

SAMPLE – SUBJECT TO CHANGE

Revised

CONTRACT FOR PROFESSIONAL ENGINEERING DESIGN FIRM

THE STATE OF TEXAS §

COUNTY OF HARRIS §

THIS CONTRACT FOR ENGINEERING DESIGN SERVICES FOR THE REHABILITATION OF RUNWAY 13R-31L ("Contract") is made on the date countersigned by the City Controller ("Effective Date") by and between the **CITY OF HOUSTON, TEXAS** ("City"), a home-rule city principally situated in Harris County, Texas and ("Engineer"), a _____ authorized to do business in the State of Texas.

RECITALS:

WHEREAS, the City desires to obtain professional engineering services in connection with the planning and/or design of the Project hereinafter described in accordance with the Texas Professional Services Procurement Act; and

WHEREAS, the Engineer desires to provide such services in exchange for the fees hereinafter specified;

NOW, THEREFORE, for and in consideration of the promises and mutual covenants herein contained, it is agreed as follows:

ARTICLE 1. PARTIES

1.1 Address

1.1 The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

<u>City</u>	<u>Engineer</u>
Director of Houston Airport System or designee City of Houston P. O. Box 60106 Houston, Texas 77205-0106	

1.2 Table of Contents

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EXHIBITS	
“A-1”	SCOPE OF PROJECT
“A-2”	PROJECT SCHEDULE
“B”	HOURLY BILLING RATES
“C”	STAFFING SCHEDULE
“D”	TITLE VI ASSURANCES
“E”	DRUG POLICY COMPLIANCE AGREEMENT
“F”	CERTIFICATION OF NO SAFETY IMPACT POSITIONS
“G”	DRUG POLICY COMPLIANCE DECLARATION

1.3 Parts Incorporated

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

1.4 Controlling Parts

1.4.1 If there is a conflict or inconsistency between the provisions of the articles or exhibits, the articles control over the exhibits.

[SIGNATURE PAGE FOLLOWS]

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1.5 Signatures

1.5.1 The City and Engineer have signed this Contract in multiples copies, each of which is an original.

ENGINEER:

CITY:

_____ **CITY OF HOUSTON**

By: _____ By: _____
Name: _____ Mayor
Position: _____

ATTEST/SEAL

ATTEST/SEAL

By: _____ By: _____
Name: _____ City Secretary

Tax ID No. _____ **APPROVED:** _____

Director, Houston Airport System

APPROVED AS TO FORM:

Assistant City Attorney
L.D. File No.

COUNTERSIGNED BY:

City Controller

DATE COUNTERSIGNED:

("Effective Date")

ARTICLE 2. DEFINITIONS

- 2.1 As used in this Contract, the following terms have the meanings given below:
- 2.1.1. "*Basic Services*" are defined in **Section 3.1.2.** and in **Exhibit A-1.**
 - 2.1.2. "*Billing Rate(s)*" means the rates set forth in **Exhibit "B"** for each job classification of personnel providing services. It includes salary cost, labor overhead, general and administrative overhead, direct non-salary expenses (not included in Reimbursable Expenses), and profit. The fee shall be computed separately for each Employee who performs Special Services by multiplying the number of hours the Employee performs Special Services times the Employee's hourly Billing Rate. The Billing Rates set forth in **Exhibit "B"** must not be exceeded without the written approval of the Director and only for corporate-wide salary adjustments or additional Employee categories required to accomplish Special Services and corresponding Billing Rates. Engineer shall establish the Billing Rates in accordance with FAA Advisory Circular 150/5100-14C, as amended from time to time, and **Section 3.1.2.** and **Article 4.**
 - 2.1.3. "*Business Day*" means any day that is not a Saturday, Sunday, or City Holiday whether capitalized or not. In the event that any deadline set forth in this Agreement falls on a Saturday, Sunday, or City Holiday, the deadline shall automatically be extended to the next day that is not a Saturday, Sunday or City Holiday.
 - 2.1.4. "*City*" is defined in the preamble of this Contract and includes its successors and assigns.
 - 2.1.5. "*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 Contract.
 - 2.1.6. "*City Holiday*" means any office City of Houston holiday as determined each year by City Council.
 - 2.1.7. "*Contract*" means this document including all exhibits and any written amendments authorized by City Council and Engineer.
 - 2.1.8. "*Construction Cost*" means the direct actual cost to the City of all construction contract items for the Project, including labor, materials and equipment required for the Project and reflected by the actual construction contract(s) or if no contract is awarded, the lowest bona fide bid received plus the total value of all labor, material and equipment purchased or furnished directly by the City for the Project but excluding: (i) fees or other costs of engineering, legal and related services; (ii) cost of land and rights-of-way; (iii) the City's administrative expenses; and (iv) any additional exclusions that may be listed in **Exhibit "A-1"**.
 - 2.1.9. "*Construction Documents*" mean all of the graphic and written information prepared or assembled by Engineer or the City for communicating the design and for the bidding and construction of the Project.
 - 2.1.10. "*Day*" or "*Days*" means calendar day, including weekends and legal holidays, whether capitalized or not, unless otherwise specifically provided. In the case of

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plural “days”, those days will be consecutive.

- 2.1.11. "*Director*" means the Director of Houston Airport System of the City or any person designated by the Director to perform one or more of the Director's duties under this Contract.
- 2.1.12. "*Documents*" means notes, manuals, notebooks, plans, computations, databases, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Engineer prepares, receives, or provides under this Contract.
- 2.1.13. "*Employee*" means the personnel working under Engineer's direction and control who are direct employees of Engineer.
- 2.1.14. "*HAS*" means the Houston Airport System, the City's Department of Aviation.
- 2.1.15. "*LOA*" or "*Letter of Authorization*" means the documents sent to the Engineer by the Director authorizing certain work to be performed pursuant to **Section 3.1.3**.
- 2.1.16. "*Phase*" means either Phase I – Preliminary Design, Phase II – Final Design, or Phase III – Construction Administration Phase Services, as indicated in the context in which it appears.
- 2.1.17. "*Project*" means Design for REHABILITATION OF RUNWAY 13R 31L AT HOU, Project No. 982
- 2.1.18. "*Project Schedule Chart*" means a schedule of Project activities and events, showing initiation point, duration, and ending points. The schedule indicates time allowed for reviews by the City staff. The Project Schedule Chart shall be drafted by the Engineer, in consultation with the City staff, and must be approved in writing by the Director.
- 2.1.19. "*Reimbursable Expenses*" means:
- 2.1.19.1 the reasonable and actual costs of copying and printing (other than for the Engineer's internal use and the review Documents required under this Contract), postage, message and delivery services, other than for general correspondence, and long-distance telephone charges incurred by the Engineer in the course of its performance under this Contract;
 - 2.1.19.2 with prior written approval the Director, the ordinary and reasonable cost of travel to points outside of Houston and its extra-territorial jurisdiction by representatives of the Engineer, 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 if reservations are made as far in advance as feasible; and
 - **Section 2.1.19. 2.** does not apply to any travel points within the City of Humble where the Houston Airport System has facilities.

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- sales tax related to the Engineer’s services under this Contract which it is legally required to pay.

2.1.20. "*Special Services*" are defined in **Section 3.1.3**.

2.1.21. "*Subcontract Cost*" means the ordinary and reasonable cost of subcontracts made by the Engineer and approved in writing in advance by the Director for services rendered by Subcontractors under this Contract plus a fixed payment not to exceed 5% of Subcontractor Cost to compensate Engineer for profit, assumption of responsibility, and performance risk related to the subcontracts. Such fixed payment shall be computed on an LOA by LOA basis and shall not be subject to adjustment unless the LOA’s scope of work, with respect to subcontracted work, changes. Subcontractors must be selected and paid in accordance with FAA and/or TSA requirements, including but not limited to, FAA Advisory Circular 150/5100-14C, as amended from time to time. Engineer is responsible for the performance and work product of Subcontractors.

2.1.22. "*Subcontractor*" ("**also “Subcontractor”**") means the professional entity subcontracted by Engineer to provide a portion of the engineering services required under this Contract.

2.1.23. "*Staffing Schedule*" means Engineer’s organizational structure and staffing assignments for key positions on the Project as shown in **Exhibit “C”**.

2.1.24. "*Work*" means the entire construction required to be provided by the Construction Documents. The Work may constitute the whole or a part of the Project.

ARTICLE 3. RIGHTS AND DUTIES OF ENGINEER

3.1 SCOPE OF SERVICES

3.1.1 Services in General.

Engineer agrees to provide prompt and efficient professional services in relation to the design and management of the Project for the fees hereinafter specified. Engineer shall perform its work in accordance with the professional skill and care ordinarily provided by competent engineers, practicing in the same or similar locality and under the same or similar circumstances and professional license; and as expeditiously as is prudent considering the ordinarily professional skill and care of a competent aviation engineer.

3.1.1.1. For and in consideration of the payment specified in this Contract, the Engineer shall provide all labor, material, and supervision necessary to perform such specific tasks as set forth in “Exhibit “A-1” when directed to do so by a Letter of Authorization “LOA” which is attached hereto and made a part hereof for all purposes.

3.1.1.2. The Engineer’s performance under this Contract is divided into two

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categories of Services: Basic Services and Special Services. The Scope of Basic Services and Special Services includes the matters set out in Article 3.1.1.3..

3.1.1.3.

Engineer shall perform the following:

- 3.1.1.3.1. Prompt and efficient professional engineering services for the planning and design of the Project;
- 3.1.1.3.2. Coordinate its performance with the Director, City consultants, and all governmental entities having jurisdiction over this Project;
- 3.1.1.3.3. Make periodic written reports, meeting notes, and recommendations to the Director with respect to conditions, transactions, situations or circumstances encountered by the Engineer relating to its services under this Contract;
- 3.1.1.3.4. Attend meetings with representatives from the HAS, local, State and federal agencies, and contractors if required by the Director;
- 3.1.1.3.5. If requested, provide a copy of written materials prepared by it or made available to it under this Contract;
- 3.1.1.3.6. Meet the professional standards prevailing for aviation engineering services performed for similar projects in Texas;
- 3.1.1.3.7. Ensure the professional quality, technical accuracy, and coordination of all Documents and Services;
- 3.1.1.3.8. Correct or revise all errors and deficiencies in Documents and Services as directed by the Director. No compensation will be paid for corrections or revisions of errors and deficiencies.

3.1.2 Basic Services

- 3.1.2.1 The Basic Services in this Contract are divided into three distinct phases: Phase I - Preliminary Design;
- 3.1.2.2 Phase II - Final Design; and
- 3.1.2.3 Phase III –Construction Administration Services.
- 3.1.2.4 The Engineer shall perform the services required for each Phase only after it receives written notice of acceptance of that Phase, “Letter of Authorization” by the Director to begin performance, and assurance that adequate funds have been allocated.
- 3.1.2.5 The City is not required to proceed with the Contract after the Engineer completes each Phase. If the Engineer performs services before receiving a “**Letter of Authorization**” , the Director shall notify the Engineer in writing of his intent to terminate this Contract under **Section 5.2**. Any amounts paid to the Engineer before it receives this written notice plus any amounts to which the Engineer is entitled constitute total compensation for the services rendered to the date of receipt of the written notice. The Engineer is not entitled to any additional sums.

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- 3.1.2.6 Within 10 days of receiving the “**Letter of Authorization**” for Phase 1 “Preliminary Design”, the Engineer shall submit an estimate of Construction Cost based on the current scope of the Project. Following approval by HAS, the Engineer shall report any significant changes in the Construction Cost of the Project.
- 3.1.2.7 The Engineer shall perform the services described below and in **Exhibit “A-1”** for each Phase authorized by the Director. If there is a conflict between this Section and **Exhibit “A-2”**, **Exhibit “A-2”** controls.

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- 3.1.2.7.1. Phase I - Preliminary Design (30%). Phase I services include, but are not limited to, the following:
- 3.1.2.7.1.1. Submit a Project Schedule reflecting firm dates for activities and reviews within 10 days of receiving the Letter of Authorization with Phase I.
 - 3.1.2.7.1.2. Prepare and submit preliminary engineering report and designs for the Project at 30% completion milestone. These studies and designs consist of preliminary layouts, sketches, recommended final design criteria, list of City of Houston standard specifications to be incorporated into the Project, reports, and cost estimates.
 - 3.1.2.7.1.3. The reports must (i) clearly indicate anticipated problems; (ii) recommend alternate solutions to the problems; (iii) identify possible "alternate" bid items for the Project recommended by the Engineer and the Director; and (iv) show recommended subdivision into separate contracts, if any. The Engineer shall coordinate all Documents.
 - 3.1.2.7.1.4. Submit copies of the preliminary design and outline specification Documents to the Director as provided in **Exhibit A-2**.
- 3.1.2.7.2. Phase II - Final Design. Based upon approved preliminary design Documents and any further adjustments in the scope or quality of the Project authorized by the Director, Phase II services include, but are not limited to, the following:
- 3.1.2.7.2.1. Submit the Project Schedule updated to reflect firm dates for the beginning and end of each activity and the review dates within 10 days of receiving the Letter of Authorization with Phase II.
 - 3.1.2.7.2.2. Prepare detailed Construction Documents based on guidelines provided by the Director. The Construction Documents must list recommended alternate bid items for the Project in a manner that permits ready evaluation and comparison. Specifications must conform to City of Houston and other regulatory agency standards.

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- 3.1.2.7.2.3. Inform the Director of any adjustments to previous estimates of the Project Construction Cost which are indicated by market conditions or authorized changes in the scope and requirements of the Project. The Engineer does not guarantee that bids will not vary from the estimate.
- 3.1.2.7.2.4. Prepare and submit the required Documents to obtain approval of all governmental authorities having jurisdiction over the design or operation of the Project and all public and private utilities, including pipeline transmission and railroad companies affected by the Project; obtain the signatures of representatives of these governmental authorities and public and private utilities; obtain the signatures of City officials indicated by the City's standard title block for drawings.
- 3.1.2.7.2.5. Design the Project in compliance with the requirements of applicable laws, codes, and regulations, including the City of Houston Building Code and FAA and TSA directives, rules, and regulations; make revisions to the Contract Documents necessary to provide clarifications or to correct discrepancies; and provide the Director with Documents necessary for obtaining a City building permit and other required permits for the Project. The Construction Documents must conform to applicable federal, state, and City regulations.
- 3.1.2.7.2.6. Deliver to the Director:
 - 3.1.2.7.2.6.1. a detailed cost estimate at the 65%, 95%, and 100% overall completion stages which occur during Phase II;
 - 3.1.2.7.2.6.2. eight copies identified in Exhibit "A-2" of all reports, recommendations, analyses, specifications, plans and drawings (including working drawings); and
 - 3.1.2.7.2.6.3. Construction Documents identified in this Contract and Exhibit "A-2".

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- 3.1.2.7.2.7. Assist the City in securing bids for the construction of the Project based on the Construction Documents; attend pre-bid conferences; assist the City in evaluating the bid proposals; prepare tabulations of bids received; and furnish the City three copies of the bid tabulation and a written recommendation for the award of a construction contract for the Project.
 - 3.1.2.7.2.8. Prepare all required addenda to revise the Construction Documents in order to provide clarifications, correct discrepancies, or correct errors or omissions.
 - 3.1.2.7.2.9. Provide an original or reproducible of the "as-bid" record drawings and for all CADD based drawings, an electronic record of the drawings.
 - 3.1.2.7.2.10. Provide assistance to the City in the preparation and processing of a building permit application for the Project.
 - 3.1.2.7.2.11. Provide design of construction phasing, traffic control and related drawings, details, and notes. Includes developing construction sequencing procedures and documentation.
 - 3.1.2.7.2.12. Prepare pollution prevention plans, consistent with the Environmental Protection Agency National Pollutant Discharge Elimination System (NPDES) permit requirements.
- 3.1.2.7.3. Phase III - Construction Administration Services. The Engineer shall provide professional services during construction to assist in obtaining a completed Project in accordance with the purpose and intent of the Construction Documents. Phase III services include, but are not limited to, the following:
- 3.1.2.7.3.1. Participate in pre-construction conferences and assist with the preparation of a contract between the City and the successful bidder.
 - 3.1.2.7.3.2. Attend weekly construction meetings and make monthly visits to the Project site during construction to observe and report on the progress and the quality of the Work. The reports must be in writing and inform the Director of deviations from the Construction Documents or the construction contractor's construction schedule observed by or brought to the attention of the Engineer. The Engineer must submit the reports in a timely manner so that Work is not

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delayed. The Engineer's personnel must be experienced in construction contracts administration and must be supervised by a professional engineer registered in Texas. Supporting personnel must be provided from the Project design team when specialized knowledge of the Project design is required.

- 3.1.2.7.3.3. Review and approve or take other appropriate action on the shop drawings, samples, and other submissions furnished by the construction contractor and submitted to the Engineer by the City. The Engineer shall determine if the shop drawings, samples, and other submissions conform to the Design concept of the Project and the requirements of the Construction Documents. The Engineer must notify the Director if the shop drawings, samples, or other submissions do not conform to the design concept of the Project. These actions must be taken within 21 days of receipt from the City unless otherwise approved in advance by the Director. The Engineer must maintain a log of all construction contractor submittals which includes the submittal date, the action taken, and the date returned.
- 3.1.2.7.3.4. Prepare supporting data and provide other services (including revisions to Construction Documents) in connection with change orders when such change orders are required either (i) to make clarifications or to correct discrepancies, errors, or omissions in the Construction Documents, or (ii) to conform the Construction Documents to the requirements of all applicable laws, codes, and regulations, including the City of Houston Building Code in effect during design of the Project.
- 3.1.2.7.3.5. Review laboratory, shop, and mill tests of material and equipment for general conformance with Contract Document requirements and report findings to the Director in writing.
- 3.1.2.7.3.6. Provide design clarifications and recommendations to assist the City in resolving field problems relating to the construction.
- 3.1.2.7.3.7. Evaluate construction contractor change and cost proposals and substitutions and recommend either approval or disapproval with detailed reasoning and identifying any impacts on price or time.

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- 3.1.2.7.3.8. Visit the construction site with City representatives as needed to determine the dates of substantial and final completion of the Work. The Engineer shall recommend the proper date to issue the final certificate of payment.
- 3.1.2.7.3.9. No less than 30 days and no more than 45 days before the expiration of the correction period established by the Construction Documents, the Engineer and the Director shall observe the construction site. Within 14 days after this observation, the Engineer shall furnish a written report enumerating items which require repair or replacement as provided under the correction period provisions of the Construction Documents.
- 3.1.2.7.3.10. Provide continuing counsel to the Director throughout the construction of the Project. The Engineer does not have the authority or responsibility to issue direct instructions to the construction contractor, to reject work done by the construction contractor, or to require special inspections or tests. The Director is responsible for the general administration of the contract.
- 3.1.2.7.3.11. Within 90 days after substantial completion, provide to the Houston Airport System, two sets of full size (22" x 34") "record drawings" ("as built"), two sets of half size (11" x 17") "record drawings" ("as built") and two sets of "as built" specifications. In addition to Record drawing sets, one set of electronic files on compact disk (CD) compatible with Autocad latest version shall be included. Specification sets shall include two sets hard bound copies and one set of electronic files as specified by the Director. Engineer shall also provide one record set of drawings in ADOBE Acrobat.
- 3.1.2.7.4. Subject to the requirements of **Section 3.1.1.3.3.**, the Engineer will not be otherwise responsible for the means, methods, techniques, sequences or procedures of construction selected by the Engineer or the safety precautions and programs incident to the work of the Engineer. However, if the Engineer observes any unsafe conditions or unsafe practices by the construction contractor(s), it shall notify the Director immediately. The Engineer will provide confidence to the City of Houston that the completed work of Engineer conforms to the Contract Documents.

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3.1.3. Special Services

- 3.1.3.1. The Engineer shall perform Special Services only in response to a LOA signed by the Director. An LOA will describe the scope of work included in the Special Service, the length of time to perform the service, and the maximum amount of compensation that may be earned for the performance of that service. Payment may be either (i) Billing Rates plus Reimbursable Expenses and Subcontract Costs, or (ii) a lump sum that does not exceed an estimate of (i).
- 3.1.3.2. Special Services tasks are detailed below and in **Exhibits “A-1” and “A-2”**:
 - 3.1.3.2.1. Make revisions to Construction Documents, prepare addenda and prepare change orders to reflect Project Scope changes requested by the Director, required to address changed conditions or a change in direction previously approved by the Director, mandated by changing governmental laws, or necessitated by the City’s acceptance of substitutions by the construction contractor;
 - 3.1.3.2.2. Consult with the City concerning replacement of any Work damaged by casualty and furnish services required in connection with the replacement;
 - 3.1.3.2.3. Assist the City in making arrangements for the Work to proceed if the construction contractor is declared in default by the City for any reason;
 - 3.1.3.2.4. Prepare supporting data and other services related to change orders, other than those change orders and related services included in **Section 3.1.2.3.3.4**;
 - 3.1.3.2.5. If this Contract is terminated, provide services necessary to preserve partially finished work products and to record work products in a particular manner (including record prints of drawings, etc.);
 - 3.1.3.2.6. Assist the City in obtaining any special licenses or permits which may be required for completion of the Project excluding any licenses or permits required to be obtained under **Sections 3.3. and 3.8.** or in **Exhibit “A-2”**. The City shall pay for special licenses or permits;
 - 3.1.3.2.7. If the construction exceeds the time stated in the Project construction contract by more than 30 days due to actions other than the Engineer’s, continue the services required during construction;

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- 3.1.3.2.8. Perform on-site observation to observe site situations and provide advice and consultation on site during Phase III in addition to original Phase III, Construction Phase Services;
- 3.1.3.2.9. Conduct random, reasonable suspicion and post-accident drug testing necessary to comply with **Section 3.12.**;
- 3.1.3.2.10. Provide any other mutually agreed upon services requested and authorized in writing by the Director that are related to the Project and not otherwise included in the Basic Services or other Special Services.

3.1.4. Letters of Authorization “LOA”

- 3.1.4.1. In response to LOA’s that may be issued periodically by the Director, Engineer shall perform Special Services as set forth under this Contract. The extent of such assigned work and the method of payment will be defined in each LOA in accordance with this Contract (after negotiations with Engineer have been completed for each LOA). The method of payment is (i) Billing Rate plus Reimbursable Expenses and Subcontract Costs, and (ii) a lump sum that does not exceed an estimate of (i), not to exceed the amounts set forth in **Section 3.1.3.**
- 3.1.4.2. Engineer agrees that it shall diligently perform all assigned Project tasks and meet the delivery schedules of the Project Schedule Chart established for the Project. Engineer acknowledges that time is of the essence in performing services under this Contract. Engineer shall not begin Special Services until it receives a signed LOA from the Director. Should there be a conflict between the terms of the LOA and the terms of **Exhibit “A-2”**, the terms of **Exhibit “A-2”** shall control.
- 3.1.4.3. LOA's must set forth the following:
 - 3.1.4.3.1. Contract number and Engineer's name, address and telephone number.
 - 3.1.4.3.2. LOA number and date.
 - 3.1.4.3.3. Identity of Engineer's key personnel.
 - 3.1.4.3.4. A scope of services specifically identifying the services to be performed and the Project deliverables (Documents) to be prepared.
 - 3.1.4.3.5. Project Schedule Chart including the following:
 - 3.1.4.3.5.1. Start and completion dates of the Special Services/deliverables;
 - 3.1.4.3.5.2. Critical dates of coordination with Subcontractors;

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- 3.1.4.3.5.3. Review submittal dates and period duration allowed for HAS review;
- 3.1.4.3.5.4. Scheduled submittals of required reports; and
- 3.1.4.3.5.5. Meeting schedule including required attendance at scheduled progress meetings.
- 3.1.4.3.6. A breakout to include identification, by line item, of the required position classifications to perform the Services, the estimated hours, the applicable hourly Billing Rates and other costs as defined in **Section 4.1.** and **Exhibit “B”**, and an extended dollar amount therefor.
- 3.1.4.3.7. 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 therefore.
- 3.1.4.3.8. Balance of funds remaining in the Contract.
- 3.1.4.3.9. Identification of the estimated amount of services to be performed by Disadvantaged Business Enterprises, if applicable.
- 3.1.4.3.10. Such other information required by the Director.
- 3.1.4.4. LOA's shall continue to be in effect and performed by Engineer 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 Engineer receives written notification from the Director to discontinue services on a particular Project. LOA's may be amended by the Director at any time during the performance.

3.2 CONSTRUCTION BUDGET

- 3.2.1. If the construction budget for this Project is indicated in an exhibit to this Contract, Engineer will use its best efforts to design the Project so that it is likely that the Project may be constructed within that budget. At any point Engineer becomes reasonably aware that the construction budget will likely be exceeded, Engineer will notify City of its awareness of that likelihood.

3.3 SITE CONDITIONS

- 3.3.1. Engineer understands that it is in the interest of the City that the construction of the Project being designed by the Engineer under this Contract shall proceed in a prompt and efficient manner. Engineer will make a reasonable effort to identify and note on its Construction Documents interferences that will be encountered on the site of the construction by the construction contractor.

3.4 COORDINATE PERFORMANCE

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

3.5 USE OF WORK PRODUCTS

- 3.5.1 Engineer conveys and assigns to the City its entire interest and full ownership worldwide in and to any work, invention, and all Documents, and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively "Proprietary Rights") that Engineer, its agents, employees, contractors, and Subcontractors (collectively "Authors") develop, write, or produce under this Contract (collectively "Works").
- 3.5.2 The Authors shall not claim or exercise any Proprietary Rights related to the Works. If requested by the Director, Engineer shall place a conspicuous notation on any Works which indicates that the City owns the Proprietary Rights.
- 3.5.3 Engineer shall execute all documents required by the Director to further evidence this assignment and ownership. Engineer shall cooperate with the City in registering, creating, and enforcing Proprietary Rights arising under this Contract. If Engineer's assistance is requested and rendered under this Section, the City shall reimburse Engineer for all out-of-pocket expenses it incurs in rendering assistance, subject to the availability of funds. On termination of this Contract, or if requested by the Director, Engineer shall deliver all Works to the City. Engineer shall obtain written agreements from the Authors which bind them to the terms in this Section.
- 3.5.4 All Works developed, written, or produced under this Contract for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, are "works made for hire."
- 3.5.5 Engineer may retain copies of the Works for its archives. Engineer shall not otherwise use, sell, license, or market the Works.

3.6 TIME OF PERFORMANCE

- 3.6.1 Time is of the essence in this Agreement and hence, the Engineer shall perform the Basic Services set forth in **Section 3.1.2.** and **Exhibit "A-2"** in accordance with the time schedule shown on the approved Project Schedule Chart (below). Except for matters clearly beyond the control of the Engineer, it shall perform the Basic Services within the time constraints listed below, which begin when the Engineer receives the Letter of Authorization for each Phase.

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Project Schedule Chart	
Basic Services	Calendar Days
Phase I - Preliminary Design	_____calendar days
Phase II - Final Design including Bidding	_____calendar days
Phase III – Construction	Services must be completed at reasonable intervals in conjunction with the progress of the Project construction and for the period of construction time stated in the Project construction contract: _____months.

- 3.6.2 The Director may grant time extensions for delays caused by the City or other agencies over which the Engineer has no control. The Director's approval must be in writing.
- 3.6.3 If the Engineer requests an extension of time to complete its performance, then the Director, in consultation with the CPO, may, in his or her sole discretion, extend the time so long as the extension does not exceed **90 calendar days**. The extension must be in writing and does not require amendment of this Agreement. Engineer is not entitled to damages for delay(s) regardless of the cause of the delay(s).

3.7 CONFIDENTIALITY

- 3.7.1 Engineer recognizes that all materials to be prepared under this Contract and all City data received by the Engineer shall be kept in strictest confidence. The Engineer shall not divulge this information except as approved in writing by the Director or as otherwise required by law.

3.8 INSURANCE

- 3.8.1 With no intent to limit Engineer's liability or the indemnification provisions set forth herein, Engineer shall provide and maintain certain insurance in full force and effect at all times during the term of this Contract and any extensions thereto. Such insurance is described as follows:

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<u>COVERAGE</u>	<u>LIMIT OF LIABILITY</u>
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	<ul style="list-style-type: none"> • Bodily Injury by Accident \$100,000 (each accident) • Bodily Injury by Disease \$100,000 (policy limit) • Bodily Injury by Disease \$100,000 (each employee)
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence, and \$2,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos \$10,000,000 for vehicles driven on airfield
Professional Liability Coverage	\$4,000,000 per claim/aggregate
Excess Liability for Commercial General Liability and Automobile Liability	\$1,000,000.00
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

3.8.2 Insurance Coverage.

At all times during the term of this Contract and any extensions or renewals, Engineer shall provide and maintain insurance coverage that meets the requirements of this Contract. Engineer shall be responsible for and pay (i) all premiums and (ii) any claims or losses to the extent of any deductible amounts or self-insured retentions. Engineer waives any claim it may have for premiums, deductible amounts, or self-insured retentions against the City, its officers, agents, or employees. Engineer shall also require all subconsultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except the limit of liability. The limits of liability for subconsultants must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim. The limits of liability required of any subconsultants may be modified by the City Attorney, in his sole discretion.

3.8.3 Form of insurance.

The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall not (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 (a) have a Certificate of Authority to transact insurance business in Texas, or (b) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide.

3.8.4 Required Coverage.

The City shall be an Additional Insured under this Agreement, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name the City as an Additional Insured for both ongoing and completed operations. The City shall enjoy the same coverage as the Named Insured without regard to other provisions of this Contract. If professional liability coverage is written on a "claims made" basis, Engineer shall also provide proof of renewal each year for two years after Substantial Completion, 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.

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3.8.5 NOTICE.

ENGINEER 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, Engineer shall provide other suitable policies in order to maintain the required coverage. If Engineer does not comply with this requirement, the Director, at his sole discretion, may immediately suspend Engineer from any further performance under this Agreement and begin procedures to terminate for default. All policies maintained by Engineer as required herein shall be endorsed to provide 30 days' notice of cancellation to the City.

3.8.6 Deductibles and Self-Insured Retentions. Engineer shall be responsible for and pay any claims or losses to the extent of any deductible amounts or self-insured retentions and waives any claim it may have for the same against the City, its officers, agents, or employees.

3.8.7 Subrogation. Engineer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees. Each policy, except professional liability, must contain an endorsement waiving such claim.

3.8.8 Endorsement of Primary Insurance. Each policy, except workers' compensation and professional liability, must contain an endorsement or equivalent policy language that the policy is primary and non-contributory to any other insurance available to the Additional Insured with respect to claims arising under this Agreement.

3.8.9 Liability for Premium. Engineer shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.

3.8.10 Proof of Insurance

3.8.10.1.1 On the Countersignature Date and upon request at any other time during the Term of this Agreement, Engineer shall furnish the Director with certificates of insurance and required endorsements, along with an affidavit from Engineer confirming that the Certificates accurately reflect the insurance coverage maintained. If requested in writing by the Director, Engineer shall furnish the City with certified copies of Engineer's actual insurance policies. Failure of Engineer to provide certified copies, as requested, within 14 days after receipt of written notice from Director, may be deemed, in the Director's and/or City Attorney's discretion, to constitute a breach of this Contract.

3.8.10.1.2 Engineer shall continuously and without interruption, maintain in force the required insurance coverages specified in this Section. If Engineer does not comply with this requirement, the Director, at his discretion, may immediately suspend Engineer from any further performance under this Contract and begin procedures to terminate for default.

3.9 RELEASE

3.9.1 ENGINEER AGREES TO AND SHALL RELEASE THE CITY, IT'S 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. ENGINEER 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.

3.10 INDEMNIFICATION

3.10.1 INDEMNIFICATION

ENGINEER AGREES TO AND SHALL, TO THE EXTENT PERMITTED BY TEXAS LOCAL GOVERNMENT CODE §271.904, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES 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 ARISING AS A RESULT OF ENGINEER'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONSULTANTS', OR SUBCONTRACTORS' ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS IN CONNECTION WITH ITS PERFORMANCE UNDER THIS AGREEMENT, WHETHER ENGINEER IS IMMUNE FROM LIABILITY OR NOT. ENGINEER SHALL INDEMNIFY AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATION. THE INDEMNITY SHALL APPLY WHETHER OR NOT THE EVENT IS CAUSED BY THE CONTRIBUTORY NEGLIGENCE OF THE CITY.

3.11 INDEMNIFICATION PROCEDURES

3.11.1 Notice of Claims.

If the City or Engineer receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving Party shall give written notice to the other Party within 30 days. The notice must include the following:

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- 3.11.1.1 a description of the indemnification event in reasonable detail;
- 3.11.1.2 the basis on which indemnification may be due; and
- 3.11.1.3 the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 30-day period, it does not waive any right to indemnification except to the extent that Engineer is prejudiced, suffers loss, or incurs expense because of the delay.

3.11.2 Defense of Claims

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

3.11.3.2 Continued Participation. If Engineer 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 SUBCONTRACTOR’S INDEMNITY

ENGINEER 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.

3.13 ENGINEER’S PERSONNEL

3.13.1 The Engineer shall perform services under this Contract employing the people listed in its Staffing Schedule provided in **Exhibit “C”**. The Engineer may revise its Staffing Schedule only after obtaining the prior written approval of the Director. The revised Staffing Schedule must include the following information for each professional-level employee proposed for assignment under this Contract:

- 3.13.1.2 Name of employee;
- 3.13.1.3 Description of tasks to be performed;
- 3.13.1.4 Applicable registration;
- 3.13.1.5 Principal office of employment;

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- 3.13.1.6 Summary of relevant experience; and
- 3.13.1.7 Date and expected duration of assignment.
- 3.13.2 During the existence of this Contract, the Engineer must obtain, maintain, and pay for all licenses, permits, and certificates, including all professional licenses required by any statute, ordinance, rule or regulation. If the Engineer does not maintain these professional licenses, the Director may immediately terminate this Contract. The Engineer must immediately notify the Director of any suspension, revocation, or other negative action against his or her license.
- 3.13.3 The Director may require the removal of any employee of the Engineer providing services under this Contract whose work product in the Director's sole discretion is unacceptable.

3.14 TAXES, LICENSES AND PERMITS

- 3.14.1 Engineer shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation for the performance under this Agreement. Engineer shall immediately notify the Director of any suspension, revocation, or other detrimental action against its license.
- 3.14.2 Engineer shall pay, before delinquency, all taxes that may be levied, assessed, or charged upon Engineer or the property, real and personal, owned by Engineer. Engineer may contest these taxes.

3.15 COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY ORDINANCE

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

3.16 MINORITY AND WOMEN BUSINESS ENTERPRISE COMPLIANCE

- 3.16.1 Engineer 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. Engineer shall make good faith efforts to award subcontracts or supply agreements in at least _____% of the value of this Agreement to MWBEs ("Stated MWBE goal"). If the Contractor is a certified MBE or WBE, Contractor may count toward goals the work that it commits to perform with its own work force, capped at 50% of the total advertised goal. Engineer acknowledges that it has reviewed the requirements for good faith efforts on file with OBO and will comply with them
- 3.16.2 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

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Year and Engineer'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 Engineer must provide a written explanation to both the Director and Office of Business Opportunity Director ("OBO Director") of the following: (1) the discrepancy between Contractor's MWBE participation level and the Stated MWBE goal, (2) the reason for the discrepancy, and (3) Contractor's good faith efforts (in accordance with the City's policy) towards achieving the Stated MWBE goal. As part of the good faith efforts assessment, the OBO Director may consider Engineer's failure to timely submit the notice or explanation required by this provision and the OBO Director may impose sanctions or other penalties on Engineer 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.

3.16.3 Engineer shall maintain records showing:

- 3.16.3.1 Subcontracts and supply agreements with Minority Business Enterprises;
- 3.16.3.2 Subcontracts and supply agreements with Women Business Enterprises; Subcontracts and supply agreements with Small Business Enterprises (if any);
- 3.16.3.3 Written confirmation from MWBE subcontractors and suppliers that they are participants on the contract; and
- 3.16.3.4 Specific efforts to identify and award subcontracts and supply agreements to MWBEs. Contractor shall submit periodic reports of its efforts under this Section to the OBO Director in the form and at the times he or she prescribes
- 3.16.3.5 Engineer shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:
- 3.16.3.6 [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.
- 3.16.3.7 Within five (5) business days of execution of this subcontract, Engineer [prime contractor] and Subcontractor shall designate, in writing, to the City of Houston's OBO Director ("the OBO Director") an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street, mailing address, phone number, and email address of such agent.
- 3.16.3.8 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

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services in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances

3.17 NON-DISCRIMINATION

3.17.1. Engineer 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, Engineer shall include the summary of the provisions of 49 CFR Part 21, as may be amended, in subcontracts it enters into under this Contract. This summary is set forth in **Exhibit “D”**.

3.18 DRUG ABUSE DETECTION AND DETERRENCE

3.18.1. It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Engineer 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 Contract and is on file in the City Secretary's Office. For purposes of **Exhibits “E”, “F”, and “G”**, Engineer shall be referred to as “Contractor”.

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

3.18.2.1 a copy of its drug-free workplace policy,

3.18.3.2 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,

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

3.18.3.4 If Engineer files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Contract or on completion of this Contract if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to **Exhibit “G”**. Engineer 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 Contract. The first six-month period begins to run on the date the City issues its Letter of Authorization or if no Letter of Authorization is issued, on the first day Engineer begins work under this Contract.

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- 3.18.3.5 Engineer also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Engineer's employee work force.
- 3.18.3.6 Engineer shall require that its Subcontractors comply with the Executive Order, and Engineer shall secure and maintain the required documents for City inspection.

3.19 NON-PARTICIPATION

- 3.19.1. Engineer shall not participate in the bidding process as a bidder and shall not engage in construction of the Project either as a Contractor or Subcontractor.. By written agreement, Engineer shall require each of its Subcontractors(Consultants) for Project engineering services to be bound by the requirements of this Section.

3.20 CONFLICTS OF INTEREST

- 3.20.1. If an actual or potential conflict arises between the interests of the City and the interests of other clients represented by Engineer regarding this Project, Engineer shall immediately notify the Director by fax transmission or telephone. If the Director consents to Engineer's continued representation of these other clients, he will notify Engineer in writing. If the Director does not issue written consent within three business days after receiving Engineer's notice, Engineer shall immediately terminate its representation if allowed by the other agreements of the other client whose interests are or may be in conflict with those of the City. If Engineer does not terminate the other agreements, the Director may terminate this Contract immediately without providing any further opportunity to cure under **Section 5.2**.

3.21 ENGINEER'S PERFORMANCE

- 3.21.1 Engineer shall make citizen satisfaction a priority in providing services under this Agreement. Engineer shall train its employees to be customer service-oriented and to interact with citizens positively and politely when performing contract services. Engineer'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, Engineer is not interacting in a positive and polite manner with citizens, he or she shall direct Engineer to take all remedial steps to conform to these standards
- 3.21.2 Engineer shall manage, control and be responsible for all the work performed by its subcontractors/agents. A complete list of all subcontractors shall be submitted to the Director and/or designee for approval prior to Subcontractor/Agent commencing work. Contractor shall replace any of its personnel or subcontractors whose work product is deemed unsatisfactory by the Director

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3.22 SUBCONTRACTORS

- 3.25.1 Engineer shall not subcontract any part of its Contract without approval by the Director.
- 4.25.1 Engineer shall be responsible for services performed by Subcontractors to the same extent as if the services were performed by Engineer.
- 5.25.1 Engineer shall replace any Subcontractor when requested to do so by the Director, who shall state the reasons for such request.
- 6.25.1 Engineer shall provide the Director with a copy of any of its Subcontract subcontracts at Director's request.

3.23 PAYMENT OF SUBCONTRACTORS

- 3.23.1. Engineer shall make timely payments to all persons and entities supplying labor, materials, or equipment for this Contract. **ENGINEER SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF ENGINEER'S FAILURE TO MAKE THESE PAYMENTS.** Disputes relating to payment of MWBE Subcontractors must be submitted to mediation in the same manner as any other disputes under the MWBE subcontract. If Engineer does not comply with the decision of the mediator, the City may terminate this Contract under **Section 5.2**.

3.24 AIRPORT SECURITY

- 3.24.1. Engineer shall comply with all HAS, Transportation Security Administration ("TSA"), Federal Aviation Administration ("FAA"), and any other governmental agency security directives, rules and regulations. The FAA and/or the TSA may assess fines and/or penalties for Engineer's non-compliance with the provisions of 49 CFR 1540 and 1542, as amended from time to time, or by other agencies for noncompliance with laws or regulations applicable to Engineer's operations. Within 15 days after receiving written notice from the FAA, the TSA, or other agency of any alleged violation or infraction, the Director shall notify Engineer in writing and provide a copy of the FAA/TSA/Agency documents pertaining to the violation. Within 10 days of required payment of any fine or penalty by the City, Engineer shall reimburse the City for any fine or penalty assessed against the City because of Engineer's non-compliance with 49 CFR 1540 and 1542 or other applicable laws or regulations.

3.25 ENVIRONMENTAL LAWS

- 3.25.1 Engineer shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), the Texas Commission on Environmental Quality ("TCEQ"), and any other governmental agency with the authority to promulgate environmental rules and regulations ("Environmental Laws"). Engineer shall promptly reimburse the City for any fines or penalties levied against the City because of Engineer's failure to comply.

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- 3.25.2 Engineer shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Laws. "Hazardous Materials" mean any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, and local laws, regulations, ordinances, or orders. Engineer 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.

3.26 STATE ENERGY CONSERVATION PLAN

- 3.26.1. The Engineer shall recognize mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163), which is incorporated herein by reference.

3.27 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

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

3.28 CERTIFICATION REGARDING FOREIGN TRADE RESTRICTIONS

In accordance with 49 CFR Part 30, Engineer, by execution of this Contract, certifies that it:

- 3.28.2 is not owned or controlled by one or more citizens or nationals of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- 3.28.3 has not knowingly entered into any contract or subcontract for this Project with a contractor that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- 3.28.4 has not procured any product nor subcontracted for the supply of any product for use on the Project that is produced in a foreign country on said list.
- 3.28.5 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 Engineer or a Subcontractor who is unable to certify to the above. If the Engineer knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the Project; the Federal Aviation Administration may direct, through the City,

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cancellation of the Contract at no cost to the City of the Federal Government

- 3.28.6 Further, the Engineer agrees that it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The Engineer may rely upon the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous. The Engineer shall provide immediate written notice to the City if the Engineer learns that its certification or that of Subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Subcontractor agrees to provide immediate written notice to the Engineer, if at any time it learns that its certification was erroneous by reason of changed circumstances.
- 3.28.7 This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Engineer 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 Federal Government.
- 3.28.8 Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of the Engineer is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 3.28.9 This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

3.29 ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES

- 3.29.1 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. Engineer has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of the Countersignature Date. Engineer shall notify the CPO, City Attorney, and the Director of any information regarding possible violation by Contractor or its subcontractors providing services or goods under this Agreement within 7 days of Engineer becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

3.30 COMPLIANCE WITH CERTAIN STATE LAW REQUIREMENTS

- 3.30.1 *Anti-Boycott of Israel.* Engineer certifies that Engineer 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.

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- 3.30.2 *Anti-Boycott of Energy Companies.* Engineer certifies that Engineer 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.

- 3.30.3 *Anti-Boycott of Firearm Entities or Firearm Trade Associations.* Engineer certifies that Engineer 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.

- 3.30.4 *Certification of No Business with Foreign Terrorist Organizations.* For purposes of Section 2252.152 of the Texas Government Code, Engineer certifies that, at the time of this Agreement neither Engineer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Engineer, 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.

3.31 PRESERVATION OF CONTRACTING INFORMATION

- 3.31.1 The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Engineer agrees that this Agreement can be terminated if the Engineer 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), Engineer 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, Engineer shall provide any Contracting Information related to this Agreement that is in the custody or possession of Engineer. Upon the expiration or termination of this Agreement, Engineer 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 Engineer, or (b) preserve the Contracting Information related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or City policy

- 3.31.2 If Engineer 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 Engineer and may terminate this Agreement. To effect final termination, the Director must notify Engineer in writing with a copy of the notice to the CPO. After receiving the notice, Engineer shall, unless the notice directs otherwise,

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immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

3.32 PAY OR PLAY

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

3.33 AIRPORT SYMBOLS

- 3.33.1 Engineer 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.

3.34 PUBLICITY

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

3.35 NON-EXCLUSIVITY

- 3.35.1 This Contract does not create an exclusive right for Engineer to perform all services relating to professional aviation engineering services for the Project. The City may procure and execute contracts with other entities for the same, similar, or additional services as those set forth in this Contract.

ARTICLE 4. RIGHTS AND DUTIES OF CITY

4.1 PAYMENT

4.1.1 Fees, In General

- 4.1.1.1 The City shall pay fees to the Engineer as specified in **Article 4** for all services rendered by the Engineer in accordance with the terms and conditions of this Contract, but subject to **Section 4.2.** relating to appropriations made by the City.
- 4.1.1.2 If the Engineer receives payment from the City for work performed by any Subcontractor or for materials provided by any supplier, and the Engineer 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 Engineer until the next regular payment to the Engineer occurring after the City receives reasonable documentation that the deficiency has been remedied.

4.2.1 Basic Service Fees; Method of Payment

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4.2.1.1 The City shall pay the following fees to the Engineer for Basic Services rendered by the Engineer in accordance with the terms and conditions of this Contract. Compensation for Reimbursable Expenses will be paid from Special Services fees.

Phase I - Preliminary Design	Lump Sum Fee of \$ _____
Phase II - Final Design	Lump Sum Fee of \$ _____
Phase III - Construction Services	Lump Sum Fee of \$ _____
Total	\$ _____

4.3.1.1 The City shall make partial payment of the fees based on monthly invoices submitted by the Engineer and approved by the Director. The invoices must show the following: (i) the percentage of the total services completed in the applicable Phase in the preceding month; (ii) a summary of the services performed during the period covered by the invoice; (iii) the amount due for the services; and (iv) the amount due for itemized Reimbursable Expenses.

4.2.1.2.1 The amount of partial payment due for services performed during each Phase is a percentage of the lump sum fee equal to the percentage of services performed for the Phase during the period covered by the invoice plus Reimbursable Expenses.

4.2.1.2.2 After the Engineer has completed the performance of all required services for each Phase, the City shall pay the Engineer the total amount owed for that Phase less any amounts paid under the monthly invoices.

4.2.1.2.3 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 check or electronic deposit. The checks will be payable to the Engineer. Payments will be mailed to the address specified in **Section 1.1**. The City will not unreasonably delay or withhold payment or approval of any invoice. The Director shall approve or disapprove the Engineer'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 Engineer's services to which the partial payment or approval relates. The payments do not relieve the Engineer of any its obligations under this Contract. The Engineer shall send all invoices to the address listed in **Section 1.1**. to the attention of the Deputy Director of Planning, Design & Construction.

4.2.1.2.4 With each monthly invoice the Engineer shall submit a copy of the updated Project Schedule Chart, a brief narrative of the services performed in the preceding month, and a list of the planned activities for the following

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month.

4.3.1 Fees for Special Services; Method of Payment

- 4.3.1.1 Subject to all the terms and conditions of this Contract, the City shall pay and the Engineer accepts, as full compensation for the Special Services described in **Section 3.1.3**, the fees specified in **Section 4.1.3**. Funds may be interchanged between the various Special Services when approved in writing by the Director. Fees and scope of for Special Services are detailed in **Exhibits “A-1” and “A-2”**.
- 4.3.1.2 The City shall pay (i) Billing Rate, plus Reimbursable Expenses and Subcontract Costs or (ii) a lump sum that does not exceed an estimate of (i), for those Special Services set forth in **Section 3.1.3**, which the Engineer or its employees directly perform.
- 4.3.1.3 For Drug Detection and Deterrence Services set forth in **Section 3.2.3.3.12.**, the City shall pay:
 - 4.3.1.3.2 The cost of invoiced laboratory analyses necessary for personnel producing services under this Contract, and
 - 4.3.1.3.2 Billing Rate for employees time not to exceed one hour for each random test conducted.
- 4.3.1.4 To receive payment for Special Services, the Engineer must submit invoices showing the corresponding Special Services performed and not previously invoiced. The invoice must include itemizations supporting the Engineer's costs. The itemization must include, where applicable:
 - 4.3.1.4.1 A breakdown of the type and cost of each item of Reimbursable Expenses;
 - 4.3.1.4.2 A breakdown of the individual expenditures allowable as travel costs;
 - 4.3.1.4.3 The actual invoice cost of Subcontract Cost, including a copy of the invoice;
 - 4.3.1.4.4 For hourly rate billing, the number of hours expended by the Engineer's employees and applicable Billing Rates for each Special Service; and
 - 4.3.1.4.4 A breakdown of the work performed in the Lump Sum items and a percentage of the total that is completed.
- 4.3.1.5 The Special Services fees incurred shall be paid by the City in the same manner as specified for payment for Basic Services in **Section 3.1.1.3.3**.
- 4.3.1.6 Claims for Special Services must be submitted for payment within 60 days from the date of completion of the Special Services.

4.4.1. Fees for Reimbursable Expenses; Method of Payment

- 4.4.1.1 For Reimbursable Expenses in **Section 4.1.3.4.1**, the City's obligation to

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pay expenses must not exceed 6.0 cents per page for specifications and \$1.00 per page for blueprints.

- 4.4.1.2 For Reimbursable Expenses in **Section 4.1.3.4.1**, the City's obligation to pay expenses cannot exceed \$15.00 per hour administrative fee.

4.2 Limit of Appropriation - Allocated Funds; Limitation of City's Duties

- 4.2.1 The Engineer recognizes that under certain provisions of the Charter of the City of Houston, 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 Basic Services hereunder and that only \$_____ has been appropriated by the City Council to pay the cost of Special Services and Reimbursable Expenses hereunder for a total amount of \$_____.
- 4.2.2 If the appropriation for Basic Services is insufficient to compensate the Engineer for Basic Services in accordance with the payment provisions under the Contract, the Engineer may suspend its Basic Services at such time as the total appropriation for Basic Services is expended, but shall resume such Basic 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 Basic Services.
- 4.2.3 If the appropriation for Special Services is insufficient to compensate Engineer for authorized Special Services in accordance with the payment provisions under the Contract, the Engineer may suspend its Special Services at such time as the total appropriation for Special Services is expended, but shall resume such Special 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 Special Services.
- 4.2.4 The Director may authorize the transfer of funds between Basic Services and Special Services or among the categories of Special Services when necessary to continue services, provided that the total funds authorized for Basic Services and Special Services do not exceed the total amount appropriated by City Council. However, under no circumstances may funds be transferred into Basic Services or Special Services when the Engineer has agreed to perform such services for a lump sum or Not to Exceed Price when the transfer would result in increasing such agreed upon amount or Not to Exceed Price, without a corresponding increase in services.

4.3 Taxes

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

4.4 Coordination of Performance with Engineer

- 4.4.1 In addition to its other duties under this Contract, the City shall perform the following services:

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- 4.4.1.1 Provide information to Engineer concerning the requirements for the Project;
- 4.4.1.2 Provide existing plans, maps, field notes, statistics, computations, and other data in the possession of the City which in the Director's opinion will assist Engineer in performing services under the Contract; and
- 4.4.1.3 Examine the Documents submitted by Engineer and render decisions pertaining to them within a reasonable time to avoid unnecessary delay of Engineer's services.

ARTICLE 5. TERMINATION

5.1 Term

- 5.2.1 This Contract is effective on the date the City Controller countersigns this Contract and expires one year after completion of the Project, unless sooner terminated under this Article.

5.2 Termination for Convenience by City

- 5.2.1 The Director may terminate this Contract at any time by giving 14 days written notice to Engineer. The City's right to terminate this Contract for convenience is cumulative of all rights and remedies which exist now or in the future.
- 5.2.2 On receiving the notice, Engineer shall, unless the notice directs otherwise, immediately discontinue all services under this Contract and cancel all existing orders and subcontracts that are chargeable to this Contract and deliver all supplies, materials, and work products accumulated in performing this Contract to a place designated by the Director. As soon as practicable after receiving the termination notice, Engineer 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 Engineer for services actually performed, but not already paid for, in the same manner as prescribed in **Article 4** unless the fees exceed the allocated funds remaining under this Contract.
- 5.2.3 Any installments on Fixed Lump Sum fees will be prorated in accordance with the progress of the work at the date of termination. Engineer may submit invoices for vendor and Subcontractor charges incurred before the notice of termination and received by Engineer after its initial termination invoice.
- 5.2.4 **TERMINATION OF THIS CONTRACT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE ENGINEER'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS CONTRACT. ENGINEER 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.**

5.3 Termination for Cause by City

- 5.3.1 If Engineer defaults under this Contract, the Director may either terminate this

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Contract or allow Engineer to cure the default as provided below. The City's rights and remedies provided in this **Section 5.3** are in addition to all rights and remedies provided by law or under this Contract. Default by Engineer occurs if:

- 5.3.1.1 Engineer fails to perform any of its duties under this Contract;
 - 5.3.1.2 Engineer becomes insolvent;
 - 5.3.1.3 all or a substantial part of Engineer's assets are assigned for the benefit of its creditors; or
 - 5.3.1.4 a receiver or trustee is appointed for Engineer.
- 5.3.2 If a default occurs, the Director may deliver a written notice to Engineer describing the default and the termination date. The Director, at his sole option, may extend the termination date to a later date. If Engineer cures the default to the Director's satisfaction before the termination date, then the termination is ineffective. If Engineer does not cure the default before the termination date, then the Director upon notice of termination, may terminate this Contract on the termination date, at no further obligation of the City.
- 5.3.3 To effect final termination, the Director must notify Engineer in writing. After receiving the notice, Engineer shall, unless the notice directs otherwise, immediately discontinue all services under this Contract, promptly cancel all orders or subcontracts chargeable to this Contract and deliver all supplies, materials, and work products accumulated in performing this Contract to a place designated by the Director.
- 5.3.4 In the event of termination due to Engineer's failure to fulfill its obligations, the City may take over the work and prosecute the same to completion by contract or otherwise. In such case, Engineer shall be liable to the City for any additional cost occasioned to the City thereby.
- 5.3.5 If after termination for failure to fulfill contract obligations, it is determined that the Engineer had not so failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, payment shall be made as provided in **Section 5.2**.

5.4 Termination for Cause by Engineer

- 5.4.1 Engineer may terminate its performance under this Contract only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Contract. If a default occurs and Engineer decides to terminate the Contract, then Engineer must deliver a written notice to the Director describing the default and the proposed termination date. The date must be at least 60 days after the Director receives the notice. Engineer, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Engineer may terminate its performance under this Contract on the termination date.

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ARTICLE 6. MISCELLANEOUS

6.1 Independent Contractor

- 6.2.1 Engineer is an independent contractor and is not an employee, agent, representative or subcontractor of the City. No partnership or joint venture is created by this Contract.

6.2 Force Majeure

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

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

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

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

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

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

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

- 6.2.3 Engineer is not relieved from performing its obligations under this Contract due to a strike or work slowdown of its employees. Engineer shall employ only fully trained

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and qualified personnel during a strike.

6.3 Severability

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

6.4 Entire Agreement

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

6.5 Written Amendment

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

6.6 Governing Law

- 6.6.1 This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction. Venue for any litigation relating to this Agreement is Harris County, Texas.
- 6.6.2 Nothing in this Contract creates any new cause of action against the City or waives any immunity or limitation of liability in favor of the City existing now or in the future under common law, state or federal regulations, or statutes (including, but not limited to, the Texas Tort Claims Act).

6.7 Notices

- 6.7.1 All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, 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.

6.8 Captions and Headings

- 6.8.1 The captions and headings at the beginning of the Articles and Sections of this Contract are guides and labels to assist in locating and reading the Articles and Sections, and, therefore, will be given no effect in construing this Contract. Any reference to gender shall include the masculine, feminine and neutral.

6.9 Non-Waiver

- 6.9.1 If either party fails to require the other to perform a term of this Contract, that failure

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does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Contract.

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

6.10 Inspections and Audits

- 6.10.1 City representatives may perform or have performed (i) audits of Engineer's books and records and (e) inspections of all places where work is undertaken in connection with this Contract. Engineer shall maintain an acceptable job cost accounting system. The City, the FAA, the TSA, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are directly pertinent to this Contract for the purposes of making an audit, examination, excerpts and transcriptions. Engineer shall maintain all required records for seven years after the City makes final payment and all other pending matters are closed. This provision does not affect the applicable statute of limitations.

6.11 Enforcement

- 6.11.1 The City Attorney shall have the right to enforce all legal rights and obligations under this Contract without further authorization. Engineer shall provide to the City Attorney all documents and records that the City Attorney deems necessary to assist in determining Engineer's compliance with this Contract, 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 Contract is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

6.13 Survival

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

6.14 No Third Party Beneficiary

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

6.15 Successors and Assigns

- 6.15.1 This Contract shall bind and benefit the parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Contract does not create any personal liability on the part of any officer or agent of the City.

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6.16 Business Structure and Assignments

- 6.16.1 Engineer shall not assign this Contract at law or otherwise or dispose of all or substantially all 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, Engineer shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.
- 6.16.2 Engineer shall not delegate any portion of its performance under this Contract without the Director's prior written consent.

6.17 Remedies Cumulative

- 6.17.1 Except as otherwise provided herein, the rights and remedies contained in this Contract shall not be exclusive and are cumulative of all rights and remedies now or hereafter existing by statute, at law, or in equity. Neither party may terminate its duties under this Contract except in accordance with its terms.

6.18 ENGINEER DEBT

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

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EXHIBIT "A-1"
SCOPE OF SERVICES FOR HAS PROJECT NUMBER 982

[REFER TO RFQ]

EXHIBIT "A-2"

SCOPE OF SERVICES FOR HAS PROJECT NUMBER 982

[REFER TO RFQ]

PROJECT SCHEDULE
(Cumulative in Calendar Days)

EXHIBIT "B"

**HOURLY BILLING RATES
Pay Grades and Billing Rates**

EXHIBIT "D"

TITLE VI ASSURANCES

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

1. Compliance with Regulations - The Engineer 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 Contract.
2. Non-discrimination - The Engineer, with regard to the work performed by it during the contract, 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 Engineer shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract 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 Engineer 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 Engineer of the Engineer's obligations under this Contract and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports - The Engineer 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 Engineer is in the exclusive possession of another who fails or refuses to furnish this information, the Engineer 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 Engineer's noncompliance with the non-discrimination provisions of this Contract, 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 Engineer under the Contract until the Engineer complies, and/or
 - 5.2. cancellation, termination, or suspension of the Contract, in whole or in part.
6. Incorporation of Provisions - The Engineer 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 Engineer 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 Engineer becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Engineer may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the Engineer may request the United States of America to enter into such litigation to protect the interests of the United States.

EXHIBIT "E"

STAFFING SCHEDULE

Key Personnel	Role	Firm

Firm Legend	

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EXHIBIT “F”

DRUG POLICY COMPLIANCE AGREEMENT

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

(Name of Company) (Contractor)

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

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

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

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

Date _____

Contractor Name _____

Signature _____

Title _____

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EXHIBIT “G” CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT

POSITIONS IN PERFORMANCE OF 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 "H"

DRUG POLICY COMPLIANCE DECLARATION

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

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

_____ Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection
Initials 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 Services (HHS)
Initials guidelines.

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

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

	<u>Random</u>	<u>Reasonable 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 consistent with
Initials the Mayor's Policy and Executive Order No. 1-31.

_____ I affirm that falsification or failure to submit this declaration timely in accordance with established
Initials 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)