the performance of their services performed in furtherance of an LOA, including but not limited to, a copy of the actual invoice from subcontractor to Consultant. The Subcontract Cost shall be calculated on an LOA by LOA basis and shall not be subject to adjustment unless the LOA’s scope of work, with respect to subcontracted work, changes. Subcontractors must be selected and paid in accordance with FAA requirements, including but not limited to, FAA Advisory Circular 150/5100-14D, as amended from time to time.
- 2.1.18 “*Staffing Schedule*” means Consultant’s organizational structure and staffing assignments for key positions on the Projects as shown in **Exhibit “C”**.
- 2.1.19 “*TCEQ*” means the Texas Commission on Environmental Quality or its successor agency or agencies.
- 2.1.20 “*Term*” means the entire period during which this Agreement is in effect, starting on the Countersignature Date and continuing through the final date of termination or expiration of this Agreement, including any renewals or extensions.
- 2.1.21 “*TSA*” means the Transportation Security Administration as presently constituted as a division of the United States Department of Transportation or its successor agency or agencies.

### **ARTICLE 3. RIGHTS AND DUTIES OF CONSULTANT**

#### **3.1 SCOPE OF SERVICES**

##### *3.1.1 Services in General*

3.1.1.1 For and in consideration of the payment specified in this Contract, the Consultant shall provide all labor, material and supervision necessary to perform professional airport asset management consulting services as set out in this Contract, including those in **Exhibit “A”**, and as specifically



described in individual LOAs. Time is of the essence in the performance of this Contract.

3.1.1.2 Consultant shall perform the following services:

- 3.1.1.2.1 Provide prompt and efficient professional airport asset management consulting services as may be required in an LOA for each Project;
- 3.1.1.2.2 Coordinate its performance with the Director, City consultants, and all governmental entities having jurisdiction over the Project;
- 3.1.1.2.3 Make periodic written reports, meeting notes, and recommendations to the Director with respect to conditions, transactions, situations or circumstances encountered by the Consultant relating to its services under this Contract;
- 3.1.1.2.4 Attend meetings with representatives from the HAS, local, state and federal agencies, and contractors, if required by the Director;
- 3.1.1.2.5 If requested, provide a copy of Documents prepared by it or made available to it under this Contract;
- 3.1.1.2.6 Meet the standards prevailing in its profession for professional airport asset management consulting services performed for similar sized airports in the United States;
- 3.1.1.2.7 Verify the professional quality, technical accuracy and coordination of all Documents and services;
- 3.1.1.2.8 Correct or revise all errors and deficiencies in Documents and services as directed by the Director. No compensation will be paid for corrections or revisions resulting from errors or omissions made by Consultant.
- 3.1.1.2.9 Notwithstanding the requirements of **Section 3.1.1.3**, Consultant shall not be responsible for any construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of any construction work conducted by other entities in accordance with construction documents and any health and safety requirements imposed upon any such entities by the City or other agencies with jurisdiction.

3.1.2 *Services in Particular*

3.1.2.1 In response to Letters of Authorization (“LOA”) to be issued periodically by the Director, Consultant shall perform professional airport asset management consulting services in accordance with the Contract and each LOA. The extent of each assigned Project will be defined in each LOA in accordance with the Contract after negotiations with Consultant have been completed for each LOA. The method of payment may be either (a) an hourly based agreement which includes Billing Rate set forth in **Exhibit “B”** multiplied by the hours that each employee set forth in **Exhibit “C”** worked on the particular Project plus Reimbursable Expenses plus Subcontract Cost or (b) a Fixed Lump Sum that does not exceed an estimate of the total of the payment categories set forth in (a) when added together.

3.1.2.2 Consultant shall perform diligently all assigned Project tasks and meet the Project delivery schedules of the Project Schedule Chart established in each LOA. Consultant shall not begin work until it receives an LOA signed by the Director.

3.1.2.3 In the case of an emergency service request, the selected firms may perform assessments or other tasks as directed upon the verbal approval of the Director or his/her designee. However, within five (5) business days, the Director will submit a written Letter of Authorization (LOA) to the firms and the same process for non-emergency Letter of Authorization (LOA) will apply. Work may commence once a mutually agreed not-to-exceed amount is established by the Director and the selected firms.

3.1.2.4 LOAs must set forth the following:

3.1.2.4.1 Contract number and the Consultant’s name, address, and telephone number;

3.1.2.4.2 LOA number and date;

3.1.2.4.3 Identity of the Consultant’s key personnel assigned to each LOA and subcontractor’s who will perform services (after having secured the Director’s written approval of such subcontractor(s));

3.1.2.4.4 A scope of services specifically identifying the services to be performed and the specific deliverables for the LOA (e.g., project definition document, forecast report, PowerPoint presentation, etc.);

3.1.2.4.5 Time of performance (including Project Schedule Chart);

- 3.1.2.4.6 Place of performance;
  - 3.1.2.4.7 HAS Project Manager;
  - 3.1.2.4.8 A breakout to include identification, by line item, of the required position classifications set forth in **Exhibit “C”** to perform the services, the estimated hours, and the fixed hourly Billing Rate as set forth in **Exhibit “B”** and as defined in this Contract, if an hourly based agreement;
  - 3.1.2.4.9 Identification of the estimated amount of services to be performed by Disadvantaged Business Enterprises, if applicable;
  - 3.1.2.4.10 Method of payment, either a Fixed Lump Sum agreement or an hourly-based agreement with a total not-to-exceed amount;
  - 3.1.2.4.11 Balance of funds remaining in the Contract;
  - 3.1.2.4.12 A breakout of all Reimbursable Expenses, by line item, to include the estimated quantity of the item required, the unit cost, and an extended “not to exceed” dollar amount;
  - 3.1.2.4.13 Frequency of payment, either monthly or upon completion of a Project;
  - 3.1.2.4.14 Submittal requirements, including schedule and deliverables, (i.e., reports, analyses statements, etc.); and
  - 3.1.2.4.15 Any other information necessary to identify and perform the services or as otherwise may be required by the Director.
- 3.1.2.5 Upon written request by the Consultant, the Director, in his sole discretion, may grant extensions of time for completion of services for delays caused by the City or other agencies with which the work must be coordinated and for other reasonable causes over which the Consultant has no control. The Director’s approval of the extension of time must be in writing. Each LOA continues in effect until all requirements have been met and a written acceptance of the services performed has been made by HAS’s Project Manager or until the Consultant receives written notification from the Director to discontinue services.
- 3.1.2.6 LOAs may be amended by the Director in the same manner as they are issued.
- 3.1.2.7 LOAs may not alter or amend the terms and conditions set forth in this Agreement.
- 3.1.2.8 The Director may request Consultant to engage subcontractors with specialized skills or specific knowledge. Consultant shall identify subcontractors demonstrating successful work history in the requested area to the satisfaction of

the Director. Upon the Director's approval, Consultant shall be responsible for choosing and contracting with each specialized subcontractor. All specialized subcontractors must make Good Faith Efforts to meet the subcontracting goal set out in **Section 3.7** of this Contract.

### **3.2 CONSULTANT'S PERSONNEL**

- 3.2.1 The Consultant shall perform services under this Contract employing the people listed in its Staffing Schedule in **Exhibit "C"**. The Consultant may revise its Staffing Schedule, including changes in employee job categories, only with the prior written approval of the Director, after which the revision will automatically become a part of **Exhibit "C"**. The requested revision must be made within 10 days after the Consultant receives an LOA for a Project. The revised Staffing Schedule must include the following information for each professional-level employee proposed for assignment on the Project:
- 3.2.1.1 Name of employee;
  - 3.2.1.2 Project role;
  - 3.2.1.3 Job Category;
  - 3.2.1.4 Applicable registration;
  - 3.2.1.5 Principal office of employment;
  - 3.2.1.6 Summary of relevant experience; and
  - 3.2.1.7 Start date and expected duration of assignment.
- 3.2.2 During the term of this Contract, the Consultant must obtain, maintain and pay for all licenses, permits, HAS badges and certificates, including all professional licenses required by any statute, ordinance, rule or regulation. If the Consultant does not maintain required professional licenses, the Director may immediately terminate this Contract. The Consultant must immediately notify the Director of any suspension, revocation or other negative action against an employee's or subcontractor's license.
- 3.2.3 The Consultant shall not subcontract any part of its performance under this Contract without the prior written approval of the Director. In requesting such approval, the Consultant must provide the Director with the name of the proposed subcontractor, the nature of the services to be performed, and a copy of the proposed subcontract which, at a minimum, (i) includes the same information required of the Consultant in **Section 3.2.1**, inclusive of all sections therein, and (ii) restricts the subcontractor from adding any mark-up to its reimbursable expenses and its all-inclusive billing rates. All testing and analytical laboratories must be approved in writing by Director. If such approval is given, Consultant shall be responsible for services performed by subcontractors to the same extent as if the services were performed by the Consultant.
- 3.2.4 The Director may require removal from the Project of any employee or subcontractor of the Consultant providing services under this Contract.

### **3.3 USE OF WORK PRODUCTS**

- 3.3.1 Consultant conveys and assigns to the City its entire interest and full ownership worldwide in and to any work, invention, and all Documents, and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively “Proprietary Rights”) that Consultant, its agents, employees, contractors, and subcontractors (collectively “Authors”) develop, write, or produce under this Contract (collectively “Works”).
- 3.3.2 The City may use all Documents that Consultant prepares or obtains under this Agreement. In addition, Consultant 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, Consultant shall provide this information from its work paper files.
- 3.3.3 Consultant shall deliver the original Documents to the Director on request. Within five working days after this Agreement terminates, Consultant shall deliver to the Director the original Documents, and all other files and materials Consultant produces or gathers during its performance under this Agreement.
- 3.3.4 The Authors shall not claim or exercise any Proprietary Rights related to the Works. If requested by the Director, Consultant shall place a conspicuous notation on any Works which states that the City owns the Proprietary Rights.
- 3.3.5 Consultant shall execute all documents required by the Director to further evidence this assignment and ownership. Consultant shall cooperate with the City in registering, creating, and enforcing Proprietary Rights arising under this Contract. If Consultant’s assistance is requested and rendered under this Section, the City shall reimburse Consultant 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, Consultant shall deliver all Works to the City. Consultant shall obtain written agreements from the Authors that bind the Authors to the terms in this Section.
- 3.3.6 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” under 17 U.S.C. §§101 and 201, as amended.
- 3.3.7 Consultant may retain copies of the Works for its archives. Consultant shall not otherwise use, sell, license, or market the Works.

- 3.3.8 Notwithstanding any provision to the contrary contained in this Contract, Consultant shall retain sole ownership to its preexisting information including but not limited to computer programs, software, standard details, figures, templates and specifications.
- 3.3.9 Any reuse of the documents prepared by Consultant under this Contract for other than their specific intended purpose will be at the sole risk of the user and without liability to the Consultant.

### **3.4 CONFIDENTIALITY**

3.4.1 All reports, information, data or other documents given to, prepared by or assembled by Consultant or its subcontractors arising out of the work performed under this Contract are the exclusive property of the City and will be kept confidential and may not be made available to any individual or organization by the Consultant or its subcontractors without the prior written approval of the Director, provided, however, that these provisions shall not apply to data that is in the public domain; was previously known to Consultant; or was independently acquired by the Consultant from third parties who are under no obligation to the City to keep the data and information confidential. These provisions shall not apply to information in whatever form that comes into the public domain through no fault of Consultant, nor shall they be interpreted in any way to restrict Consultant from complying with a legally enforceable court order to provide information or data; provided Consultant shall immediately give the City notice of the court order to permit City the opportunity to determine whether a Protective Order will be filed. This restriction includes, but is not limited to, press releases, presentations, promotional materials and other public disclosures.

3.4.2 Except as provided in the preceding paragraph, the Consultant shall keep confidential, and shall require its employees, agents, subordinates, and subcontractors to keep confidential all information disclosed by the City or its consultants to the Consultant or developed by the Consultant or the Consultant's employees, agents, subordinates, or subcontractors in the performance of services hereunder.

#### **3.4.3 City Use**

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

#### **3.4.4 Contractor Confidentiality**

3.4.4.1 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.

### 3.4.5 Sensitive Security Information

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

3.5 **RELEASE. EXCEPT FOR THE CITY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, 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 TO PERSONS OR PROPERTY IS CAUSED BY THE CITY’S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY’S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY. CONTRACTOR HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.**

### 3.6 INDEMNIFICATION

#### 3.6.1 GENERAL/NEGLIGENCE

3.6.1.1 **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:**



**SAMPLE CONTRACT  
SUBJECT TO CHANGE**

**3.6.1.1.1 CONSULTANT'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 3.6.1.1.1.-3.6.1.1.3., "CONSULTANT") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**

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

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

**3.6.1.2 CONSULTANT SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONSULTANT CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$1,000,000 PER OCCURRENCE. CONTRACTOR CONSULTANT SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.**

**3.6.2 INTELLECTUAL PROPERTY RELEASE AND INDEMNIFICATION**

**3.6.2.1 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.**

**3.6.2.2 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.**

**3.6.2.3 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.**

**3.6.3 SUBCONTRACTOR'S INDEMNITY. CONSULTANT SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.**

### **3.7 INDEMNIFICATION PROCEDURES**

**3.7.1 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:

**3.7.1.1** a description of the indemnification event in reasonable detail;

**3.7.1.2** the basis on which indemnification may be due; and

**3.7.1.3** the anticipated amount of the indemnified loss.

**3.7.2** 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.

**3.7.3 Defense of Claims**

**3.7.3.1 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

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Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

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

**3.8 INSURANCE**

3.8.1 With no intent to limit Consultant's liability or the indemnification provisions set forth herein, Consultant shall, at a minimum, provide and maintain the following insurance coverage:

| <u>Coverage</u>  | <u>Limit of Liability</u>  |
|--|--|
| Workers' Compensation  | Statutory for Workers' Compensation  |
| Employer's Liability   | Bodily Injury by Accident \$500,000 (each accident)<br>Bodily Injury by Disease \$500,000 (policy limit)<br>Bodily Injury by Disease \$500,000 (each employee)   |
| Commercial General Liability:<br>Including Contractual Liability, Bodily and Personal Injury, Property Damage,; Products and Completed Operations Coverage (for two years following completion of the Services under this Agreement) | Bodily Injury and Property Damage, Combined single limitLimits of \$1,000,000 (each occurrence), aggregate ofOccurrence, and \$2,000,000;<br>aggregate   |
| Automobile Liability (for vehicles Consultant uses in performing under this Agreement, including Employer's Non-Owned and Hired Auto Coverage)   | \$1,000,000 combined single limit for (1) any auto : (i) Any Auto; or (2) all owned, hiredii) All Owned, Hired, and non-owned autos. Non-Owned Autos<br><br>\$10,000,000 for all autos used onauto driven in the Airfield Operations Area. (AOA) |
| Professional Liability (if applicable)   | \$1,000,000 per occurrence; \$2,000,000 claim/aggregate  |
| Excess Liability for Commercial General Liability and Automobile Liability   | \$1,000,000  |
| Aggregate Limits are per 12-month policy period unless otherwise indicated.  |  |

3.8.2 *Insurance Coverage*. At all times during the term of this Agreement 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: (i) all premiums; and (ii) any claims or losses to the extent of any deductible or self-insured retention amounts. Consultant waives any claim it may have for premiums,

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or deductibles, or self-insured retention amounts against the City, its officers, agents, or employees. Consultant waives any claim it may have for premiums, deductibles, or self-insured retention amounts against the City, its officers, agents, or employees. Consultant 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.

- 3.8.3 *Form of insurance.* The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (i) excuse non-compliance with the terms of this Section, or (ii) waive or estop the City from asserting its rights to terminate this 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.
- 3.8.4 *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 provisions of this Agreement. Consultant 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 policy, except Workers' Compensation and Professional Liability, must also contain an endorsement or equivalent policy language 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 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.
- 3.8.5 *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 Contract and begin procedures to terminate for default.

### **3.9 TAXES, LICENSES, LAWS, RULES**

- 3.9.1 The Consultant shall pay, before delinquency, all taxes that may be levied, assessed or charged upon the Consultant or the property, real and personal, owned by the Consultant. The Consultant may contest these taxes.
- 3.9.2 Consultant shall comply with all laws, codes, rules, regulations and ordinances relating to its performance under this Contract, including any which may impose requirements more stringent than, or inconsistent with, this Contract. The Consultant shall also obtain and pay for all licenses and certificates necessary or required by statute, ordinance or regulation for the conduct of its performance under this Contract, and shall give written proof of compliance thereof to the Director on or before the Countersignature Date of this Contract.
- 3.9.3 Nothing in this Contract abrogates or diminishes the regulatory or police powers of the City.
- 3.9.4 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.

### **3.10 MWBE COMPLIANCE**

- 3.10.1 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.
- 3.10.2 Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:
- 3.10.3 [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").
- 3.10.4 [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.

3.10.5 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.

3.10.6 Any controversy between the Parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract may be submitted to the Director. The Director may prescribe procedures to provide dispute resolution by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

### **3.11 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE**

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

### **3.12 TITLE VI ASSURANCES**

3.12.1 The 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, the Consultant shall include the summary of the provisions of 49 CFR Part 21, as may be amended, in subcontracts it enters into under this Contract. This summary is set forth in **Exhibit "G"**.

### **3.13 PAY OR PLAY.**

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

### **3.14 DRUG DETECTION AND DETERRENCE**

3.14.1 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, the Consultant represents and certifies that it meets and

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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.

- 3.14.2 Confirming its compliance with the Mayor's Policy and the Executive Order, the Consultant, 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 the execution of this Contract by the City:
- 3.14.2.1 A copy of its drug-free workplace policy,
  - 3.14.2.2 the Drug Policy Compliance Agreement substantially in the format set forth in **Exhibit "D"**, together with a written designation of all safety impact positions and,
  - 3.14.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the format set forth in **Exhibit "E"**.
- 3.14.3 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 Contract or upon the completion of this Contract if performance is less than six months, a Drug Policy Compliance Declaration in a form substantially similar to **Exhibit "F"**. The Drug Policy Compliance Declaration shall be submitted to the CCODT within 30 days of the expiration of each six month period of performance and within 30 days of completion of this Contract. The first six month period shall begin to run on the date the City issues its notice to proceed under this Contract or if no notice to proceed is issued, on the first day the Consultant begins work under this Contract.
- 3.14.4 The Consultant 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. The Consultant 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 the Consultant's employee work force.
- 3.14.5 The Consultant shall require that its subcontractors hereunder comply with the Mayor's Policy and the Executive Order and the Consultant shall be responsible for securing and maintaining the required documents for City inspection throughout the term of this Contract.



3.14.6 The failure of the Consultant to comply with the above Sections shall be a breach of this Contract entitling the City to terminate in accordance with **Article 5**.

**3.15 CONFLICTS OF INTEREST**

3.15.1 If an actual or potential conflict arises between the interests of the City and the interests of other clients represented by the Consultant regarding this Project, the Consultant shall immediately notify the Director by fax transmission, telephone or email. If the Director consents to the Consultant's continued representation of these other clients, it will notify the Consultant in writing. If the Director does not issue written consent within three business days after receiving the Consultant's notice, the Consultant shall immediately terminate its representation if allowed by the other agreements of the other client whose interests are or may be in conflict with those of the City. If the Consultant does not terminate the other agreements, the Director may terminate this Contract immediately without providing any further opportunity to cure under **Section 5.3**.

**3.16 PAYMENT OF SUBCONTRACTORS.**

3.16.1 **IN ACCORDANCE WITH THE TEXAS PROMPT PAYMENT ACT, CONTRACTOR SHALL MAKE TIMELY PAYMENTS TO ALL PERSONS AND ENTITIES THAT CONTRACTOR HAS HIRED TO SUPPLY LABOR, MATERIALS, OR EQUIPMENT FOR THE PERFORMANCE OF THIS AGREEMENT. CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS REGARDLESS OF WHETHER THE FAILURE TO PAY IS CAUSED BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), OR GROSS NEGLIGENCE, (WHETHER SOLE, JOINT OR CONCURRENT), STRICT LIABILITY, INTENTIONAL ACTS, OR OTHER CONDUCT OR LIABILITY OF THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES.**

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

**3.17 AIRPORT SECURITY.**

3.17.1 Consultant shall comply with all HAS, TSA, FAA and any other governmental agency security directives, rules and regulations. The FAA and/or the TSA may assess fines and/or penalties for Consultant's non-compliance with the provisions of 49 CFR 1540 and 1542, as amended from time to time, or by other agencies for noncompliance with laws or regulations applicable to Consultant's operations.

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

**3.18 ENVIRONMENTAL MATTERS**

- 3.18.1 Consultant shall comply with all federal, state, local, and airport statutes, ordinances, regulations, rules, policies, codes, or guidelines now or hereafter in effect as they may be amended from time to time, that relate to the environment, human health, safety, or hazardous materials, (collectively, "Environmental Laws").
- 3.18.2 Any fines and/or penalties that may be levied against the City by the EPA, TCEQ, or any other governmental agency because of Consultant's (or its agents', employees' and subcontractors') failure to comply with any Environmental Laws shall promptly be reimbursed to the City, and in no event later than 10 days after receipt of an invoice from the City for any such fine and/or penalty. Likewise any fines assessed for Consultant's (or its agents', employees' and subcontractors') failure to comply with any Environmental Law are the responsibility of the Consultant.

**3.19 ENVIRONMENTAL RECORDS/WASTE MANIFESTS**

3.19.1 To the extent a Project includes laboratory, sampling or field work of any kind, Consultant shall maintain complete records including all analytical results, QA/QC summaries, calibration information, case narratives, field records, field notes, all associated raw data, and complete chain of custody records of all hazardous and/or waste materials generated, handled, transported and/or disposed of as a result of or arising out of Consultant's activities under this Contract. Consultant shall deliver all such records to City in accordance with instructions from City. If wastes are generated in connection with Consultant's performance of services under this Contract, Consultant is authorized to sign the waste manifest on behalf of the City and shall duly note "On behalf of the City of Houston" in the signature block. The City and Consultant acknowledge that Consultant shall not be deemed the generator of the wastes identified in any such manifest. Nothing contained in this paragraph shall be construed to create an agency relationship between the City and Consultant except with respect to the authorization to sign the manifests.

3.19.2 Consultant and its subcontractors agree:

- 3.19.2.1 that any facility to be used in the performance of the Contract or subcontract or to benefit from the Contract is not listed on the EPA List of Violating Facilities;
- 3.19.2.2 to comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water



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Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;

3.19.2.3 that, as a condition for the award of this Contract, the Consultant or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the Contract is under consideration to be listed on the EPA List of Violating Facilities; and

3.19.2.4 to include or cause to be included in any subcontract that exceeds \$100,000 the aforementioned criteria and requirements.

**3.20 WARRANTY – TRAINING, QUALIFICATIONS, SERVICES AND PERFORMANCE**

3.20.1 Consultant represents and warrants that it has the requisite competence, skill, physical resources, and number of trained, skilled, and licensed personnel (qualified by education and experience to perform their assigned tasks) to perform the services required by this Contract. If requested, Consultant shall provide the Director a health and safety plan for each LOA and a certification that each person working in a potentially contaminated site (e.g. class I non-hazardous, hazardous waste, petroleum storage tank/pipeline releases) has been trained in the health and safety procedures for the kind of site work required in accordance with the Federal Occupational Safety and Health Administration (“OSHA”) requirements.

3.20.2 Consultant represents and warrants that all professional airport asset management consulting services shall be performed in a manner meeting the professional standards prevailing in the United States for other similar sized airports, with respect to the scope, quality, due diligence, and care of professional airport asset management consulting services and products Consultant provides under this Contract.

3.20.3 Consultant warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.

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

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

- 3.20.4.2 that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed;
  - 3.20.4.3 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
  - 3.20.4.4 that no item or its use infringes any patent, copyright, or proprietary
- 3.20.5 Consultant shall make citizen satisfaction a priority in providing services under this Agreement. Consultant's employees should be trained to be customer-service oriented and to positively and politely interact with citizens when performing Contract services. Consultant'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, Consultant is not interacting in a positive and polite manner with citizens, the Director may instruct Consultant to take all remedial steps to conform to the standards set by this Contract. Consultant's failure to comply may be cause for the Director to terminate this Contract.

**3.21 PUBLICITY**

- 3.21.1 Consultant shall make no announcement or release of information concerning this Contract until such release has been submitted to and approved in writing by the Director.

**3.22 STATE ENERGY CONSERVATION PLAN.**

- 3.22.1 The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the State of Texas energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163), which is incorporated herein by reference.

**3.23 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION.**

- 3.23.1 The Consultant certifies by acceptance of this Contract, 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. Where the Consultant or subcontractor is unable to certify to this statement, it shall notify the City in writing immediately and attach an explanation.

**3.24 CERTIFICATION REGARDING FOREIGN TRADE RESTRICTIONS.**

- 3.24.1 The Consultant or Subconsultant by submission of an offer and/or by execution of this Contract, certifies that it:
- 3.24.1.1 is not owned or controlled by one or more citizens or nationals of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
  - 3.24.1.2 has not knowingly entered into any contract or subcontract for this Project with a person/subconsultant/consultant that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
  - 3.24.1.3 has not procured any product nor subcontracted for the supply of any product for use on the Project that is produced in a foreign country on said list.
- 3.24.2 Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a Consultant or subcontractor who is unable to certify to the above. If the Consultant knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the Project; the FAA may direct, through the City, cancellation of the Contract at no cost to the City or the Federal Government.
- 3.24.3 Further, the Consultant agrees that it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The Consultant may rely upon the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous. The Consultant shall provide immediate written notice to the City if the Consultant learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide immediate written notice to the Consultant, if at any time it learns that its certification was erroneous by reason of changed circumstances.
- 3.24.4 This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Consultant or subcontractor knowingly rendered an erroneous certification, the FAA may direct, through the City, cancellation of the Contract or subcontract for default at no cost to the City or Federal Government.
- 3.24.5 Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of the Consultant is not required to

exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

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

### **3.25 AIRPORT CUSTOMS SECURITY BOND**

3.25.1 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).

### **3.26 RIGHTS TO INVENTIONS**

3.26.1 All rights to inventions and material generated under this Contract are subject to regulations issued by the FAA and the City.

### **3.27 NON-EXCLUSIVITY**

3.27.1 This Contract does not create an exclusive right in Consultant to perform all services concerning asset management consulting Projects at HAS. The City may procure and execute contracts with other consulting firms for the same, similar or additional services as those set forth in this Contract.

### **3.28 PERFORMANCE BOND**

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

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

## **ARTICLE 4. RIGHTS AND DUTIES OF CITY**

### **4.1 PAYMENT TERMS**

4.1.1 *Fees, In General*

4.1.1.1 The City shall pay fees to the Consultant as specified herein for all services rendered by the Consultant in accordance with the terms and conditions of this Contract, but subject to **Section 4.2** relating to appropriations made by the City.

4.1.1.2 If the Consultant receives payment from the City for work performed by any subcontractor or for materials provided by any supplier, and the Consultant withholds payment to the subcontractor or supplier on account of a deficiency in the quality or quantity of the work or materials, the City may withhold a corresponding amount from any pending or future payments to the Consultant until the next regular payment to the Consultant occurring after the City receives reasonable documentation that the deficiency has been remedied.

4.1.2 *Fees; Method of Payment*

4.1.2.1 The Consultant shall perform services only in response to an LOA signed by the Director. The method of payment will be specified in each LOA and may be either (a) an hourly based agreement which includes the Billing Rates set forth in **Exhibit "B"** multiplied by hours worked by each employee set forth in **Exhibit "C"** who performs work for the Project plus Reimbursable Expenses and Subcontract Cost, or (b) a Fixed Lump Sum that does not exceed an estimate of the total of all the payment categories set forth in (a) when added together.

4.1.2.2 The City shall make partial payment of the fees for lump sum services on the basis of monthly invoices submitted by the Consultant and approved by the Director. The invoices based on lump sum services must show the following: (i) the percentage of the total services completed for each LOA in the preceding month; (ii) a summary of the services performed for each LOA during the period covered by the invoice; (iii) the amount due for the services, and (iv) any other information required by Director. The amount of partial payment due for services performed shall be a percentage of the Fixed Lump Sum fee equal to the percentage of services performed on each LOA during the period covered by the invoice.

4.1.2.3 The invoices for services rendered on an hourly-based agreement must include the following:

4.1.2.3.1 A detailed description of the work performed.

4.1.2.3.2 The Billing Rate and number of hours worked for each of Consultant's employees who worked on each LOA during the

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invoice period. (Documentation must include employee name, Billing Rate, and hours expended. At the Director's sole discretion, supporting documentation may also include copies of original time sheets that Consultant certifies are true and accurate copies.)

4.1.2.3.3 Itemized Reimbursable Expenses.

4.1.2.3.4 Subcontract Cost, including a copy of the subcontractor's actual invoice and supporting documentation for itemized Reimbursable Expenses in amounts not to exceed the cost schedule set forth in Section B of Exhibit "B". If requested by the Director, additional supporting documentation will be provided by subcontractor.

4.1.2.4 After the Consultant has successfully completed the performance to the Director's satisfaction of all required services for an LOA, the City shall pay the Consultant the total amount owed for the Project less any amounts paid under the monthly invoices.

4.1.2.5 All invoices must be approved by the Director. The invoices will be paid in accordance with Texas Government Code Section 2251.021. All payments will be made by check transfer. The checks will be payable to the Consultant. Payments will be mailed to the address specified in **Section 1.1**. The City will not unreasonably delay or withhold payment or approval of any invoice. The Director shall approve or disapprove the Consultant's invoices within 30 days after receiving them. Neither partial payments made nor approvals of invoices or services by the Director constitute final acceptance or approval of the Consultant's services to which the partial payment or approval relates. The payments do not relieve the Consultant of any its obligations under this Contract. The Consultant shall send all invoices to the address listed in **Section 1.1**.

4.1.2.6 With each monthly invoice and for each active LOA, the Consultant shall submit a copy of the updated Project Schedule Chart, a monthly status report, including but not limited to, a narrative of the services performed in the preceding month, and a list of the planned activities for the following month.

**4.2 LIMIT OF APPROPRIATION.**

4.2.1 The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section and are Consultant's total compensation for its services under this Contract. Consultant recognizes that, under the City's Charter, the City may not obligate itself by contract to pay more money than the amount the City Council appropriates, and further recognizes that the City Council has appropriated only \$----- to pay for services under ----- asset management consulting services contracts, of which this Contract is one. Unless the City Council makes further appropriations for the three professional asset

management services contracts, the City's obligation to Consultant under this Contract must not exceed \$-----.

4.2.2 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 (each a "Supplemental Allocation" and collectively, the "Supplemental Allocations") for this Agreement, but they are not obligated to do so. Therefore, the Parties have agreed to the following procedures and remedies:

4.2.2.1.1 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.

**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.

\$ \_\_\_\_\_

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

**4.3 ACCEPTANCE AND APPROVALS.**

4.3.1 Any acceptance or approval by the City, or its agents or employees shall not constitute nor be deemed to be a release of the responsibility and liability of the Consultant, its employees, agents, subcontractors, or suppliers for the accuracy, competency, and completeness for any Documents prepared or services performed



pursuant to the terms and conditions of this Contract, nor shall acceptance or approval be deemed to be an assumption of such responsibility or liability by the City, or its agents and employees, for any defect, error or omission in any Documents prepared or services performed by the Consultant, its employees, agents, subcontractors or suppliers pursuant to this Contract.

**4.4 COORDINATION OF PERFORMANCE WITH THE CONSULTANT.**

- 4.4.1 In addition to its other duties under this Contract, the City shall perform the following services:
- 4.4.2 Provide information to the Consultant concerning the requirements for the Project;
- 4.4.3 Provide existing plans, maps, field notes, statistics, computations, and other data in the possession of the City which in the Director's opinion will assist the Consultant in performing services under the Contract; and
- 4.4.4 Examine the Documents submitted by the Consultant and render decisions pertaining to them within a reasonable time to avoid unnecessary delay of the Consultant's services.

**4.5 ACCESS TO SITE**

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

**4.6 ACCESS TO DATA**

- 4.6.1 The City shall, to the extent permitted by law, allow Contractor to access and make copies of documents in the possession or control of the City or available to it that are reasonably necessary for Contractor to perform under this Agreement.
- 4.6.2 The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for Contractor's use.
- 4.6.3 For any raw data created, assembled, used, maintained, collected, or stored by Contractor for or on behalf of the City, Contractor shall provide the City either the raw data itself or the ability to extract the raw data in a format mutually agreed upon by both Parties at no additional cost to the City.

**ARTICLE 5. TERMINATION**



**5.1 CONTRACT TERM.**

5.1.1 This Contract is effective on the Countersignature Date and remains in effect for ----- years from the Countersignature Date, unless sooner terminated under the terms of this Contract. The Director shall have the right in his sole discretion to extend this Contract for ----- additional one-year periods by giving Consultant advance written notice at least 30 days prior to the expiration of this Contract. After expiration of the Contract (as may be extended by options years), no additional LOAs may be issued; however, for any LOA issued prior to the expiration of the Contract, Consultant shall complete the work unless otherwise notified by the Director in writing. The Director may not amend any LOA issued prior to the expiration of the Contract to add scope or time.

**5.2. TERMINATION FOR CONVENIENCE BY CITY**

5.2.2 The Director may terminate this Contract in whole or in part at any time by giving 14 days written notice to Consultant. The City's right to terminate this Contract for convenience is cumulative of all rights and remedies which exist now or in the future.

5.2.3 On receiving the notice, Consultant shall, unless the notice directs otherwise, immediately discontinue all services under this Contract and cancel all existing orders and subcontracts that are chargeable to this Contract and deliver all supplies and materials accumulated in performing this Contract to a place designated by the Director. As soon as practicable after receiving the termination notice, Consultant shall submit an invoice showing in detail the services performed under this Contract up to the termination date. The City shall then pay the fees to Consultant for services actually performed, but not already paid for, in the same manner as prescribed in **Article 4**, unless the fees exceed the appropriated funds remaining under this Contract.

**5.2.4 TERMINATION OF THIS CONTRACT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONSULTANT'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS CONTRACT. 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, LOST PROFITS OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.**

5.2.5 The rights and remedies of the City provided in **Section 5.2** are in addition to any other rights and remedies provided by law or under this Contract.

**5.3 TERMINATION FOR CAUSE BY CITY**

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- 5.3.2 Any violation or breach of terms of this Contract on the part of the Consultant or its subcontractors may result in the suspension or termination of this Contract or such other action that may be necessary to enforce the rights of the parties to this Contract. The duties and obligations imposed by the Contract and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
- 5.3.3 If Consultant defaults under this Contract, the Director may either terminate this Contract or allow Consultant to cure the default as provided below. The City's rights to terminate this Contract for Consultant's default is cumulative of all rights and remedies which exist now or in the future. Default by Consultant occurs if:
- 5.3.3.1 Consultant fails to perform any of its duties under this Contract;
  - 5.3.3.2 Consultant becomes insolvent;
  - 5.3.3.3 all or a substantial part of Consultant's assets are assigned for the benefit of its creditors; or
  - 5.3.3.4 a receiver or trustee is appointed for Consultant.
- 5.3.4 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 or her 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 upon notice of termination, may terminate this Contract on the termination date, at no further obligation of the City.
- 5.3.5 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 Contract, promptly cancel all orders or subcontracts chargeable to this Contract and deliver all supplies and materials accumulated in performing this Contract to a place designated by the Director.
- 5.3.6 In the event of termination due to Consultant's failure to fulfill its obligations, the City may take over the work and prosecute the same to completion by contract or otherwise. In such case, Consultant shall be liable to the City for any additional cost occasioned to the City thereby.
- 5.3.7 If after termination for failure to fulfill contract obligations, it is determined that the Consultant had not so failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, payment shall be made as provided in **Section 5.2**.

5.3.8 The rights and remedies of the City provided in **Section 5.3** are in addition to any other rights and remedies provided by law or under this Contract.

#### **5.4 TERMINATION FOR CAUSE BY CONSULTANT**

5.4.1 Consultant may terminate its performance under this Contract 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 Contract. If a default occurs and Consultant decides to terminate the Contract, then Consultant must deliver a written notice to the Director describing the default and the proposed termination date. The date must be at least 60 days after the Director receives the notice. Consultant, 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 Consultant may terminate its performance under this Contract on the termination date.

#### **5.5 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS**

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

### **ARTICLE 6. MISCELLANEOUS**

#### **6.1 INDEPENDENT CONTRACTOR**

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

#### **6.2 FORCE MAJEURE**

6.2.1 Timely performance by both parties is essential to this Contract. However, neither party is liable for reasonable delays in performing its obligations under this Contract to the extent the delay is caused by Force Majeure that directly impacts the City or 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 Contract. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or 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 extra Reimbursable Expenses or payment.

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 Contract by the City.

6.2.5 If the Force Majeure continues for more than 14 days from the date performance is affected, the Director may terminate this Contract by giving seven days' written notice to Consultant. This termination is not a default or breach of this Contract. **CONSULTANT WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE CONTRACT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

6.2.6 Consultant is not relieved from performing its obligations under this Contract 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 Contract 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 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 this Contract.

**6.5 WRITTEN AMENDMENT**

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

**6.6 APPLICABLE LAWS**

6.6.1 This Contract is subject to the laws of the State of Texas, the City Charter and Ordinances, Airport rules and regulations, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction. If Consultant discovers any discrepancy or inconsistency between this Contract and any ordinance, law, rule, regulation, order or decree, Consultant must report it immediately in writing to the City.

6.6.2 Venue for any litigation relating to this Contract is Harris County, Texas.

**6.7 NOTICES.**

6.7.1 All notices to either party to the Contract must be in writing and must be delivered by hand, 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** 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.

**6.8 CAPTIONS**

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

**6.9 NON-WAIVER**

6.9.1 If either party fails to require the other to perform a term of this Contract, that failure does not prevent the party from later enforcing that term and all other terms. If

either party waives the other's breach of a term, that waiver does not waive a later breach of this Contract.

- 6.9.2 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 Contract or establish a standard of performance other than that required by this Contract and by law. The Director is not authorized to vary the terms of this Contract.

**6.10 INSPECTIONS**

- 6.10.1 City representatives have the right to perform, or have performed inspections of all places where work is undertaken in connection with this Contract.

**6.11 AUDITS**

- 6.11.1 Consultant shall maintain an acceptable cost accounting system. The City, the FAA, the TSA, and the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the Consultant which are pertinent to this Contract for the purposes of making an audit, examination, excerpts and transcriptions. Consultant agrees to maintain all books, records, and reports pertinent to or required under this Contract for a period of not less than seven years after the City makes final payment and all other pending matters are closed. This provision does not affect the applicable statute of limitations.

**6.12 ENFORCEMENT**

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

**6.13 AMBIGUITIES**

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

**6.14 SURVIVAL**

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

**6.15 PARTIES IN INTEREST**

6.15.1 This Contract does not bestow any rights upon any third party, but binds and benefits the City and Consultant only.

**6.16 SUCCESSORS AND ASSIGNS**

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

**6.17 BUSINESS STRUCTURE AND ASSIGNMENTS**

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

6.17.2 Consultant shall not delegate any portion of its performance under this Contract without the Director's prior written consent.

**6.18 REMEDIES CUMULATIVE**

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

**6.19 CONSULTANT DEBT.**

6.19.1 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, HE 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 FOR 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 CONTRACT.

**6.20 COMPLIANCE WITH CERTAIN STATE LAW REQUIREMENTS**

6.20.1 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.

6.20.2 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.

6.20.3 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.

6.20.4 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.

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

6.21.1 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.

**6.22 PRESERVATION OF CONTRACTING INFORMATION**

6.22.1 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.

- 6.22.2 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. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

## **6.23 AIRPORT SYMBOLS**

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

## **6.24 AIRPORT SECURITY AND BADGING**

- 6.24.1 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

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assessed against the City because of Contractor's non-compliance with 49 CFR 1540 and 1542 or other applicable laws or regulations.

6.24.2 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.

**[THE REST OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.]**

SAMPLE

**EXHIBIT "A"**

**SCOPE OF SERVICES**

SAMPLE

**EXHIBIT "B"**

**CONSULTANT'S BILLING RATES AND REIMBURSABLE EXPENSES**

SAMPLE

**EXHIBIT "C"**  
**STAFFING SCHEDULE**

SAMPLE

**EXHIBIT "D"**

**DRUG POLICY COMPLIANCE AGREEMENT**

I, \_\_\_\_\_ as an owner or officer of

(Name)

(Print/Type)

(Title)

\_\_\_\_\_  
(Contractor)

(Name of Company)

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

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

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor Name

\_\_\_\_\_  
Signature

SAMPLE



**EXHIBIT "E"**

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

I, \_\_\_\_\_, \_\_\_\_\_,  
(Contractor) (Title)  
(Name)

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 "F"**

**DRUG POLICY COMPLIANCE DECLARATION**

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

This reporting period covers the preceding 6 months from \_\_\_\_\_ to \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_ Written drug testing procedures have been implemented in conformity with the Mayor's  
Initials 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 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 tests have occurred  
Initials (Start Date) (End Date)

|                            | <u>Random</u> | <u>Reasonable<br/>Suspicion</u> | <u>Post<br/>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 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

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_

(Signature)

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(Title)

SAMPLE

## EXHIBIT "G"

### TITLE VI ASSURANCES

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

1. Compliance with Regulations - The Consultant 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 Consultant, 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 Subconsultants, including procurement of materials and leases of equipment. The Consultant 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 Consultant 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 Consultant of the Consultant'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 Consultant 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 Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant 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 Consultant'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 Consultant under the Agreement until the Consultant complies, and/or
  - 5.2. cancellation, termination, or suspension of the Agreement, in whole or in part.
6. Incorporation of Provisions - The Consultant 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 Consultant 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 Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the sponsor to enter into such litigation to protect the interests

of the sponsor and, in addition, the Consultant may request the United States of America to enter into such litigation to protect the interests of the United States.

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