

**PROFESSIONAL SERVICES AGREEMENT  
FOR CONTENT PRODUCTION COMPANY (CPC)  
FOR THE OCULUS SUPPORT AGREEMENT FOR THE HOUSTON AIRPORT  
SYSTEM**

**THIS PROFESSIONAL SERVICES AGREEMENT FOR CONTENT PRODUCTION COMPANY (CPC) FOR THE OCULUS SUPPORT AGREEMENT FOR THE HOUSTON AIRPORT SYSTEM** (“Agreement”) is made on the date countersigned by the City Controller (“Effective Date”) by and between the **CITY OF HOUSTON, TEXAS** (“City”), a Texas Home Rule City of the State of Texas principally situated in Harris County, and \_\_\_\_\_ (“Consultant” or “Technical Advisor”), a \_\_\_\_\_ authorized to do business in Texas **OR** Texas corporation. City and Consultant are referred to in this Agreement individually as the “Party” or collectively as the “Parties”.

The Parties agree as follows:

**ARTICLE 1. PARTIES**

**1.1 ADDRESS**

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

**City**

**Consultant**

\_\_\_\_\_  
Director, Houston Airport System  
City of Houston  
PO Box 60106  
Houston, TX 77205-0106

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**1.3 PARTS INCORPORATED**

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

**1.4 CONTROLLING PARTS**

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

**[SIGNATURE PAGE FOLLOWS]**

**1.5 SIGNATURE**

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

**CONSULTANT**

**CITY OF HOUSTON, TEXAS**

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

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

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

Mayor \_\_\_\_\_

Title: \_\_\_\_\_

Tax ID Number: \_\_\_\_\_

**ATTEST/SEAL:**

Signed by: \_\_\_\_\_

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

**APPROVED:**

**COUNTERSIGNED BY:**

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

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

**APPROVED AS TO FORM:**

**DATE COUNTERSIGNED:**

\_\_\_\_\_  
Sr. Assistant City Attorney  
L.D. File No. \_\_\_\_\_

\_\_\_\_\_

**DRAFT**

## ARTICLE 2. DEFINITIONS

- 2.1 In addition to the words and terms defined elsewhere in this Agreement, the following terms have the meanings set out below:
- 2.1.1 “Accept” or “Acceptance” means the act of the Director by which the City assumes for itself, approval of specific services, as partial or complete performance of the Agreement.
- 2.1.2 “Agreement” means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Consultant. Any reference in this Agreement to Agreement shall mean Agreement.
- 2.1.3 “Billing Rate(s)” means the all-inclusive rates set forth in **Exhibit “B”** for each job category of personnel providing services.
- 2.1.3.1 Billing Rate 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. From the Countersignature Date through the end of the Term, Consultant shall charge City the Billing Rates set forth in **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”**.
- 2.1.4 “Business Day(s)” mean(s) any day that is not a Saturday, Sunday, or City Holiday. In the event that any deadline set forth in this Agreement falls on a Saturday, Sunday, or City Holiday, the deadline shall automatically be extended to the next day that is not a Saturday, Sunday, or City Holiday.
- 2.1.5 “Change Order” means either an increase or decrease in the Project Area, the Scope of Work, the locations of Disposal Site or other key elements of the projects.
- 2.1.6 “City” is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.1.7 “City Attorney” means the City Attorney of the City or any person designated by the City Attorney to perform one or more of the duties of the City Attorney under this Agreement.
- 2.1.8 “City Data” means all Documents and/or Information: (i) that the City discloses, supplies, or provides to Consultant under, pursuant to, or in

connection with this Agreement, (ii) that Consultant obtains, receives, or collects under, pursuant to, or in connection with this Agreement, and/or (iii) collected, received, entered, stored, archived, retained, maintained, processed, or transmitted in, into, or by the Software. "City Data" does not include the Software, the Object Code, or the Source Code.

- 2.1.9 "City Holiday" means any official City of Houston holiday as determined each year by the City Council.
- 2.1.10 "City Information" or "Information" is defined in Section 3.16.1 of this Agreement.
- 2.1.11 "City Personnel" means all City employees, but not elected officials.
- 2.1.12 "Consultant" is defined in the preamble of this Agreement and includes its successors and assigns. Any reference in this Agreement to Contractor shall mean Consultant.
- 2.1.13 "Countersignature Date" means the date the City Controller countersigns this Agreement
- 2.1.14 "CPO" means the City of Houston Chief Procurement Officer of the City of Houston, as set forth in Chapter 15 of the Houston Code of Ordinances.
- 2.1.15 "Day(s)" or "days" means calendar day, including weekends and legal holidays, whether capitalized or not, unless otherwise specifically provided. In the case of plural "days", those days will be consecutive.
- 2.1.16 "Deliverable(s)" mean(s) any equipment, services, products, goods, software, case management databases and applications, documents, or other tangible item provided by Consultant to the City in connection with this Agreement.
- 2.1.17 "Director" means the Director of the Houston Airport System, or any person designated by the Director to perform one or more of the Director's duties under this Agreement.
- 2.1.18 "Documents" means all original and non-identical copy of any written, typed, or printed matter, or electronically stored information, of any kind or description in any format including paper, digital or electronic.

The word "documents" includes, but is not limited to, the following: agendas, analyses, audio or video recordings, bulletins, charts, circulars, communications (including any interoffice, social media, and other communications), computations, computer programs, copies, correspondence, data, databases, data compilations, data prototypes,



designs, diagrams, diskettes, documents, drafts, drawings, electronic mail (email), electronically stored information, exhibits, facsimiles, forms, graphs, guides, help files, how to guides, images, information, instructions, inventions, items, letters, logs, manuals, maps, materials, memoranda, metadata, microfilm, minutes or meeting minutes, models, notes, notations, notebooks, operating manuals, original tracings of all drawings and plans, other graphic matter (however produced or reproduced), pamphlets, photographs (including any digital or film photographs), plans, printouts, policies, procedures, records, recordings (including any audio, video, digital, film, tape, and other recordings), reports, social media communications, software, specifications, tabulations, telegrams, underlying data, user guides, works, worksheets, work products, writings, and any other writings or recordings of any type or nature (and any revisions, modifications, or improvements to them).

- 2.1.18.1 "Effective Date" means the date the City Controller countersigns the signature page of this Agreement and the Agreement becomes effective and binding.
- 2.1.18.2 "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.
- 2.1.19 "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.
- 2.1.20 "HAS" means the City of Houston Airport System, the City of Houston's department of aviation.
- 2.1.21 "Holiday" means any day that has been designated as such by City Council.
- 2.1.22 "Include" and "including", and words of similar import, shall be deemed to be followed by the words "without limitation".
- 2.1.23 "Letter of Authorization" or "LOA" means the document the Director sends to the Consultant authorizing certain services to be performed in accordance with this Agreement.
- 2.1.24 "Notice to Proceed" means a written communication from the Director to Consultant instructing Consultant to begin performance under this Agreement.

- 2.1.25 "Party" or "Parties" means City and Consultant who are bound by this Agreement, individually or collectively as indicated in the context by which it appears.
- 2.1.26 "Project" means the services to be performed as authorized by individual Letters of Authorization in accordance with the Agreement. The work described in each Letter of Authorization is an individual Project. "Project" includes all labor, materials equipment and vehicles necessary to complete the services described in **Exhibit "A"** of this Agreement.
- 2.1.26.1 "Reimbursable Expenses" means: 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 Agreement; 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; sales tax related to the Consultant's services under this Agreement which it is legally required to pay; and as set forth in **Exhibit "B"**, if any. It shall be the Consultant's responsibility to inform itself of the City's travel reimbursement policies.
- 2.1.27 "Services" means all services required by or reasonably inferable from the Agreement and Exhibit A including all labor, materials, tools, supplies, equipment, transportation, mobilization, insurance, subcontracts, supervision, management, reports, incidentals, quality control, and other items necessary or incidental by Consultant to fulfilling Consultant 's obligations.
- 2.1.28 "Software" means the any software or licenses as further described in **Exhibit "A"** of this Agreement, including without limitation, software-as-a-service, associated databases, storage means, user interfaces, software components or modules, and any related documentation and user guides provided by Contractor.
- 2.1.29 "Staffing Schedule" means Consultant's organizational structure and staffing assignments for key positions on the Projects as shown in **Exhibit "C"** regarding Key Personnel

- 2.1.30 "Subcontractor" means any individual, partnership, firm, corporation, or joint venture who contracts with the Consultant to furnish services, labor, equipment, and/or materials under this Agreement.
- 2.1.31 "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 Agreement 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. 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. 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. Consultant is responsible for the performance and work product of subcontractors.
- 2.1.32 "Term" means the entire period during which this Agreement is in effect, starting on the Effective Date and continuing through the final date of termination or expiration of this Agreement, including any renewals or extensions.
- 2.1.33 "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.
- 2.1.34 "Writing" or "written" shall mean a written communication from one Party to the other, including an electronic communication or e-mail.
- 2.1.34 When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular include the plural.
- 2.1.35 The word "*shall*" is always mandatory and not merely permissive.

## ARTICLE 3. DUTIES OF CONSULTANT

### 3.1 SCOPE OF SERVICES

#### 3.1.1. Services in General

3.1.1.1 In consideration of the payment specified in this Agreement, Contractor shall provide all labor, materials, and supervision necessary to perform the services described in **Exhibit "A"** (Scope of Services), the services specifically described in individual LOA's, and other services required under this Agreement, including any additional services, if requested ("Service(s)").

3.1.1.2 Contractor represents and warrants that it has all the necessary rights, title, and interest to the delivered content, strategy, guidelines, capsules, media and documentation, is to fully and legally comply with its obligations under this Agreement. In the event there are third-party components in the delivered content, strategy, guidelines, capsules, media and documentation, Contractor represents and warrants that these third-party components have been fully licensed or purchased by Contractor for City's use for all purposes and therefore, City will not be subject to any other further licensing requirements, restrictions, or additional fees.

3.1.1.3 Subject to and in accordance with the terms and conditions of this Agreement, the Director and Contractor may execute and issue under this Agreement one or more LOA's setting forth Services that Contractor shall provide or perform relating to the matters set forth in this Agreement. Contractor shall complete the Services set forth in and in accordance with each LOA, and/or any authorized amendment thereto, approved and signed by the Director and Contractor. No additional term or condition added in any LOA, or any authorized amendment thereto, shall conflict with or diminish any term or condition of this Agreement and any such term or condition shall be void and unenforceable.

3.1.1.4 The City may duplicate the delivered content, strategy, guidelines, capsules, media and documentation for any use, including but not limited to, for training purposes.

3.1.2. Time is of the essence in the performance of this Agreement.

3.1.3 Consultant shall also perform the following services:

3.1.3.1. Provide prompt and efficient consulting services as may be required in an LOA for each Project;

3.1.3.2. Coordinate its performance with the Director, City consultants, and all governmental entities having jurisdiction over the Project;

3.1.3.3. 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 Agreement;

- 3.1.3.4. Attend meetings with representatives from the City, local, state and federal agencies, and contractors, if required by the Director;
- 3.1.3.5. If requested, provide a copy of Documents prepared by it or made available to it under this Agreement;
- 3.1.3.6. Meet the standards prevailing in its profession for services performed for similar sized airports in the United States;
- 3.1.3.7. Verify the professional quality, technical accuracy and coordination of all Documents and services; and
- 3.1.3.8. Correct or revise all errors and deficiencies in delivered content, strategy, guidelines, capsules, media, documentation and services as directed by the Director. No compensation will be paid for corrections or revisions resulting from errors or omissions made by Consultant.
- 3.1.4. Services in Particular
- 3.1.5. In response to Letters of Authorization to be issued periodically by the Director, Consultant shall perform consulting services in accordance with this Agreement and each LOA. The extent of each assigned Project will be defined in each LOA in accordance with this Agreement after negotiations with Consultant have been completed for each LOA.
- 3.1.6. The method of payment will be a Fixed Lump Sum upon each approved milestone as described in appendix B.
- 3.1.6.3. 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.
- 3.1.7. Each LOA must set forth the following:
  - 3.1.7.1. Contract number and Consultant's name, address, and telephone number;
  - 3.1.7.2. LOA number and date;
  - 3.1.7.3. Identity of the Consultants key personnel assigned to each LOA and Subcontractors who will perform services (after having secured the Director's written approval of such Subcontractor(s));
  - 3.1.7.4. 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.);
  - 3.1.7.5. Time of performance (including Project Schedule Chart);
  - 3.1.7.6. Place of performance;

- 3.1.7.7. HAS Project Manager;
- 3.1.7.8. 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 Agreement, if an hourly based agreement;
- 3.1.7.9. Identification of the estimated amount of services to be performed by M/WBEs, if applicable;
- 3.1.7.10. Method of payment, either a Fixed Lump Sum agreement or an hourly-based agreement with a total not-to-exceed amount;
- 3.1.7.11. Balance of funds remaining in the Agreement;
- 3.1.7.12. 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;
- 3.1.7.13. Frequency of payment, either monthly or upon completion of a Project;
- 3.1.7.14. Submittal requirements, including schedule and deliverables, (i.e., reports, analyses statements, etc.); and
- 3.1.7.15. Any other information necessary to identify and perform the services or as otherwise may be required by the Director.
- 3.1.8. LOA's shall continue to be in effect and performed by Consultant until such time as all requirements have been met and a written acceptance of the Project performed has been made by the Director or until Consultant receives written notification from the Director to discontinue services on a particular Project.
- 3.1.9. Upon written request by 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 Director or until the Consultant receives written notification from the Director to discontinue services.
- 3.1.10. LOAs may be amended by the Director in the same manner as they are issued.
- 3.1.11. A LOA may not alter or amend the terms and conditions set forth in this Agreement.
- 3.1.12. 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 this Agreement.

### **3.2 COORDINATE PERFORMANCE**

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

### **3.3 REPORTS**

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

### **3.4 SCHEDULE OF PERFORMANCE**

3.4.1 *Time of Performance*

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

### **3.5 SUBCONTRACTORS AND PROMPT PAYMENT OF SUBCONTRACTORS**

3.5.1 Consultant shall not subcontract any part of its performance under this Agreement without the prior written approval of the Director. In requesting such approval, 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 Consultant in this Agreement, 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. 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.

3.5.2 **IN ACCORDANCE WITH THE TEXAS PROMPT PAYMENT ACT, CONTRACTOR SHALL MAKE TIMELY PAYMENTS TO ALL PERSONS AND ENTITIES THAT CONTRACTOR HAS HIRED TO SUPPLY LABOR, MATERIALS, OR EQUIPMENT FOR THE PERFORMANCE OF THIS AGREEMENT. CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF**

**CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS REGARDLESS OF WHETHER THE FAILURE TO PAY IS CAUSED BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), OR GROSS NEGLIGENCE, (WHETHER SOLE, JOINT OR CONCURRENT), STRICT LIABILITY, INTENTIONAL ACTS, OR OTHER CONDUCT OR LIABILITY OF THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES.**

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

### **3.6 CONSULTANT'S PERSONNEL**

- 3.6.1 Consultant shall perform services under this Agreement employing the people listed in its staffing schedule provided in **Exhibit "C"**. Consultant may revise its staffing schedule only after obtaining the prior written approval of the Director. Upon the Director's written approval, the revised Staffing Schedule shall replace the existing **Exhibit "C"** without the need of an amendment. The revised Staffing Schedule must include the following information for each professional-level employee proposed for assignment under this Agreement:

- 3.6.1.1 Name of employee;
- 3.6.1.2 Description of tasks to be performed;
- 3.6.1.3 Applicable registration;
- 3.6.1.4 Principal office of employment;
- 3.6.1.5 Summary of relevant experience; and
- 3.6.1.6 Date and expected duration of assignment.

- 3.6.2 During the term of this Agreement, Consultant must obtain, maintain, and pay for all licenses, permits, and certificates, including all professional licenses required by any statute, ordinance, rule or regulation. If Consultant does not maintain these professional licenses, the Director may immediately terminate this Agreement. The Consultant must immediately notify the Director of any suspension, revocation, or other negative action against his or her license.

- 3.6.3 The Director may require the removal of any employee of the Consultant providing services under this Agreement whose work product in the Director's sole discretion is unacceptable.

- 3.6.4 Contractor shall make citizen and City personnel satisfaction a priority in providing services under this Agreement. Contractor shall train its employees and personnel to be customer service-oriented and to positively and politely



interact with citizens and City personnel when performing services. Consultant's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the Director's opinion, Consultant is not interacting in a positive and polite manner with citizens or City personnel, he or she shall direct Consultant to take all remedial steps to conform to these standards. Consultant shall replace any of its personnel or subcontractors assigned to the project whose work product is deemed unsatisfactory by the Director.

### **3.7 RELEASE**

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

### **3.8 INDEMNIFICATION**

#### **3.8.1 INDEMNIFICATION – GENERAL**

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

**3.8.1.1.1 CONSULTANT'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED SUBPARAGRAPHS 3.07.1.1 THROUGH 3.07.1.3, "CONSULTANT") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**

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

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

**3.8.1.2 CONSULTANT SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES.**

**3.8.1.3 CONSULTANT AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONSULTANT, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, DOCUMENTATION, OR DOCUMENTS CONSULTANT FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, 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. CONSULTANT SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, DOCUMENTATION, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT. WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONSULTANT SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, DOCUMENTATION, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, DOCUMENTATION, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONSULTANT SHALL REFUND THE PURCHASE PRICE.**

**3.9 INTELLECTUAL PROPERTY RELEASE AND INDEMNIFICATION**

**3.9.1 CONSULTANT AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE**

“CITY”) HARMLESS FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONSULTANT , ALLEGING THAT THE CITY’S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONSULTANT FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, SERVICE MARK, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONSULTANT SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

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

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

**3.10 SUBCONTRACTOR’S INDEMNITY**

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

**3.11 INDEMNIFICATION PROCEDURES**

*3.11.1. Notice of Claims*

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

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

- 3.11.1.1.2 the basis on which indemnification may be due, and
- 3.11.1.1.3 the anticipated amount of the indemnified loss.

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

3.11.2. *Defense of Claims*

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

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

**3.12 INSURANCE**

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

<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)
	Bodily Injury by Disease \$500,000 (policy limit)

	<ul style="list-style-type: none"> <li>• Bodily Injury by Disease \$500,000 (each employee)</li> </ul>
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence, and \$2,000,000 aggregate
Automobile Liability	<p>\$1,000,000 combined single limit for: (i) Any Auto; or (ii) All Owned, Hired, and Non-Owned Autos</p> <p>\$10,000,000 for auto driven in the Airfield Operations Area (AOA)</p>
Professional Liability (if applicable)	\$1,000,000 per occurrence; \$2,000,000 aggregate
Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability and Automobile Liability	\$1,000,000
<b>Aggregate Limits are per 12-month policy period unless otherwise indicated.</b>	

3.12.2. *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 Agreement requirements. Prior to beginning performance under the Agreement, at any time upon the Director's request, or each time coverage is renewed or updated, 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 amounts. Consultant waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Consultant shall also require all subcontractors or consultants 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.

3.12.3. *Form of Insurance.* The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never: (i) excuse non-compliance with the terms of this Section; or (ii) waive or estop the City from asserting its rights to terminate this 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.

- 3.12.4. *Required Coverage.* The City shall be an Additional Insured under this Agreement, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other Agreement provisions. 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 that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement. If professional liability coverage is written on a "claims made" basis, 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 Consultant shall be accompanied by endorsements for: (i) Additional Insured coverage in favor of the City for Commercial General Liability and Automobile Liability policies; and (ii) Waivers of Subrogation in favor of the City for Commercial General Liability, Automobile Liability and Workers' Compensation/Employers' Liability policies. The Director will consider all other forms on a case-by-case basis.
- 3.12.5. *Notice.* **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 or her sole discretion, may immediately suspend Consultant from any further performance under this Agreement and begin procedures to terminate for default.
- 3.12.6 *Other Insurance.* If requested by the Director, Consultant shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Consultant's operations under this Agreement.

### 3.13 PROFESSIONAL STANDARDS

- 3.13.1 Consultant's performance shall conform to the professional standards prevailing in the Harris County, Texas, to perform work in a good and workman like manner with respect to the scope, quality, due diligence, and care of the services and products Consultant provides under this Agreement. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.
- 3.13.2 With respect to any parts and goods it furnishes, Contractor warrants:
- 3.13.2.1 that all items are free of defects in title, design, material, and workmanship;
- 3.13.2.2 that each item meets or exceeds the City's specifications and requirements for the content;
- 3.13.2.3 that each replacement content is new, in accordance with original content, and of a quality at least as good as the quality of the item which it replaces; and
- 3.13.2.4 that no item or its use infringes any patent, copyright, or proprietary right.

### 3.14 ACCEPTANCE AND REJECTION

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

Section) and Consultant shall continue to make any necessary correction(s) or replacement(s) (as provided under this Section) until the Director Accepts in writing all previously rejected Services or other Deliverables.

- 3.14.5. Notwithstanding anything to the contrary herein or elsewhere, if the Director does not Accept any Services or other Deliverables after one or more attempted correction(s) or replacement(s) of such Services or other Deliverables by Consultant, the Director may, in his sole discretion, issue a final rejection notice to Consultant for all Services and other Deliverables (whether or not previously Accepted), the City shall return all Equipment and Software to Consultant at no cost to the City, the City shall have no obligation to pay any amount whatsoever under this Agreement, Consultant shall immediately refund any and all amounts paid by City under this Agreement, and this Agreement shall immediately terminate.
- 3.14.6. The City reserves all other available rights and remedies at law or in equity, including without limitation all rights and remedies and rights under Article 2 of the Texas Business and Commercial Code.

### **3.16 CONFIDENTIALITY**

#### **3.16.1 City Use**

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

#### **3.16.2 Consultant Confidentiality**

##### **3.16.1 Consultant Confidentiality**

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

### **3.17 SENSITIVE SECURITY INFORMATION**

- 3.17.1 Consultant shall take all appropriate measures in accordance with 49 C.F.R. 1520 and other applicable laws to protect all proprietary, privileged,



confidential, or otherwise Sensitive Security Information (“SSI”) that may come into Consultant’s possession as a result of this Agreement.

### **3.18 LICENSES AND PERMITS**

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

### **3.19 COMPLIANCE WITH LAWS**

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

### **3.20 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE**

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

### **3.21 TITLE VI ASSURANCES**

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

### **3.22 MINORITY AND WOMEN BUSINESS ENTERPRISE COMPLIANCE**

3.22.1\_ Consultant shall comply with the City’s Minority and Women Business Enterprise (“MWBE”) programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances and the applicable Office of Business Opportunity’s (“OBO”) Policies and Procedures. Consultant shall make good faith efforts to award subcontracts or supply agreements in at least **10%** of the value of this Agreement to MWBEs (“Stated MWBE goal”). If the Consultant is a certified MBE or WBE, Consultant may count toward goals the work that it commits to perform with its own work force, capped at 50% of the total advertised goal. Consultant acknowledges that it has reviewed

the requirements for good faith efforts on file with OBO and will comply with them.

- 3.22.2 For purposes of this paragraph, "Contract Year" means a twelve (12) month period during the term of the contract commencing on the Effective Date of this Agreement and each anniversary thereof. If the term of this Agreement exceeds one Contract Year and Consultant's MWBE participation level in a Contract Year is less than the Stated MWBE goal, then within 30 calendar days of the end of each Contract Year Consultant must provide a written explanation to both the Director and Office of Business Opportunity Director ("OBO Director") of the following: (1) the discrepancy between Consultant's MWBE participation level and the Stated MWBE goal, (2) the reason for the discrepancy, and (3) Consultant's good faith efforts (in accordance with the City's policy) towards achieving the Stated MWBE goal. As part of the good faith efforts assessment, the OBO Director may consider Consultant's failure to timely submit the notice or explanation required by this provision and the OBO Director may impose sanctions or other penalties on Consultant for said failures in accordance with Chapter 15 of the Code of Ordinances, OBO's policies and procedures, and the City's good faith efforts policy.
- 3.22.3 Consultant shall maintain records showing:
- 3.22.3.1 Subcontracts and supply agreements with Minority Business Enterprises;
  - 3.22.3.2 Subcontracts and supply agreements with Women Business Enterprises; Subcontracts and supply agreements with Small Business Enterprises (if any);
  - 3.22.3.3 Written confirmation from MWBE subcontractors and suppliers that they are participants on the contract; and
  - 3.22.3.4 Specific efforts to identify and award subcontracts and supply agreements to MWBEs. Consultant shall submit periodic reports of its efforts under this Section to the OBO Director in the form and at the times he or she prescribes.
- 3.22.4 Consultant shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:
- 3.22.4.1 [Name of MWBE subcontractor] shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (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.

3.22.4.2 Within five (5) business days of execution of this subcontract, Consultant [prime Consultant] and Subcontractor shall designate, in writing, to the City of Houston's OBO Director ("the OBO Director") an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street, mailing address, phone number, and email address of such agent.

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

### **3.22 DRUG ABUSE DETECTION AND DETERRENCE**

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

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

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

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

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

3.22.3 If Consultant files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six months during the performance of this Agreement (or on completion of this Agreement if performance is less than six months), a Drug Policy Compliance Declaration

in a form substantially similar to **Exhibit “G”**. Consultant shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each six-month period of performance and within 30 days of completion of this Agreement. The first six-month period begins to run on the date the City issues its Notice to Proceed or, if no Notice to Proceed is issued, on the first day Consultant begins work under this Agreement.

- 3.22.4. Consultant also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Consultant’s employee work force.
- 3.22.5. Consultant shall require that its subcontractors comply with the Executive Order, and Consultant shall secure and maintain the required documents for City inspection.

### **3.23 ADDITIONS AND DELETIONS**

- 3.23.1. Subject to the allocation of funds, the Director may add similar supplies, services, or locations, within the scope of this Agreement, to the list of supplies, services, or locations to be performed or provided by giving written notification to Consultant. For purposes of this Section, the “Effective Date” means the date specified in the notification from the Director. As of the Effective Date, each item added is subject to this Agreement, as if it had originally been a part, but the charge for each item starts to accrue only on the Effective Date.
- 3.23.2. If a deliverable or service that is subject to this Agreement is deleted, lost, stolen, destroyed, damaged, sold, replaced, or otherwise disposed of, the Director may exclude it from the operation of this Agreement by notifying Consultant in writing. The notice takes effect immediately on its receipt by Consultant. More than one notice may be given. When a notice is received, Consultant shall delete the charge for the excluded deliverable or service from the sum(s) otherwise due under this Agreement.

### **3.24 PAY OR PLAY**

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

### **3.25 COMPLIANCE WITH CERTAIN STATE LAW REQUIREMENTS**

- 3.25.1. Anti-Boycott of Israel. Consultant certifies that Consultant is not currently engaged in, and agrees for the duration of this Agreement not to engage in,

the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

- 3.25.2 Anti-Boycott of Energy Companies. Consultant certifies that Consultant is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.
- 3.25.3 Anti-Boycott of Firearm Entities or Firearm Trade Associations. Consultant certifies that Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.
- 3.25.4 Certification of No Business with Foreign Terrorist Organizations. For purposes of Section 2252.152 of the Texas Government Code, Consultant certifies that, at the time of this Agreement neither Consultant nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Consultant, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code as a company known to have contracts with or provide supplies to a foreign terrorist organization.

### **3.26 ZERO TOLERANCE FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES**

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

### **3.27 USE OF PRODUCTS**

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

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

### **3.28 CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND INELIGIBILITY AND VOLUNTARY EXCLUSION**

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

### **3.29 AIRPORT BADGING AND SECURITY**

- 3.29.1 Each employee of Consultant and its subcontractors must wear a badge issued by the Houston Airport System at all times while on airport property. Consultant shall be responsible for the cost of the initial badges and any replacements thereof.
- 3.29.2 The Transportation Security Administration may assess fines and/or penalties for Consultant's non-compliance with the provisions of 49 CFR Part 1542 entitled "Airport Security," as amended from time to time, or by agencies for noncompliance with laws or regulations applicable to Consultant's operations. Within 10 days after receiving written notice from the Director stating the amount of any fine or penalty, Consultant shall reimburse the City for any fine or penalty assessed against the City because of Consultant's non-compliance with 49 CFR Part 1542 or other applicable laws or regulations.

### **3.30 AIRPORT SYMBOL**

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

### **3.31 CONFLICTS OF INTEREST**

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

### **3.32 USE OF WORK PRODUCTS**

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

3.32.2 Consultant agrees that neither it nor any of its agents, employees, contractors or subcontractors shall have any right to assert or establish a claim or exercise any of the rights embodied in any copyrights, patents, trademarks, trade, secrets and any other possessory or proprietary rights related to the Works. If requested by the Director, Consultant shall place a conspicuous notation upon any such Works which indicates that the copyright, patent, trademark, or trade secret thereto is owned by the City of Houston.

3.32.3 Consultant shall execute all documents required by the Director to further evidence such assignment and ownership. Consultant shall cooperate with the City in registering, creating, or enforcing any copyrights, patents, trademarks, trade secrets, or other possessory or proprietary rights arising hereunder. If any assistance by Consultant is requested and rendered pursuant to this Section, the City shall reimburse Consultant for all out-of-pocket expenses incurred by Consultant in rendering such assistance subject to the availability of funds. On termination of this Contract or upon request by the Director, Consultant shall deliver all Works to the City. Consultant shall obtain written agreements in the form specified in **Exhibit "G"** from its agents, contractors and subcontractors performing work hereunder which bind them to the terms contained in this Section.

- 3.32.4 Consultant may, however, retain copies of such Documents. Consultant shall have the right to use such copies internally, but Consultant may not sell, license or otherwise market such Documents. Upon request by the Director, Consultant shall deliver such Documents to the City.
- 3.32.5 Consultant does not represent that the Documents are or are intended to be suitable for use on other Projects or extensions of this Project to the extent that the Documents are site-specific.
- 3.32.6 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.
- 3.32.7 The City may use all City Confidential Information, and any other information, materials, documents, reports, and work products that Consultant prepares, creates, or obtains under this Agreement. In addition, Consultant shall provide the Director with supporting schedules, flow charts or other analysis necessary (“Work Product”). For clarity, the City shall retain sole ownership of any and all Work Product the City provides to understand the reported findings and recommendations. Generally, this information is attached as exhibits to the final report; however, if requested by the Director, the Consultant shall provide this information from its work paper files.
- 3.32.8 Consultant warrants that it owns the copyright to the Documents and all Work Product it creates or provides to the City, or has the license to use (and for the City to use) the Work Product Consultant creates or provides to the City, for this purpose.
- 3.32.9 Consultant shall deliver the original Work Product to the Director on request. Within five business days after this Agreement terminates, Consultant shall deliver to the Director the original Work Product, and all other files and materials Consultant produces or gathers during its performance under this Agreement.

3.34. **CONSULTANT’S PERFORMANCE**

- 3.34.1 Consultant shall make citizen satisfaction a priority in providing services under this Agreement. Consultant shall train its employees to be customer service-oriented and to positively and politely interact with citizens when performing contract services. Consultant’s employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the



highest quality of service to the public. If, in the Director's opinion, Consultant is not interacting in a positive and polite manner with citizens, he or she shall direct Consultant to take all remedial steps to conform to these standards

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

### **3.35 WARRANTIES**

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

3.35.2 Consultant warrants that it is the sole owner and/or has all necessary intellectual property rights in the entire right, title, and interests in and to the Equipment, Software, services, work products, documentation, and Documents provided by Consultant to City under this Agreement. Consultant further warrants that any Equipment, Software, work products, Documents, and related documentation provided to City does not infringe upon any patent, copyright, trade secret, or any other rightful claim, proprietary or intellectual property right of any third party.

3.35.3 Consultant's performance shall conform to the professional standards prevailing in Harris County, Texas with respect to the scope, quality, due diligence, and care of the Services and products Consultant provides under this Agreement and make citizen satisfaction a priority. Consultant shall perform as specified in the Service Level Agreement attached to this Agreement as **Exhibit "C."** Upon the Director's request, Consultant shall promptly re-perform and/or provide, at no charge to the City, any Equipment, Software, or Services which fail to reasonably conform to the warranty contained in this section, any statement of work, project plan, task order, or LOA.

### **3.36 CONSULTANT PERFORMANCE**

3.36.1 Contractor shall make citizen satisfaction a priority in providing services under this Agreement. Consultant shall train its employees to be customer service-oriented and to positively and politely interact with citizens when performing contract services. Consultant's employees shall be clean,

courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the Director's opinion, Consultant is not interacting in a positive and polite manner with citizens, he or she shall direct Consultant to take all remedial steps to conform to these standards.

### **3.37 DATA SECURITY AND LIABILITY FOR LOSS OR CORRUPTION OF DATA**

- 3.37.1 Consultant shall maintain the security of all City data, including but not limited to, all City-specific data, user data, and any other data that is provided to Consultant by City or by any user, or that Consultant generates, creates, or analyzes for the City. Consultant shall implement and maintain reasonable administrative, technical, and physical controls, safeguards, measures, and procedures to (i) protect and safeguard the privacy, security, integrity, and confidentiality of the City's Information and City data, (ii) prevent, detect, contain, and correct security breaches in, involving, or against the City's Information and City data, and (iii) ensure that the City's Information and City data are not accessed, processed, stored, transmitted, transferred, copied, disposed of, archived, or disclosed contrary to the provisions of this Agreement or applicable laws concerning information technology security, network or data security, and privacy laws. Consultant shall be responsible and liable for the acts and omissions of Consultant's personnel, temporary employees, agents, and subcontractor in connection with the provision of the services required under this Agreement, as if such acts or omissions were Consultant's acts or omissions. With respect to any of Consultant's personnel, temporary employees, agents, and subcontractors who process, store, transmit, access, dispose of, or have access to the City's Information, City data, or the Software in so far as it relates to Consultant's performance of this Agreement, Consultant shall:
- (a) Advise these persons of and require that they comply with the provisions of this Agreement applicable to each person, including without limitation, the provisions relating to the privacy, security, integrity, and confidentiality of the City's Information and City data;
  - (b) Require these persons to execute and deliver to Consultant written agreements that are a direct flow-down of, or substantially similar to (or no less restrictive than) the terms of this Agreement, including without limitation, with respect to privacy, security, integrity, and confidentiality of the City's Information and City data; and
  - (c) With respect to Consultant's personnel with access to the City's physical property or premises, Consultant shall advise these persons of applicable visitor policies and require that they comply with them and only access authorized areas.

- (1) Pursuant to this Agreement, Consultant shall be responsible for any fraudulent or dishonest acts committed by Consultant's employees, personnel, temporary employees, agents, subcontractors, directors, or officers.
- (2) Consultant shall comply with all applicable state and federal laws and regulations, including without limitation, all export laws and regulations, HIPAA, and the City Charter and Code of Ordinances. Consultant understands that in certain situations access to information or systems may be restricted by law. Consultant represents and warrants that it has read the Criminal Justice Information Systems (CJIS) process and related documents located at <http://www.houstontx.gov/police/cjis/hpdvendorcertification.htm> and shall comply with the terms and requirements therein and with all applicable state and federal laws.
- (3) If as a result of Consultant's negligence, any City data is lost or corrupted, Consultant shall restore the data to the previous day's uncorrupted state. Loss or corrupted data means data that is inaccessible, and not merely one that contains inaccurate data due to service defects or other reasons.

### 3.38 **PERFORMANCE BOND**

- 3.38.1 Consultant shall furnish and maintain throughout the Agreement term a Performance Bond in the amount of 100% of the annual applicable Agreement year as determined by Director. Consultant 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 Consultant'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.
- 3.38.2 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.

### 3.39 **TIME EXTENSIONS**

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

## ARTICLE 4. 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 Agreement, but subject to **Section 4.3** 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:

4.1.2.1.1. an hourly based agreement which includes the Billing Rates set forth in **Exhibit "C"** 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

4.1.2.1.2. a Fixed Lump Sum that does not exceed an estimate of the total of all the payment categories set forth in **the section immediately above**. 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:

4.1.2.2.1. the percentage of the total services completed for each LOA in the preceding month;

4.1.2.2.2. a summary of the services performed for each LOA during the period covered by the invoice;

4.1.2.2.3. the amount due for the services, and

4.1.2.2.4. any other information required by Director.

- 4.1.2.2.5. 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 City shall make partial payment of the fees on the basis of monthly invoices submitted by Consultant and approved by the Director. 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. Itemized Reimbursable Expenses.
  - 4.1.2.3.3. 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 **Exhibit "B"** If requested by the Director, additional supporting documentation will be provided by Subcontractor.
  - 4.1.2.3.4. 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.
- 4.1.2.4. All invoices must be approved by the Director. The invoices will be paid within 30 days after receipt and approval by the Director. All payments must be made by electronic transfer or check payable to the Consultant. Payments will be electronically transferred to the banking institution and account specified by the Consultant or 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 15 days after receiving them. Neither partial payments made nor approval 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 of its obligations under this Agreement. The Consultant shall send all invoices to the address listed in **Section 1.1** or [has.accounts payable@houstontx.gov](mailto:has.accounts payable@houstontx.gov) .
- 4.1.2.4.1. 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.
- 4.1.2.5. Fees: Disputes
- 4.1.2.5.1 If for any reason the Director disputes any items in an invoice that the Consultant submits, including lack of supporting documentation (as may be required by the Director in his sole discretion), the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Consultant of the dispute and request remedial action. After the dispute is settled, Consultant shall include the

disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

**4.2 TAXES**

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

**4.3 LIMIT OF APPROPRIATION**

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

4.3.2. The Consultant recognizes that under certain provisions of Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City may not obligate itself by contract to an extent in excess of an amount therefor appropriated by the City Council and further recognizes that only \$----- has been appropriated by City Council to pay the cost of all services authorized by LOAs for the City's current fiscal year (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

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

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

4.3.2.2. The Original Allocation plus all supplemental allocations are the "Allocated Funds". The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Consultant must assure itself

that sufficient allocations have been made to pay for Services it provides. If Allocated Funds are exhausted, Consultant's only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

4.3.2.3 If the appropriation for all services authorized by LOAs is insufficient to compensate the Consultant for services in accordance with the payment provisions under the Contract, the Consultant may suspend its Services at such time as the total appropriation for services is expended, but shall resume such Services, if and when authorized by the Director as provided elsewhere herein, upon transfer of funds by the Director or appropriation of additional funds by the City Council for Services in General.

**4.4 ACCESS TO SITE**

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

**4.3 CHANGES**

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

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

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

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

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

Subject to all terms and conditions of the Contract, the City requests that Consultant provide the following:

**[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]**

Signed:

[Signature of Director]

- 4.5.3. The Director may issue more than one Change Order, subject to the following limitations:
- 4.5.3.1. Council expressly authorizes the Director to approve a Change Orders up to \$50,000. A Change Order of more than \$50,000 must be approved by the City Council.
  - 4.5.3.2. If a Change Order describes items that Consultant is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Consultant.
  - 4.5.3.3. The Total of all Change Orders issued under this Section may not increase the Original Agreement amount by more than 25% unless: (1) the additions are exempt from the competitive bidding or proposal requirements, set forth in Texas Local Government Code Chapter 252; or (2) the City acquires the additions from Consultant through a competitive bid or competitive proposal.
- 4.5.4. Whenever a Change Order is issued and executed by both Parties, Consultant shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Consultant shall complete the work within the time prescribed. If no time for completion is prescribed, Consultant shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Consultant is required to perform under this Agreement, Consultant may request a time extension for the completion of the work. The Director's decision regarding a time extension is final.
- 4.5.5. A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the



Original Agreement and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.

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

#### **4.6 ACCESS TO DATA**

- 4.6.1. The City shall, to the extent permitted by law, allow Consultant to access and make copies of documents (including electronically stored information) in the possession or control of the City or available to it that are reasonably necessary for Consultant 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 Consultant's use.
- 4.6.3. For any raw data created, assembled, used, maintained, collected, or stored by the Consultant for or on behalf of the City, Consultant shall provide the City either the raw data itself or the ability to extract the raw data in a format mutually agreed upon by both parties at no additional cost to the City.

#### **4.7 NO QUANTITY GUARANTEE**

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

### **ARTICLE 5. TERM AND TERMINATION**

#### **5.1 TERM**

- 5.1.1. This Agreement is effective on the date the City Controller countersigns this Agreement and remains in effect for five (5) years from the Effective Date, unless sooner terminated under the terms of this Agreement. After

expiration of this Agreement, no additional LOAs may be issued; however, for any LOA issued prior to the expiration of the Agreement, Consultant shall complete the work unless otherwise notified by the Director in writing.

- 5.1.2 Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for one 1-year terms on the same terms and conditions. If the Director chooses not to renew this Agreement, he or she shall notify Contractor and the CPO of non-renewal at least 30 days before the expiration of the then-current term.
- 5.1.3 The Director may issue LOAs, signed by the Director, at any time during the Initial Term of this Agreement or subsequent renewals or extensions to it. After expiration or termination of this Agreement, no additional LOAs may be issued; however, for any LOA issued prior to the expiration or termination of this Agreement, Consultant shall complete the work or Services thereunder and this Agreement shall likewise remain in effect only for those purposes necessary and appropriate for the LOA to continue until its own expiration or termination, unless Consultant is otherwise notified in writing by the Director.

**5.2 NOTICE TO PROCEED**

- 5.2.1 Consultant shall begin performance under this Agreement on the date specified in a Notice to Proceed from the Director.

**5.3 TERMINATION FOR CONVENIENCE BY THE CITY**

- 5.3.1 The Director may terminate this Contract at any time by giving 30 days written notice to 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.
- 5.3.2 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. 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 Section 4.1 unless the fees exceed the allocated funds remaining under this Contract.
- 5.3.3 **RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE IS CONSULTANT'S ONLY REMEDY 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 OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

#### **5.4 TERMINATION FOR CAUSE BY THE CITY**

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

5.4.1.1 Consultant fails to perform any of its duties under this Agreement;

5.4.1.2 Consultant becomes insolvent;

5.4.1.3 all or a substantial part of Consultant's assets are assigned for the benefit of its creditors; or

5.4.1.4 A receiver or trustee is appointed for Consultant.

5.4.2. If a default occurs, the Director may, but is not obligated to, deliver a written notice to Consultant describing the default and the termination date. The Director, at his 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 may terminate this Agreement on the termination date, at no further obligation of the City.

5.4.3 To effect final termination, the Director must notify Consultant in writing. After receiving the notice, Consultant shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement..

#### **5.5 REMOVAL OF CONSULTANT-OWNED EQUIPMENT AND MATERIALS**

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

## ARTICLE 6. MISCELLANEOUS

### 6.1 INDEPENDENT CONSULTANT

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

### 6.02 FORCE MAJEURE

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

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

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

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

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

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

6.02.5 If the Force Majeure continues for more than 7 days from the date performance is affected, the Director may terminate this Agreement by

giving 7 days' written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

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

### **6.3 SEVERABILITY**

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

### **6.4 ENTIRE AGREEMENT**

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

### **6.5 WRITTEN AMENDMENT**

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

### **6.06 GOVERNING LAW AND VENUE**

- 6.06.1** This Agreement shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.

### **6.7 NOTICES**

- 6.7.1. Unless otherwise stated in this Agreement, all notices to either Party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the Party to whom the notice is given at its address set out in Section 1.1.

of this Agreement or other address, the receiving Party has designated previously by proper notice to the sending Party. Postage or delivery charges must be paid by the Party giving the notice.

- 6.7.2. Any notice, demand for payment or communication required or permitted to be given to Consultant by the City under the provisions of this Agreement with respect to correctable and non-correctable contract conditions, violations of this Agreement and assessment(s) of liquidated damages in accordance with **Exhibit "A"** of this Agreement shall be deemed to have been effectively delivered or given to Consultant and received by Consultant on the date emailed, faxed or mailed to Consultant's Project Manager.

6.7.2.1 If Contractor does not meet the Project Baseline Schedule approved by HAS. Section 9.3.2 of Attachment A. Cost shall range between \$250 and \$500 per day per delay.

6.7.2.2 If Contractor does not meet the items in the Response Time Matrix (Table 6) Section 12.3.9 of Attachment A. Cost shall range between \$250 and \$500 per hour per occurrence.

6.7.2.3 Any other Liquidated Damages agreed during RFP negotiations.

## **6.8 CAPTIONS**

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

## **6.9 NON-WAIVER**

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

## **6.10 INSPECTIONS AND AUDITS**

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

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

## **6.11 ENFORCEMENT**

- 6.11.1. The City Attorney may enforce all legal rights and obligations under this Agreement without further authorization. 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 Agreement, with the exception of those documents made confidential by federal or State law or regulation.

## **6.12 AMBIGUITIES**

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

## **6.13 SURVIVAL**

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

## **6.14 PUBLICITY**

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

## **6.16 PARTIES IN INTEREST**

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

## **6.17 SUCCESSORS AND ASSIGNS**

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

## **6.18 BUSINESS STRUCTURE AND ASSIGNMENTS**

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

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

## **6.19 DISPUTE RESOLUTION**

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

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

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

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

## **6.20 REMEDIES CUMULATIVE**

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

## **6.21 CONSULTANT DEBT**



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

## **6.22 ENVIRONMENTAL LAWS**

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

6.22.1.1 The Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq.,

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

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

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

6.22.1.5 The Toxic Substances Control Act, 15 U.S.C., Section 2601 et seq.;

6.22.1.6 The Clean Air Act as amended, 42 U.S.C. 7401 et seq.;

6.22.1.7 The Clean Water Act, 33 U.S.C., Section 1251 et seq.;

6.22.1.8 The Hazardous Materials Transportation Act, 49 U.S.C., Section 1801 et seq.;

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

6.22.1.10 Those substances defined as hazardous waste or as hazardous substances under the laws of Texas and/or the United States or in regulations promulgated under these laws (collectively, "Environmental Laws").

6.22.2 Within 10 days of receipt of an invoice, Contractor shall reimburse the City for any fines or penalties that may be levied against the City by the Environmental Protection Agency, the Texas Commission on Environmental Quality ("TCEQ"), or any other governmental agency for Contractor's failure to comply with the Environmental Laws.

6.22.3 Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to or from the site, including the Airports, or any other areas or Facilities subject to this Agreement, except in strict compliance with the Environmental Laws. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants, or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City Property in violation of the Environmental Laws.

6.22.3.1 All substances, materials, wastes, pollutants, oils, or governmentally regulated substances or contaminants defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws;

6.22.3.2 Asbestos and asbestos-containing materials, petroleum products including crude oil or any fraction thereof gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste; or

6.22.3.3 Any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, distributed, disposed of, or released.

6.22.4 The Airport is subject to the National Pollution Discharge Elimination System Program (“NPDES”), and the regulations, 40 CFR Part 122, relating to stormwater discharges, for operations at the Airports. Contractor is familiar with these NPDES stormwater regulations; and shall conduct operations in accordance with 40 CFR Part 122, as amended from time to time. Contractor understands that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations.

6.22.5 Close cooperation is necessary to ensure compliance with any NPDES stormwater discharge permit terms and conditions, as well as to ensure safety and to minimize costs. Contractor shall implement “Best Management Practices” as defined in 40 CFR, Part 122.2, as amended from time to time, if necessary to minimize the exposure of stormwater to significant materials generated, stored, handled, or otherwise used by Contractor’s defined in the federal stormwater regulations.

6.22.6 The City's NPDES stormwater discharge permit and any subsequent amendments, extensions, or renewals are incorporated into this Agreement. All applicable portions of the permit shall bind Contractor.

6.22.7 Contractor shall implement the NPDES requirements at its sole expense, unless otherwise agreed to in writing between the City and Contractor. Contractor shall meet all deadlines that may be imposed or agreed to by the City and Contractor. Time is of the essence.

6.22.8 Contractor shall include the City on all correspondence to and information submitted to a government entity(ies) under applicable NPDES stormwater regulations that affect the Airports.

6.22.9 Upon Contractor’s written request, the City shall provide any non-privileged information submitted to a government entity(ies) under applicable NPDES stormwater regulations.

6.22.10 Contractor appoints the City as its agent to negotiate with the appropriate governmental entity(ies) any modifications to the City’s stormwater discharge permit.

6.22.11 Contractor shall participate in any City organized task force or other work group established to coordinate stormwater activities at the Airports.

6.22.12 The City may enter upon Contractor 's premises at any time for purposes of inspection to ensure that Contractor is complying with this Section and any other provisions in this Agreement without committing a

trespass.

6.22.13 The City's remedies with regard to Environmental Requirements are cumulative and survive termination of this Agreement.

6.22.14 WITH NO INTENT TO LIMIT CONTRACTOR'S INDEMNIFICATION TO THE CITY SET FORTH IN SECTION 2.07, CONTRACTOR SHALL PROTECT, DEFEND AND INDEMNIFY THE CITY AND ITS OFFICERS, AGENTS, AND EMPLOYEES AGAINST ANY LOSS, COST, CLAIM, DEMAND, PENALTY, FINE, SETTLEMENT, LIABILITY, OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEYS' AND CONSULTANTS' FEES, COURT COSTS, AND LITIGATION EXPENSES) RELATED TO THE FOLLOWING:

6.22.14.1 ANY INVESTIGATION, MONITORING, CLEANUP, CONTAINMENT, REMOVAL, STORAGE, OR RESTORATION WORK PERFORMED BY THE CITY OR A THIRD PARTY DUE TO CONTRACTOR'S ITS EMPLOYEES', SUBCONTRACTORS', JOINT VENTURE PARTNERS' OR AGENTS' USE OR PLACEMENT OF HAZARDOUS MATERIALS (OF WHATEVER KIND OR NATURE, KNOWN OR UNKNOWN) ON THE AIRPORTS PREMISES, OR ANY OTHER AREAS IMPACTED BY THIS AGREEMENT;

6.22.14.2 ANY ACTUAL, THREATENED, OR ALLEGED HAZARDOUS MATERIALS CONTAMINATION OF THE AIRPORTS PREMISES BY CONTRACTOR'S, ITS EMPLOYEES, OR AGENTS;

6.22.14.3 THE DISPOSAL, RELEASE, OR THREATENED RELEASE OF HAZARDOUS MATERIALS BY CONTRACTOR, ITS EMPLOYEES, OR AGENTS AT THE AIRPORTS THAT AFFECTS THE SOIL, AIR, WATER, VEGETATION, BUILDINGS, PERSONAL PROPERTY, OR PERSONS;

6.22.14.4 ANY PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO HAZARDOUS MATERIALS USE BY CONTRACTOR, ITS EMPLOYEES, OR AGENTS AT THE AIRPORTS; OR

6.22.14.5 ANY VIOLATION BY CONTRACTOR, ITS EMPLOYEES, AGENTS, OR JOINT VENTURE PARTNERS OF ANY ENVIRONMENTAL LAWS.

6.22.15 THIS INDEMNITY IS NOT APPLICABLE TO LOSSES, CLAIMS, PENALTIES, FINES, SETTLEMENTS, LIABILITIES, AND

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

## **6.23 PRESERVATION OF CONTRACTING INFORMATION**

- 6.23.1. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Consultant agrees that this Agreement can be terminated if the Consultant knowingly or intentionally fails to comply with a requirement of that subchapter. If the requirements of Subchapter J, Chapter 552, Texas Government Code, apply to this Agreement, then for the duration of this Agreement (including the initial term, any renewal terms, and any extensions), Consultant shall preserve all Contracting Information, as defined by Section 552.003 of the Texas Government Code, related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy, which record retention requirements include but are not limited to those set forth in Chapters 201 and 205 of the Texas Local Government Code and Texas Administrative Code Title 13, Chapter 7. Within five business days after receiving a request from the Director, Consultant shall provide any Contracting Information related to this Agreement that is in the custody or possession of Consultant. Upon the expiration or termination of this Agreement, Consultant shall, at the Director's election, either (a) provide, at no cost to the City, all Contracting Information related to this Agreement that is in the custody or possession of Consultant, or (b) preserve the Contracting Information related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy.
- 6.23.2 If Consultant fails to comply with any one or more of the requirements of this Section, Preservation of Contracting Information, or Subchapter J, Chapter 552, Texas Government Code, then, in accordance with and pursuant to the processes and procedures set forth in Sections 552.373 and 552.374 of the Texas Government Code, the Director shall provide notice to the Consultant and may terminate this Agreement. To effect final termination, the Director must notify Consultant in writing with a copy of the notice to the CPO. After receiving the notice, Consultant shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

**EXHIBIT A  
SCOPE OF SERVICES**

**DRAFT**

**EXHIBIT B  
FEE SCHEDULE**

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

DRAFT

**EXHIBIT C  
KEY PERSONNEL**

**DRAFT**



**EXHIBIT D**  
**TITLE VI: NON-DISCRIMINATION**

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

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

- 5.2. cancellation, termination, or suspension of the Agreement, in whole or in part.
6. Incorporation of Provisions - The Contractor shall include the provisions of paragraphs 1-5 above in every subcontract, including procurement of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. If the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the Contractor may request the United States of America to enter into such litigation to protect the interests of the United States.

DRAFT

EXHIBIT "E"

DRUG POLICY COMPLIANCE AGREEMENT

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

as an owner or officer of \_\_\_\_\_ (Contractor)  
(Name of Company)

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

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

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

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

EXHIBIT "F"

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

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

as \_\_\_\_\_ an \_\_\_\_\_ owner \_\_\_\_\_ or \_\_\_\_\_ officer \_\_\_\_\_ of  
(Name of Company)

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

in \_\_\_\_\_ performing  
(Project)

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

\_\_\_\_\_  
(Date)

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

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

**EXHIBIT "G"**  
**DRUG POLICY COMPLIANCE DECLARATION**

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

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

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

\_\_\_\_\_ Written drug testing procedures have been implemented in conformity with the Mayor's Drug  
 Initials 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 \_\_\_\_\_ [Start date] to \_\_\_\_\_ [End date] the following test has occurred:  
 Initials

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

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

\_\_\_\_\_ I affirm that falsification or failure to submit this declaration timely in accordance 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)

\_\_\_\_\_  
 (Title)

**EXHIBIT "H"**  
**FEDERAL MANDATORY CONTRACT CLAUSES**

**I. ACCESS TO RECORDS AND REPORTS**

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

**II. GENERAL CIVIL RIGHTS PROVISIONS**

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

**III. CONSERVATION REQUIREMENTS**

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

**IV. FEDERAL FAIR LABOR STANDARDS ACT**

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

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

**V. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

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

**VI. TRADE RESTRICTION CERTIFICATION**

Consultant by entering into the Agreement certifies that:

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

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

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

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

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

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

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

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

## **VII. VETERAN'S PREFERENCE**

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

## **VIII. TEXTING WHEN DRIVING**

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages

recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

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

#### **IX. CERTIFICATION OF CONSULTANT REGARDING DEBARMENT**

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

#### **X. CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT**

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

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

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

#### **XI. CERTIFICATION REGARDING LOBBYING**

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of Consultant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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



## EXHIBIT "I"

### Title VI List of Pertinent Nondiscrimination Acts and Authorities

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

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

**EXHIBIT "J"**

**SUBCONTRACTOR'S ASSIGNMENT OF COPYRIGHT**

1. Consultant has entered into a contract with the **CITY OF HOUSTON, TEXAS** ("City") to provide support and consulting services.
2. Subcontractor is or will be providing services for Consultant related to its Contract with the City.
3. In the course of Subcontractor's work for Consultant related to the provision of services to the City, Contract Documents and other work products will be produced by Subcontractor for the benefit of the City for which Subcontractor will be compensated by Consultant.
4. Contract Documents include but are not limited to reports, charts, analyses, maps, letters, tabulations, computer programs, exhibits, notes, models, photographs, the original transparencies of all drawings, all graphic and written information prepared or assembled by Subcontractor and all other work products obtained or prepared by Subcontractor as part of its services for Consultant.
5. For and in consideration of the foregoing, the Subcontractor shall grant and assign and hereby does grant and assign to the City all right, title, interest and full ownership worldwide in and to any work, invention and all Contract Documents, or any modifications or improvements to them, and the copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights therein, that are discovered, conceived, developed, written or produced by the Subcontractor, its agents and employees pursuant to its contract with Consultant (collectively "Works"), to have and to hold the same unto the City absolutely.
6. The Subcontractor agrees that neither it nor any of its agents and employees shall have any right to assert or establish a claim or exercise any of the rights embodied in any copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights related to the Works. If requested by the Consultant, the Subcontractor shall place a conspicuous notation upon any such Works which indicates that the copyright, patent, trademark or trade secret thereto is owned by the City of Houston.
7. The Subcontractor shall execute all documents required by the Consultant and the Director of the City's department of aviation ("Director") to further evidence such assignment and ownership. The Subcontractor shall cooperate with the Consultant and the City in registering, creating or enforcing any copyrights, patents, trademarks, trade secrets or other possessory or proprietary rights arising hereunder. If any assistance by the Subcontractor is requested and rendered pursuant to this Section, the City shall reimburse the Subcontractor for all out-of-pocket expenses incurred by the Subcontractor in rendering such assistance, subject to the availability of funds. On termination of the Subcontractor's contract with Consultant or upon request by the Director, the Subcontractor shall deliver all Works to the City. The Subcontractor agrees that its agents and employees performing work hereunder are bound by the terms of this Exhibit.

IN WITNESS HEREOF, Subcontractor has executed this Assignment as of this \_\_\_\_\_ day  
of \_\_\_\_\_.

\_\_\_\_\_  
Subcontractor