

**CONTRACT FOR ON-CALL PROFESSIONAL DESIGN SERVICES**

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

This **CONTRACT FOR PROFESSIONAL ON-CALL DESIGN SERVICES** ("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 \_\_\_\_\_ ("Architect/Engineer"), a **Corporation** authorized to do business in the State of \_\_\_\_\_.

The parties agree as follows:

**ARTICLE 1. PARTIES**

**1.1 ADDRESSES.** 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>Architect/Engineer</u>
Director or Designee	_____
Houston Airport System	_____
City of Houston	_____
P.O. Box 1562	_____
Houston, Texas 77251	_____

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

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**1.3 PARTS INCORPORATED.** The above referenced exhibits are attached and incorporated into this Contract.

**1.4 CONTROLLING PARTS.** If there is a conflict or inconsistency between the provisions of the articles or exhibits, the articles control over the exhibits.

**1.5 SIGNATURES.** . The parties have executed this Contract in multiple copies, each of which is an original. Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract. Each party represents and warrants to the other that the execution and delivery of this Contract

and the performance of such party's obligations hereunder have been duly authorized and that the Contract is a valid and legal agreement binding on such party and enforceable in accordance with its terms. The parties hereby agree that each party may sign and deliver this Contract electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

**[SIGNATURE PAGE FOLLOWS]**

**ARCHITECT/ENGINEER**

**CITY OF HOUSTON, TEXAS**

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

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

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

Email: \_\_\_\_\_

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

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

Mayor

**ATTEST/SEAL:**

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

City Secretary

**APPROVED:**

Director, Houston Airport System

**COUNTERSIGNED BY:**

City Controller

**DATE COUNTERSIGNED:**

**APPROVED AS TO FORM:**

Senior Assistant City Attorney

L.D. File No. \_\_\_\_\_

## ARTICLE 2. DEFINITIONS

- 2.1 As used in this Contract, the following terms have the meanings given below:
- 2.1.1 *“Agreement”* means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Architect/Engineer.
  - 2.1.2 *“Additional Services”* are those defined in Section 3.6 of this Contract.
  - 2.1.3 *“Architect”* is defined in the preamble of this Contract and includes the firm’s successors and assigns which are jointly and severally liable for the obligations and liabilities under this Contract.
  - 2.1.4 *“As-Builts”* means a permit-approved set of documents which the Architect/Engineer uses during construction to build the project. Field changes and adjustments during construction are annotated in the permit set and given to the Architect/Engineer at the end of the project to produce project Record Documents.
  - 2.1.5 *“Business Day”* means any calendar day except Saturdays, Sundays and full-day holidays for employees of the City (as designated by City Council).
  - 2.1.6 *“Beneficial Occupancy”* means when the City takes possession of and operates the Work (or portions of the Work) for its intended purposes.
  - 2.1.7 *“Billing Rates”* means the fully loaded and all-inclusive rates set forth in **Exhibit “B”** for each job category of personnel providing services. Each Billing Rate shall include the employee’s base hourly rate, multiplied by the prime or sub consultant’s audited multiplier, plus up to 10% profit. This Billing Rate is a loaded rate that includes all fringe and overhead costs in total (corporate office, regional office, district office, etc.), fee, profit, and all other costs. The charge for Architect/Engineer’s services shall be computed separately for each employee who performs services by multiplying the number of hours the employee performs services by the hourly Billing Rate applicable to that employee’s job category.
  - 2.1.8 *“BIM”* means Building Information Modeling, it is a process, a digital representation of the physical and functional characteristics of the building and civil components.
  - 2.1.9 *“BOD”* means the Basis of Design, which is a critical reference document that outlines the fundamental principles, requirements, and objectives that govern the design and construction of a project. A document that records the concepts, calculations, decisions, and product selections used to meet the Owner’s Project Requirements and to satisfy applicable regulatory requirements, standards, and guidelines. The document includes both narrative descriptions and lists of individual items that support the design process.
  - 2.1.10 *“Business Days”* means any day that is not a Saturday, Sunday, or City Holiday. In the event that any deadline set forth in this Contract 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.
  - 2.1.11 *“CCODT”* means Contractor Compliance Officer for Drug Testing.

- 2.1.12 “City” means is defined in the preamble of this Contract and includes its successors and assigns.
- 2.1.13 “The City of Houston (the City)” means the representative organization including the Houston Airport System.
- 2.1.14 “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.
- 2.1.15 “City Holiday” means any official City of Houston holiday as determined each year by the City Council.
- 2.1.16 “*Commissioning Process*” is a process – a systematic process of ensuring that a building performs in accordance with the design intent, contract documents, and the owner’s operational needs. It’s primary purpose in new or renovated facilities is to apply a Quality Assurance process to the pre-design, design, construction, and post occupancy phases of a facility’s procurement or renovation, referencing the Owners Project Requirements as the guiding document.
- 2.1.17 “*Commissioning Provider*” is the prime entity hired by HAS to represent, manage, and direct the application of the Commissioning Process.
- 2.1.18 The “*Commissioning Authority*” is the person designated by the Commissioning Provider to lead the Commissioning Team and manage the application of the Process.
- 2.1.19 “*Commissioning Issues Log*” is an instrument to track identification and resolution of any Issues in Design, Construction and Post-Occupancy, whether they be a deficiency or an RFI. The Commissioning Provider maintains this log weekly during active periods in the project, and is responsible for identifying the responsible parties for each issue.
- 2.1.20 "Construction Contractor" means the construction contractor to whom the City has awarded all or part of a construction contract for this Project.
- 2.1.21 “*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:
- 2.1.21.1 fees or other costs of architecture/engineering, legal and related services;
  - 2.1.21.2 cost of land and rights-of-way;
  - 2.1.21.3 the City’s administrative expenses; and
  - 2.1.21.4 any additional exclusions that may be listed in individual LOAs.

Construction Cost is also further defined in Exhibit A, Section 8.

- 2.1.22 "*Construction Documents*" mean all graphic and written information prepared or assembled by Architect/Engineer or the City for communicating the design and for the bidding and construction of a Project.
- 2.1.23 "*Consultant*" means the Architect/Engineer and its authorized representatives contracted by the City to execute the Work.
- 2.1.24 "*Contract*" means this document including all exhibits and amendments by written agreement of the parties.
- 2.1.25 "*Contract Documents*" means those documents identified as a component of the contract between the City and Contractor. These may include, but are not limited to, drawings, specifications, general conditions, supplemental conditions, modifications, and all pre- and post-bid addenda.
- 2.1.26 "*Contractor*" means the Architect/Engineer and its authorized representatives contracted by the City to execute the Work.
- 2.1.27 "*Countersignature Date*" means the date shown as the date countersigned on the signature page of this Agreement.
- 2.1.28 "*Day(s)*" or "*day(s)*" means calendar day, including weekends and City Holidays, whether capitalized or not, unless otherwise provided. In the case of plural 'days', those days will be consecutive.
- 2.1.29 "*Director*" means the Director of Houston Airport System or any person designated by the Director to perform one or more of the Director's duties under this Contract.
- 2.1.30 "*Documents*" the reports, charts, analyses, maps, letters, tabulations, exhibits, notes, models, photographs, the original transparencies of all drawings, Construction Documents, computer programs (including source and object codes), and other work products (and any modifications or improvements to them), specifications, AutoCAD and PDF files of all drawings and plans the Architect/Engineer prepares, receives, or provides under this Contract. The Director shall specify the medium and format in which Architect/Engineer shall provide such documents.
- 2.1.31 "*Effective Date*" means the date the City Controller countersigns this Agreement and this Agreement becomes effective and binding.
- 2.1.32 "*Electronic Document Management System (EDMS)*" means the City will use an EDMS to manage and be a repository for all Project documents.
- 2.1.33 "*Employee*" means the personnel working under Architect/Engineer's direction and control who are direct employees of Architect/Engineer.



- 2.1.34 "FAA" means the Federal Aviation Administration as presently constituted as a division of the United States Department of Transportation or its successor agency or agencies.
- 2.1.35 "*Final Completion*" means the full completion of the Work in accordance with the Contract Documents, without limitation, the satisfaction of all outstanding and Punch List Items, and the issuance of a Certificate of Occupancy by all permitting and licensing entities.
- 2.1.36 "*Fixed Lump Sum*" means the method of payment based upon Architect/Engineer's estimate of allowable costs such as salary, overhead, and Reimbursable Expenses, plus a reasonable margin of profit, all expressed as a single lump sum. A lump sum proposal shall be accompanied by the Architect/Engineer's estimate. The estimate should detail the direct labor costs by categories of employees, work hours, and hourly rate; overhead; Reimbursable Expenses; and profit.
- 2.1.37 "*HAS*" means the Houston Airport System, the City's Department of Aviation.
- 2.1.38 "*HAS Design Standards Manual*" means the HAS Standards and any supporting documents which describe the administrative requirements and minimum deliverables of the Architect/Engineer for capital improvement program (CIP) projects managed by the Houston Airport System (HAS) on HAS-owned facilities.
- 2.1.39 "*HAS Shared Parameters*" means the required data from specific equipment and model components and are part of the HAS BIM requirements and the HAS Enterprise Asset Management System (EAMS).
- 2.1.40 "*IFC*" means Issue for Construction.
- 2.1.41 "*IFP*" means Issue for Permit.
- 2.1.42 "*Letter of Authorization*" or "*LOA*" means the documents sent to the Architect/Engineer by the Director authorizing certain services to be performed pursuant to **Section 3.1.2**.
- 2.1.43 "*Notice to Proceed*" means a written communication from the Director to the Architect/Engineer instructing Architect/Engineer to begin performance under this Contract.
- 2.1.44 "*Operating Unit*" means the local branch office of the organization with which the City receives services under this contract.
- 2.1.45 "*OPR*" means Owner's Project Requirements, which are a written document that details the functional requirements of the project and the expectations of how it will be used and operated by the owner. A written document that details the functional requirements of a project and the expectations of how it will be used, operated and maintained. These include project goals, measurable performance criteria, cost considerations, benchmarks, success criteria, and supporting information.

- 2.1.46 "*Project*" means the services to be performed as authorized by individual Letters of Authorization in accordance with the Contract. The work described in each Letter of Authorization is an individual Project.
- 2.1.47 "*Project Manual*" means the project specifications.
- 2.1.48 "*Project Schedule*" means a schedule of Project activities and events, showing initiation point, duration, and ending points for services in each Letter of Authorization. The schedule indicates time allowed for reviews by the City staff. The Project Schedule is drafted by the Architect/Engineer, in consultation with the City staff. It must be approved in writing by the Director.
- 2.1.49 "*Punch List Items*" means the list of items of Work to be complete or corrected by the Construction Contractor after Substantial Completion. Punch List Items indicate items to be finished, remaining Work to be performed, or Work that does not meeting the quality or quantity requirements as requested by the Contract Documents.
- 2.1.50 "*Record Documents*" means the drawing set and models kept by Architect/Engineer and updated per contraction pay period to include all authorized contract document changes to drawings and specifications, including changes based on Construction Contractor submittals.
- 2.1.51 "*Reimbursable Expenses*" mean:
- 2.1.51.1 the reasonable costs of copying and printing (other than for the Architect/Engineer's internal use and the review Documents required under this Contract), postage, and message and delivery services (other than for general correspondence) incurred by the Architect/Engineer in the course of its performance under this Contract;
  - 2.1.51.2 with prior written approval, the ordinary and reasonable cost of travel to and from points outside of Houston and its extra-territorial jurisdiction by representatives of the Architect/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 a Project, and if reservations are made as far in advance as feasible; and
  - 2.1.51.3 sales tax related to the Architect/Engineer's services under this Contract which it is legally required to pay.
  - 2.1.51.4 It shall be the Architect/Engineer's responsibility to inform itself of the City's travel reimbursement policies.
- 2.1.52 "*Services in General*" are defined in **Section 3.1.1** of this Contract and **Section 1** of **Exhibit "A"**.

- 2.1.53 "*Services in Particular*" are defined in **Section 3.1.2** of this Contract and **Section 2** of **Exhibit "A"**.
- 2.1.54 "*Subcontract Cost*" means the ordinary and reasonable cost of subcontracts made by the Architect/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 labor cost to compensate Architect/Engineer for profit, assumption of responsibility, and performance risk related to the subcontracts.
- 2.1.54.1 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 services, with respect to subcontracted services, changes.
- 2.1.54.2 Invoices for Subcontract Cost must be accompanied by appropriate documentation detailing the subcontractor's performance contributions for the period of time being invoiced. Any additional documentation reasonably required by the Director shall also be provided by Architect/Engineer. Architect/Engineer shall require subcontractors to provide appropriate documentation of costs and expenses incurred in the performance of their services performed in furtherance of an LOA, including but not limited to, a copy of the actual invoice from subcontractor to Architect/Engineer.
- 2.1.54.3 Architect/Engineer is responsible for the performance and work product of subcontractors, including, but not limited to, the coordination of design elements published under the Architect/Engineer's design.
- 2.1.55 "*Substantial Completion*" means the phase in the progress of the Work or designated portion thereof where the Work is sufficiently and suitably complete in accordance with the Contract Documents (i) so that the City, in the Director's sole discretion, can take Beneficial Occupancy, and (ii) the balance of the Work, including all Punch List Items can reasonably be expected to be completed within 30 Calendar Days.
- 2.1.56 "*Staffing Schedule*" means Architect/Engineer's organizational structure and staffing assignments for key positions on the Project as shown in **Exhibit "C"**.
- 2.1.57 "*Term*" means the entire period during which this Contract is in effect, starting on the Effective Date and continuing through the final date of termination or expiration of this Contract, including any renewals or extensions.
- 2.1.58 "*TSA*" means the Transportation Security Administration as presently constituted as a division of the United States Department of Transportation or its successor agency or agencies.
- 2.1.59 "*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.
- 2.1.60 "*Works made for hire*" means 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.

### **ARTICLE 3. RIGHTS AND DUTIES OF ARCHITECT/ENGINEER**

#### **3.1 SCOPE OF SERVICES IN GENERAL**

##### **3.1.1 Services in General**

3.1.1.1 For and in consideration of the payment specified in this Contract, the Architect/Engineer shall provide all labor, material, and supervision necessary and reasonably inferable to perform on-call professional Design services as set out in this Contract, including those in **Exhibit "A"**, and as specifically described in Letters of Authorization.

3.1.1.2 Architect/Engineer shall perform the following services:

3.1.1.2.1 Provide prompt and efficient professional turnkey Architect/Engineer services for the Pre-Design, design, and construction administration services for each Project;

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

3.1.1.2.3 Designate a project manager who will be the Architect's liaison for this Project;

3.1.1.2.4 Make periodic written reports, meeting notes, documentation, presentations to approval and recommendations to the Director with respect to conditions, transactions, situations, or circumstances encountered by the Architect/Engineer relating to its services under this Contract;

3.1.1.2.5 Attend meetings with representatives from the City, local, State, and federal agencies, and contractors if required by the Director; Architect/Engineer

3.1.1.2.6 If requested, provide a copy of written materials prepared by Architect/Engineer or made available to Architect/Engineer under this Contract;

3.1.1.2.7 Obtain and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule or regulation of any regulatory body having jurisdiction over the conduct of its operations hereunder; meet the standards prevailing in its profession for architectural and engineering services performed for similar projects in the City of Houston, Harris County, Texas including normal civil,

structural, mechanical and electrical engineering services; and landscape architectural services to meet the minimum requirements of the City Code of Ordinances; and immediately notify the Director of any suspension, revocation or other detrimental action against his or her license;

- 3.1.1.2.8 Meet the standards for all Authorities Having Jurisdictions (AHJ) as determined by the Director.
  - 3.1.1.2.9 If an actual or potential conflict arises between the interests of the City and the interests of the Architect/Engineer or other clients represented by Architect/Engineer, immediately notify the Director by fax transmission or telephone;
  - 3.1.1.2.10 Ensure the professional quality, technical accuracy, and coordination of all Documents and services;
  - 3.1.1.2.11 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, omissions, and deficiencies.
  - 3.1.1.2.12 Notify the Director promptly of any factor, occurrence or event coming to its attention that Architect/Engineer believes is likely to adversely affect its ability to meet any of its obligations hereunder or to materially delay delivery of any Document or service provided for herein and in the LOA Schedule, in such event, promptly consult with the Director regarding a plan of action to prevent, eliminate or remedy such default or delay;
- 3.1.1.3 The Architect/Engineer will be asked to perform on-call services required for design and/or construction phases after Architect/Engineer receives written notice by the Director to begin performance, and assurance that adequate funds have been allocated.
- 3.1.1.3.1 The City is not required to proceed with this Contract, including under services authorized in individual LOAs, after completion of the Architect/Engineer's services for any phase of work. If this occurs, the Director shall notify the Architect/Engineer in writing of the Director's intent to terminate an individual LOA or this Contract under **Section 5.2**. Any amounts paid to the Architect/Engineer before it receives this written notice plus any amounts to which the Architect/Engineer is entitled constitute total compensation for the services rendered to the date of receipt of the written notice. The Architect/Engineer is not entitled to any additional sums.
- 3.1.1.4 Subject to the requirements of Construction Administration Services in **Exhibit "A"**, the Architect/Engineer will not be otherwise responsible for the means, methods, techniques, sequences, or procedures of

construction selected by the Construction Contractor or the safety precautions and programs incident to the Work of the Contractor. However, if the Architect/Engineer observes any unsafe conditions or unsafe practices by the Contractor, the Architect/Engineer shall notify the Director immediately. The Architect/Engineer will provide confidence to the City or other agencies with jurisdiction that the completed Work of the Construction Contractor conforms to the Contract Documents.

### 3.1.2 Services in Particular

- 3.1.2.1 The Architect/Engineer shall perform services only in response to a Letter of Authorization ("LOA") signed by the Director. An LOA will describe the scope included in the services, the length of time to perform the services, and the maximum amount of compensation that may be earned for the performance of those services. Payment shall be made on the basis of (a) Billing Rates set forth in **Exhibit "B"** for employees of Architect/Engineer and all subcontractors, plus Reimbursable Expenses and other Subcontract Costs, or (b) a lump sum that does not exceed an estimate of the services. Payment basis (a) or (b) will be selected at the sole discretion of the Director
- 3.1.2.2 The LOA will provide more a specific description of the design and construction phase work described in **Section 3.1.1**, Services in General, and may be extended to include:
  - 3.1.2.2.1 Make revisions to Construction Documents, prepare addenda, and review change orders to reflect: (a) Project scope changes requested by the Director; (b) required to address changed conditions or a change in direction previously approved by the Director; (c) mandated by changing governmental laws; (d) or necessitated by the City's acceptance of substitutions by the Architect/Engineer.
  - 3.1.2.2.2 Consult with the City concerning replacement of any Work damaged by casualty and furnish services required in connection with the replacement;
  - 3.1.2.2.3 Assist the City in making arrangements for the Work to proceed if the Architect/Engineer is declared in default by the City for any reason;
  - 3.1.2.2.4 Prepare supporting data and other services related to change orders, other than those change orders necessitated by the Architect/Engineer's error and/or omission;
  - 3.1.2.2.5 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.);

- 3.1.2.2.6 Assist the City in obtaining any special licenses or permits which may be required for completion of a Project excluding any licenses or permits required to be obtained under **Section 3.10**. The City shall pay the costs of special licenses or permits;
- 3.1.2.2.7 If the construction period for a Project exceeds the time stated in the applicable construction contract by more than 30 days due to actions other than the Architect/Engineer's, Architect/Engineer shall continue the services required during construction and may be entitled to additional compensation as authorized by the Director in his sole and reasonable discretion;
- 3.1.2.2.8 Perform or obtain the services of a Registered Professional Land Surveyor to do any of the following in support of design work such as:
  - 3.1.2.2.8.1 Field surveys and investigations to establish or verify boundaries and monuments;
  - 3.1.2.2.8.2 Topographic surveys;
  - 3.1.2.2.8.3 Subsurface utility exploration (SUE);
  - 3.1.2.2.8.4 Route surveys;
  - 3.1.2.2.8.5 Property and easement descriptions;
  - 3.1.2.2.8.6 Associated office work; and
  - 3.1.2.2.8.7 electronic drawings with field notes.
- 3.1.2.2.9 Perform, or obtain the services of a subcontractor to perform subsurface investigations in support of design work, including test borings, soil samples, and other foundation investigations, laboratory analyses of the samples and architectural and engineering analyses. The Architect/Engineer or the subcontractor must prepare a detailed report of all findings and transmit an electronic version of the report, signed and sealed by the registered geotechnical Architect/Engineer.
- 3.1.2.2.10 Perform on-site observation to observe site situations and provide advice and consultation on site during design.
- 3.1.2.2.11 Conduct random, reasonable suspicion and post-accident drug testing necessary to comply with **Section 3.17**.

### 3.1.3 Letters of Authorization (LOA)

- 3.1.3.1 In response to Letters of Authorization to be issued periodically by the Director, Architect/Engineer shall perform services as set forth under this Contract and each LOA. The extent of such assigned work and the payment basis after negotiations with Architect/Engineer have been completed for each LOA will be defined in each LOA in accordance with this Contract. Architect/Engineer agrees that it shall diligently perform all assigned Project tasks and meet the delivery schedules of the Project Schedule established for the Project in each LOA. Architect/Engineer acknowledges that time is of the essence in performing services under this Contract. Architect/Engineer shall not begin services until it receives a signed LOA from the Director.
- 3.1.3.2 Architect/Engineer understands and acknowledges that the City may determine not to proceed with an LOA before or after completion of Architect's services for any phase.
- 3.1.3.3 Architect/Engineer agrees that the Director may reduce the scope of services for any of the services identified in the Notice to Proceed or may divide the Project into separate Construction Packages by issuing a written notice describing: (1) the scope of the reduced Project or the scope of each Construction Package; and (2) the revised Time of Performance.
- 3.1.3.4 LOA's must set forth the following:
  - 3.1.3.4.1 Contract number, HAS project number, and Architect/Engineer's name, address, and telephone number;
  - 3.1.3.4.2 LOA number and date;
  - 3.1.3.4.3 Identity of Architect/Engineer's key personnel assigned to each LOA and the subcontractors who will perform services;
  - 3.1.3.4.4 A scope of services specifically identifying the services to be performed and the Project deliverables to be prepared.
  - 3.1.3.4.5 Project Schedule including the following:
    - 3.1.3.4.5.1 Start and completion dates of the Services in Particular deliverables;
    - 3.1.3.4.5.2 Critical dates of coordination with subcontractors;
    - 3.1.3.4.5.3 Review submittal dates and period duration allowed for HAS review;
    - 3.1.3.4.5.4 Scheduled submittals of required reports; and
    - 3.1.3.4.5.5 Meeting schedule including required attendance at scheduled progress meetings



- 3.1.3.4.5.6 A breakout to include identification, by line item, of the required position classifications set forth in Exhibit "C" to perform the services, the estimated hours, and the fixed hourly Billing Rate as set forth in Exhibit "B" and as defined in this Contract;
- 3.1.3.4.5.7 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;
- 3.1.3.4.6 Frequency of payment (i.e., monthly, milestone, upon completion of project);
- 3.1.3.4.7 Balance of funds remaining in the Contract;
- 3.1.3.4.8 Identification of the estimated amount of services to be performed by DBE firms, if applicable; and
- 3.1.3.4.9 Any other information necessary to identify and perform the services or as otherwise may be required by the Director.
- 3.1.3.4.10 LOA's shall continue to be in effect and performed by Architect/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 Architect/Engineer receives written notification from the Director to discontinue services on a particular Project.
- 3.1.3.4.11 LOA's may be amended at any time during the performance in the same manner as they are issued.
- 3.1.3.4.12 LOAs may not alter or amend the terms and conditions set forth in this Contract.

## 3.2 ARCHITECT/ENGINEER'S PERSONNEL

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

3.2.1.1 Name of employee;

- 3.2.1.2 Description of tasks to be performed;
  - 3.2.1.3 Applicable registration;
  - 3.2.1.4 Principal office of employment;
  - 3.2.1.5 Summary of relevant experience; and
  - 3.2.1.6 Date and expected duration of assignment.
- 3.2.2 During the term of this Contract, the Architect/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 Architect/Engineer does not maintain these professional licenses, the Director may immediately terminate this Contract. The Architect/Engineer must immediately notify the Director of any suspension, revocation, or other negative action against his or her license.
- 3.2.3 The Director may require removal of any employee of the Architect/Engineer providing services under this Contract whose work product in the Director's sole discretion is unacceptable.

### 3.3 **SUBCONTRACTING AND PROMPT PAYMENT OF SUBCONTRACTORS**

- 3.3.1 Architect/Engineer shall not subcontract any part of its performance under this Contract without the prior written approval of the Director. In requesting such approval, Architect/Engineer must provide the Director with the name of the proposed subcontractor, the nature of the services to be performed, and a copy of the proposed subcontract which, at a minimum, (i) includes the same information required of Architect/Engineer in **Section 3.2.1**, inclusive of all sections therein, and (ii) restricts the subcontractor from adding any mark-up to its reimbursable expenses and its all-inclusive billing rates. If such approval is given, Architect/Engineer shall be responsible for services performed by subcontractors to the same extent as if the services were performed by the Architect/Engineer.
- 3.3.2 The Director may request Architect/Engineer to engage subcontractors with specialized skills or specific knowledge. Architect/Engineer shall identify subcontractors demonstrating successful work history in the requested area to the satisfaction of the Director. Upon the Director's approval, Architect/Engineer shall be responsible for choosing and contracting with each specialized subcontractor. All specialized subcontractors must make Good Faith Efforts to meet the subcontracting goal set out in **Section 3.16** of this Contract. The Director may request Architect/Engineer to engage subcontractors with specialized skills or specific knowledge. Architect/Engineer shall identify subcontractors demonstrating successful work history in the requested area to the satisfaction of the Director. Upon the Director's approval, Architect/Engineer shall be responsible for choosing and contracting with each specialized subcontractor. All specialized subcontractors must make Good Faith Efforts to meet the subcontracting goal set out in **Section 3.16** of this Contract.
- 3.3.3 In accordance with the Texas Prompt Payment Act, Architect/Engineer shall make timely payments in accordance with applicable state and federal law to all persons and entities supplying labor, materials or equipment for the performance of this Contract, including Architect/Engineer's employees. **ARCHITECT/ENGINEER SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR**

**LIABILITY ARISING OUT OF ARCHITECT/ENGINEER'S FAILURE TO MAKE THESE PAYMENTS.** Architect/Engineer shall submit disputes relating to payment of DBE subcontractors to mediation in the same manner as any other disputes under the DBE subcontract.

3.3.4 Architect/Engineer shall be responsible for services performed by subcontractors to the same extent as if the services were performed by Architect/Engineer. Architect/Engineer shall replace any subcontractor when requested by the Director to do so, who shall state the reasons for such request. Architect/Engineer shall provide the Director with a copy of any of its subcontractor's subcontracts at Director's request.

### 3.4 **BILLING RATES**

#### 3.4.1 Allowable Increases

3.4.1.1 At the Director's sole discretion, the Billing Rates set forth in Exhibit "B" are subject to a possible increase not to exceed 4% of the Billing Rate for the previous contract year for actual salary increases which shall include cost of living adjustments. Upon the Director's written approval, the revised Billing Rate(s) will automatically become part of **Exhibit "B"**.

3.4.1.1.1 An increase to any Billing Rate may only occur once per contract year.

3.2.1.1.1 Any increase to Billing Rates will not take effect on any existing LOA, but shall take effect on any LOA issued after the increased Billing Rate has been approved by the Director.

#### 3.4.2 Employee Categories

3.4.2.1 The Director may authorize additional employee categories required to accomplish services required herein. Upon the Director's written approval, the additional employee category or categories will automatically become a part of to **Exhibit "C"** and the corresponding Billing Rate which will automatically become a part of **Exhibit "B"**.

#### 3.4.3 Most Favored Client

3.4.3.1 Architect/Engineer represents and warrants to the City that the Billing Rates set forth in **Exhibit "B"** are equal or more favorable to the fully loaded hourly rates contemporaneously offered by Architect/Engineer to any other public sector client for similar aviation services.

3.4.3.1.1 If subsequent to the Effective Date and at any point during the Term, Architect/Engineer enters into any agreement with another client that contains fully loaded hourly rates that are more favorable than those in this Contract for services

that are similar, Architect/Engineer must notify the City of such arrangements and agree to lower its Billing Rates to include those applicable and more favorable compensation terms as directed and agreed to by the Director. Upon the Director's written approval, **Exhibit "B"** shall be replaced to reflect the lower Billing Rates.

3.4.3.2 **Section 3.4.3.1** will not apply to compensation arrangements that fall into one of more of the following categories;

3.4.3.3 *Dissimilar Operating Units.* The services at issue are not provided by the same operating unit (e.g. provided by an operating unit that has no indirect cost pools in common with the operating unit providing services under this Agreement);

3.4.3.3.1 *Pro Bono.* The services at issue are pro bono in nature; or

3.4.3.3.2 *Lump Sum.* The services at issue are provided under contracts that are primarily lump sum in nature; or

3.4.3.3.3 *Below Threshold.* The services at issue are provided under a contract that is less than \$100,000 in value; or

3.4.3.3.4 *Equitable Considerations.* Other equitable considerations exist under which the Director determines, in his sole and reasonable discretion, that to adopt the more favorable, common compensation terms would not be appropriate. The Architect/Engineer must advise the Director when Architect/Engineer notifies the Director of such more favorable, common compensation terms of any facts it contends exists to negate the requirement that this Agreement be amended to adopt such terms. Any determination by the Director on this issue will be final.

3.4.3.4 *Relation Back of Compensation Changes.* If the application of this **Section 3.4.3.1** results in a modification of any compensation terms under this Agreement, that modification will be effective as of the date Architect/Engineer entered into its agreement with another client. The Parties agree that any overpayments made on invoices submitted to the City by Architect/Engineer will be refunded or used as a setoff on future invoices.

3.4.3.5 *Warranty Reporting Requirements.* On **January 1** of each year during the Term, Architect/Engineer must provide the Director a letter, executed by an appropriate representative of Architect/Engineer(subject to the Director's determination and approval), warranting and confirming that it is in compliance with this provision and that no other clients of Architect/Engineer are operating under contracts or other arrangements containing compensation terms that are more

favorable than those compensation terms provided in this Agreement.

3.4.4 Implementation of Changes to Billing Rates

3.4.4.1 To implement allowable changes to the Billing Rates set forth in **Sections 3.4.1**, and **3.4.2**, the Director shall provide written notice to Architect/Engineer of an approved change to the Billing Rate(s) along with a replacement **Exhibit "B"** depicting the approved change. Any such change to the Billing Rates or corresponding changes to **Exhibit "B"** does not require a contract amendment or any further Council action.

3.5 **RELEASE AND INDEMNIFICATION**

3.5.1 **RELEASE**

3.5.1.1 **EXCEPT FOR THE CITY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, ARCHITECT AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT.**

3.5.2 **INDEMNIFICATION**

3.5.2.1 **TO THE EXTENT PERMITTED BY TEXAS LOCAL GOVERNMENT CODE §271.904, ARCHITECT/ENGINEER AGREES TO AND SHALL INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY TO THE EXTENT CAUSED BY ARCHITECT/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 CONTRACT, WHETHER ARCHITECT/ENGINEER IS IMMUNE FROM LIABILITY OR NOT. ARCHITECT/ENGINEER SHALL INDEMNIFY AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS CONTACT AND FOR FOUR YEARS AFTER THE CONTRACT TERMINATES.**

**3.5.3 RELEASE AND INDEMNIFICATION OF PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT**

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

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

**3.5.3.3 WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, ARCHITECT SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND ARCHITECT SHALL REFUND THE PURCHASE PRICE.**

**3.5.4 SUBCONTRACTOR'S INDEMNITY**

**3.5.4.1 ARCHITECT 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.**

**3.5.5 Defense of Claims**

**3.5.5.1 Assumption of Defense.** Architect/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. Architect/Engineer shall then control the defense and any negotiations to settle the claim, subject to the City Attorney's

consent or agreement to the settlement, which consent or agreement shall not unreasonably be withheld. Within 10 days after receiving written notice of the indemnification request, Architect/Engineer must advise the City as to whether or not it will defend the claim. If Architect/Engineer does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

3.5.5.2 Continued Participation. If Architect/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.

3.6 **INSURANCE**

3.6.1 Risk and Limits of Liability. Architect/Engineer shall, at a minimum, maintain the following insurance coverages in the following amounts:

<u>COVERAGE</u>	<u>LIMIT OF LIABILITY</u>
Workers' Compensation	<ul style="list-style-type: none"> <li>• Texas Statutory for Workers' Compensation</li> </ul>
Employer's Liability	<ul style="list-style-type: none"> <li>• Bodily Injury by Accident \$1,000,000 (each accident)</li> <li>• Bodily Injury by Disease \$1,000,000 (policy limit)</li> <li>• Bodily Injury by Disease \$1,000,000 (each employee)</li> </ul>
Commercial General Liability: Including Broad Form Coverage, Bodily Injury and Property Damage (Products and Completed Operations required when Physical Operations performed)	<ul style="list-style-type: none"> <li>• \$1,000,000 Limit each Occurrence and \$2,000,000 aggregate per 12-month period</li> </ul>
Automobile Liability	<ul style="list-style-type: none"> <li>• \$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos</li> <li>• \$10,000,000 for an auto driven in the Air Operations Area</li> </ul>
Professional Liability	<ul style="list-style-type: none"> <li>• \$2,000,000 Limit per claim/aggregate</li> </ul>
Excess Liability applicable to Commercial General and Automobile Liability	<ul style="list-style-type: none"> <li>• \$1,000,000 Limit each occurrence/aggregate</li> </ul>
<b>Aggregate Limits are per 12-month policy period unless otherwise indicated.</b>	

3.6.2 Insurance Coverage. At all times during the term of this Contract and any extensions or renewals, Architect/Engineer shall provide and maintain insurance coverage that meets the requirements of this Contract. Prior to beginning performance under the Contract, at any time upon the Director's request, or each

time coverage is renewed or updated, Architect/Engineer shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Architect/Engineer shall be responsible for and pay (i) all premiums and (ii) any claims or losses to the extent of any deductible amounts. Architect/Engineer waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Architect/Engineer shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

- 3.6.3 Form of Insurance. The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (i) excuse non-compliance with the terms of this Section, or (ii) waive or estop the City from asserting its rights to terminate this Contract. 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.
- 3.6.4 Required Coverage. The City shall be an Additional Insured under this Contract, and all policies, except Professional Liability and Worker's Compensation, shall name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other Contract provisions. Contactor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Architect/Engineer's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Contract. If professional liability coverage is written on a "claims made" basis, Architect/Engineer shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Contract with a duration of two years after substantial completion.
- 3.6.5 Notice. **ARCHITECT/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, Architect/Engineer shall provide other suitable policies in order to maintain the required coverage. If Architect/Engineer does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Architect/Engineer from any further performance under this Contract and begin procedures to terminate for default.

### 3.7 USE OF WORK PRODUCTS

#### 3.7.1 Assignment



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

### 3.7.2 Proprietary Rights

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

### 3.7.3 Document Execution

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

### 3.7.4 Works for Hire

3.7.4.1 Architect/Engineer may, however, retain copies of "Works made for hire" and such Documents. Architect/Engineer shall have the right to use such copies internally, but Architect/Engineer may not sell, license or otherwise market such Documents. Upon request by the

Director, Architect/Engineer shall deliver such Documents to the City.

### 3.7.5 Architect/Engineer Copies

3.7.5.1 Architect/Engineer does not represent that the Documents are, or are intended to be suitable for use on other Projects or extensions of this Project to the extent that the Documents are site-specific.

## 3.8 CONFIDENTIALITY

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

3.8.2 Except as provided in the preceding paragraph, Architect/Engineer shall keep confidential

### 3.8.3 City Use

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

### 3.8.4 Architect/Engineer Confidentiality

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

- 3.9 **SENSITIVE SECURITY INFORMATION.** Architect/Engineer shall take all appropriate measures in accordance with 49 C.F.R. 1520 and other applicable laws to protect all proprietary, privileged, confidential, or otherwise Sensitive Security Information (“SSI”) that may come into the Architect/Engineer’s possession as a result of this Contract.
- 3.10 **TAXES, LICENSES, LAWS, RULES.** Architect/Engineer shall pay, before delinquency, all taxes that may be levied, assessed or charged upon Architect/Engineer or the property, real and personal, owned by Architect/Engineer. Architect/Engineer may contest these taxes. Architect/Engineer shall comply with all laws, codes, rules, regulations and ordinances relating to its performance under this Contract, including any which may impose requirements more stringent than, or inconsistent with, this Contract. Nothing in this Contract abrogates or diminishes the regulatory or police powers of the City.
- 3.11 **COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE.** Architect/Engineer shall comply with the City’s Equal Employment Opportunity Ordinance as set out in Section 15-17 of the Code of Ordinances.
- 3.12 **TITLE VI ASSURANCES – NON-DISCRIMINATION.** Architect/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, Architect/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 "E"**.
- 3.13 **PAY OR PLAY.** The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into this Contract for all purposes. Architect/Engineer has reviewed Executive Order No. 1-7, as revised, and shall comply with its terms and conditions.
- 3.14 **COMPLIANCE WITH CERTAIN STATE LAW REQUIREMENTS**
- 3.14.1 *Anti-Boycott of Israel.* Architect/Engineer certifies that Architect/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.
- 3.14.2 *Anti-Boycott of Energy Companies.* Architect/Engineer certifies that Architect/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.
- 3.14.3 *Anti-Boycott of Firearm Entities or Firearm Trade Associations.* Architect/Engineer certifies that Architect/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.
- 3.14.4 *Certification of No Business with Foreign Terrorist Organizations.* For purposes of Section 2252.152 of the Texas Government Code, Architect/Engineer certifies

that, at the time of this Agreement neither Architect/Engineer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Architect/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.

3.15 **ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES.** 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 Contract for all purposes. Architect/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 Effective Date. Architect/Engineer shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Architect/Engineer or its subcontractors providing services or goods under this Contract within seven days of Architect/Engineer becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

3.16 **PRESERVATION OF CONTRACTING INFORMATION**

3.16.1 The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Architect/Engineer agrees that this Agreement can be terminated if the Architect/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), Architect/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, Architect/Engineer shall provide any Contracting Information related to this Agreement that is in the custody or possession of Architect/Engineer. Upon the expiration or termination of this Agreement, Architect/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 Architect/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.

3.17 **DISADVANTAGED BUSINESS ENTERPRISES**

3.17.1 Policy. The City has established a Disadvantaged Business Enterprise ("DBE") program in accordance with regulations of the U.S. Department of Transportation ("DOT"), 49 CFR Part 26, which are incorporated herein by reference. The City has received Federal financial assistance from the DOT and as a condition of receiving this assistance, the City has signed an assurance that it shall comply

with 49 CFR Part 26. It is the policy of the DOT and the City to ensure that DBEs, as defined in part 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts.

- 3.17.2 Contract Goal. Architect/Engineer shall make Good Faith Efforts, as defined in City of Houston Ordinance No. 99-893 and 49 CFR Part 26, to subcontract 15 % of the dollar value of the Agreement to DBEs. For purposes of this Section, DBEs are businesses certified as such by a member of the Texas Unified Certification Program pursuant to 49 CFR Part 26.
- 3.17.3 Architect/Engineer, including a DBE prime contractor, if any, shall be required to submit information concerning the DBEs that shall participate in this Agreement. The information shall include the name, address, and email address of each DBE, a description of the work to be performed by each named firm, the dollar value of the contract or subcontract, bidder's written commitment to use such DBEs; and written confirmation from the DBEs that they are participants in the contract. If the Architect/Engineer fails to achieve the contract goal stated therein, it shall be required to provide documentation demonstrating that it made Good Faith Efforts.
- 3.17.4 DBE prime contractors must meet goals and make Good Faith Efforts on the same basis as other contractors, but DBEs may count toward goals the work that they commit to perform with their own work force, as well as work performed by DBE subcontractors and DBE suppliers.
- 3.17.5 The Director of the Office of Business Opportunity ("OBO Director") is the DBE Liaison Officer. In that capacity, the OBO Director is responsible for implementing all aspects of the DBE program. The Architect/Engineer shall establish and maintain records and submit regular reports, as required by the Director and the OBO Director, which shall identify and assess progress in achieving DBE subcontract goals and other DBE affirmative action efforts.
- 3.17.6 Compliance. Architect/Engineer is hereby notified that failure to carry out the DOT policy and the DBE obligation, as set forth herein, shall constitute a breach of contract which may result in termination of this Agreement or such other remedy as deemed appropriate by the City.
- 3.17.7 Contract Assurance. Architect/Engineer or subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Architect/Engineer shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Architect/Engineer to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the City deems appropriate.
- 3.17.8 Prompt Payment. Architect/Engineer agrees to pay each subcontractor under this Agreement for satisfactory performance of its contract no later than 30 days from receipt of each payment Architect/Engineer receives from the City. Architect/Engineer agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City.

- 3.17.9 Termination of DBE Subcontractor. Architect/Engineer must not terminate for convenience a DBE subcontractor and then perform the work of the terminated subcontract with its own forces or those of an affiliate without the City's prior written consent.
- 3.17.10 When a DBE subcontractor is terminated or fails to complete its work on the contract for any reason, Architect/Engineer must notify the City in writing and must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal.
- 3.17.11 Subcontract Clauses. Architect/Engineer hereby assures that it shall include the above clauses in all subcontracts which offer further subcontracting opportunities.

### 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. Architect/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 "F", "G", and "H"**, Architect/Engineer shall be referred to as "Contractor".
- 3.18.2 Before the City signs this Contract, Architect/Engineer shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):
- 3.18.2.1 a copy of its drug-free workplace policy,
- 3.18.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in **Exhibit "F"**, together with a written designation of all safety impact positions and,
- 3.18.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in **Exhibit "G"**.
- 3.18.3 If Architect/Engineer files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six months during the performance of this Contract or on completion of this Contract if performance is less than six months, a Drug Policy Compliance Declaration in a form substantially similar to **Exhibit "H"**. Architect/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 Notice to Proceed or if no Notice to Proceed is issued, on the first day Architect/Engineer begins work under this Contract.

- 3.18.4 Architect/Engineer shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Architect/Engineer's employee work force.
- 3.18.5 Architect/Engineer shall require that its subcontractors comply with the Executive Order, and Architect/Engineer shall secure and maintain the required documents for City inspection.
- 3.19 **NON-PARTICIPATION.** Architect/Engineer shall not participate in the bidding process as a bidder and shall not engage in construction of any construction projects emanating from the Project. By written agreement, Architect/Engineer shall require each of its subcontractors to comply with the requirements of this section.
- 3.20 **CONFLICTS OF INTEREST.** If an actual or potential conflict arises between the interests of the City and the interests of other clients represented by Architect/Engineer regarding this Project, Architect/Engineer shall immediately notify the Director by email or telephone. If the Director consents to Architect/Engineer's continued representation of these other clients, the Director will notify Architect/Engineer in writing. If the Director does not issue written consent within three (3) business days after receiving Architect/Engineer's notice, Architect/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 Architect/Engineer does not terminate the other agreements, the Director may terminate this Contract immediately without providing any further opportunity to cure under **Section 5.3.**
- 3.21 **AIRPORT SECURITY**
- 3.21.1 Architect/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 Architect/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 Architect/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 Architect/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, Architect/Engineer shall reimburse the City for any fine or penalty assessed against the City because of Architect/Engineer's non-compliance with 49 CFR 1540 and 1542 or other applicable laws or regulations.
- 3.21.2 Architect/Engineer shall be responsible for any requirements (and the associated costs) of the Federal Aviation Administration ("FAA"), Department of Homeland Security ("DHS") and the Houston Airport System (as applicable) regarding employee background checks and badging.
- 3.22 **ENVIRONMENTAL LAWS**

- 3.22.1 Architect/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"). Architect/Engineer shall promptly reimburse the City for any fines or penalties levied against the City because of Architect/Engineer's failure to comply.
- 3.22.2 Architect/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. Architect/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.
- 3.23 **STATE ENERGY CONSERVATION PLAN.** The Architect/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.
- 3.24 **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION.** In accordance with 49 CFR Part 29 the Architect/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.
- 3.25 **CERTIFICATION REGARDING FOREIGN TRADE RESTRICTIONS**
- 3.25.1 In accordance with 49 CFR Part 30, Architect/Engineer, by execution of this Contract, certifies that it:
- 3.25.1.1 is not owned or controlled by one or more citizens or nationals of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- 3.25.1.2 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; and
- 3.25.1.3 has not procured any product nor subcontracted for the supply of any product for use on the Project that is produced in a foreign country on said list.
- 3.25.2 Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an



Architect/Engineer or subcontractor who is unable to certify to the above. If the Architect/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, cancellation of the Contract at no cost to the City of the Federal Government.

- 3.25.3 Further, the Architect/Engineer agrees that it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The Architect/Engineer may rely upon the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous. The Architect/Engineer shall provide immediate written notice to the City if the Architect/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 Architect/Engineer, if at any time it learns that its certification was erroneous by reason of changed circumstances.
- 3.25.4 This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Architect/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.
- 3.25.5 Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of the Architect/Engineer is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 3.25.6 This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.
- 3.26 **PUBLICITY.** Architect/Engineer shall make no announcement or release of information concerning this Contract unless the release has been submitted to and approved, in writing, by the Director.
- 3.27 **AIRPORT SYMBOLS.** Architect/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.
- 3.28 **NON-EXCLUSIVITY.** This Contract does not create an exclusive right for Architect/Engineer to perform all architecture/engineering services concerning this Project. The City may procure and execute contracts with other architecture/engineering firms 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 Architect/Engineer as specified in **Article 4** for all services rendered by the Architect/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 Architect/Engineer receives payment from the City for work performed by any subcontractor or for materials provided by any supplier, and the Architect/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 Architect/Engineer until the next regular payment to the Architect/Engineer occurring after the City receives reasonable documentation that the deficiency has been remedied.

#### 4.1.2 Fees; Method of Payment

- 4.1.2.1 The Architect/Engineer shall perform services only in response to an LOA signed by the Director. The method of payment will be specified in each LOA and may be either (a) an hourly based agreement which includes the Billing Rates set forth in **Exhibit "B"** multiplied by hours worked by each employee set forth in **Exhibit "C"** who performs work for the Project plus Reimbursable Expenses and Subcontract Cost, and/or (b) a Fixed Lump Sum that does not exceed an estimate of the total of all the payment categories set forth in (a) when added together.
- 4.1.2.2 The City shall make partial payment of the fees on the basis of monthly invoices submitted by Architect/Engineer and approved by the Director. To receive payment for services, Architect/Engineer must submit invoices no more monthly in accordance with the following:
  - 4.1.2.2.1 The invoices for services rendered on a lump sum basis must include the following: (i) the percentage of the total services completed for each LOA in the preceding month; (ii) a summary of the services performed for each LOA during the period covered by the invoice; (iii) the amount due for the services, and (iv) any other information required by Director. The amount of partial payment due for services performed shall be a percentage of the Fixed Lump Sum equal to the percentage of services performed on each LOA during the period covered by the invoice.
  - 4.1.2.2.2 The invoices for services rendered on an hourly-based agreement must include the following:
    - 4.1.2.2.2.1 A detailed description of the work performed;
    - 4.1.2.2.2.2 The Billing Rate and number of hours worked for each of Architect/Engineer's employees who

worked on each LOA during the invoice period (Documentation must include employee name, Billing Rate, and hours expended. At the Director's sole discretion, supporting documentation may also include copies of original time sheets that Architect/Engineer certifies are true and accurate copies.);

4.1.2.2.2.3 Itemized Reimbursable Expenses;

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

4.1.2.3 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 electronic transfer or check payable to the Architect/Engineer. Payments will be electronically transferred to the banking institution and account specified by the Architect/Engineer or mailed to the address specified in **Section 1.1**. The City will not unreasonably delay or withhold payment or approval of any invoice. The Director shall approve or disapprove the Architect/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 Architect/Engineer's services to which the partial payment or approval relates. The payments do not relieve the Architect/Engineer of any of its obligations under this Contract. The Architect/Engineer shall send all invoices to the address listed in **Section 1.1** or Gary.High@houston.tx.gov to the attention of the HAS Chief Development Officer.

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

4.1.2.5 If for any reason the City disputes any items in an invoice that the Architect/Engineer submits, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Architect/Engineer of the dispute and request remedial action. After the dispute is settled, Architect/Engineer shall include the disputed amount (if determined eligible for payment) on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

**4.2 LIMIT OF APPROPRIATION**

- 4.2.1 The City's duty to pay money to Architect/Engineer under this Agreement is limited in its entirety by the provisions of this Section.
- 4.2.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the Architect/Engineer recognizes that the City may not obligate itself by contract to an extent in excess of an amount therefor appropriated by the City Council and further recognizes that only \$----- has been appropriated by City Council to pay the cost of all services authorized by LOAs for the combination of Projects ----- The City does not guarantee that a minimum or maximum portion of the total appropriation will be allocated to any one of the ---x number--- Projects (-----) that share the \$----- appropriation. The City will request services of the ----- firms under Projects ----- in accordance with the best interests and needs of the City.
- 4.2.3 Of the \$----- above, the City has appropriated and allocated \$----- to pay money due under multiple contracts for the City's current fiscal year (the "Original Allocation").
- 4.2.4 The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:
  - 4.2.4.1 The City has not allocated supplemental funds or made a Supplemental Allocation for this Agreement unless the City has issued to Architect/Engineer a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

**NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS**

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

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- 4.2.4.2 The Original Allocation plus all Supplemental Allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Architect/Engineer must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Architect/Engineer's only remedy is suspension or termination of its performance under this Agreement, and it

has no other remedy in law or in equity against the City and no right to damages of any kind.

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

### **4.3 COORDINATION OF PERFORMANCE WITH ARCHITECT/ENGINEER**

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

4.3.1.1 Provide information to Architect/Engineer concerning the requirements for the Project;

4.3.1.2 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 Architect/Engineer in performing services under the Contract; and

4.3.1.3 Examine the Documents submitted by Architect/Engineer and render decisions pertaining to them within a reasonable time to avoid unnecessary delay of Architect/Engineer's services.

**4.4 ACCEPTANCE AND APPROVALS.** Any acceptance or approval by the City, or its agents or employees shall not constitute nor be deemed to be a release of the responsibility and liability of the Architect/Engineer, its employees, agents, subcontractors, or suppliers for the accuracy, competency, and completeness for any Documents prepared or services performed pursuant to the terms and conditions of this Contract, nor shall acceptance or approval be deemed to be an assumption of such responsibility or liability by the City, or its agents and employees, for any defect, error or omission in any Documents prepared or services performed by the Architect/Engineer, its employees, agents, subcontractors or suppliers pursuant to this Contract.

### **4.5 ACCESS TO CITY DATA**

4.5.1 The City shall, to the extent permitted by law, allow Architect/Engineer to access and make copies of documents in the possession or control of the City or available to it that are reasonably necessary for Architect/Engineer to perform under this Contract.

4.5.2 The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for Architect/Engineer's use.

4.5.3 For any raw data created, assembled, used, maintained, collected, or stored by the Architect/Engineer for or on behalf of the City, Architect/Engineer shall provide the City either the raw data itself or the ability to extract the raw data in a format

mutually agreed upon by both parties at no additional cost to the City, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

## **ARTICLE 5: TERM AND TERMINATION**

5.1 **TERM.** This Contract is effective on the Countersignature Date and remains in effect for three (3) years ("Primary Term") unless terminated sooner. (This Contract is effective on the date the City Controller countersigns this Contract and remains in effect for five years from the Effective Date, unless sooner terminated under the terms of this Contract.

5.2. **RENEWALS.** Upon expiration of the Primary Term, this Contract will be automatically renewed for up to two additional successive one-year terms on the same terms and conditions as the Primary Term, unless the Director, at his or her sole discretion, notifies Architect/Engineer in writing of non-renewal at least thirty (30) days before the expiration of the Primary Term or current Renewal Term.

5.3. **LIMITED DURATION OF LOAS.** No new LOAs may be issued after the Primary Term or a Renewal Term, if any, but valid LOAs in effect on the last day of the Primary Term or Renewal Term will automatically extend the applicable Term until such LOA is completed and only as to that LOA, but no later than 30 months after the expiration of this Contract (the expiration of the Term and, if applicable, any Renewals exercised unless the Contract is terminated).

### **5.4 TERMINATION**

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

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

5.4.3 RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE ARCHITECT/ENGINEER'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. ARCHITECT/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.

## 5.5 POST TERMINATION.

- 5.5.1 Upon receipt of a notice of termination and prior to the effective date of the termination, the Architect/Engineer shall, unless the notice otherwise directs, immediately begin to Phase-out and discontinue all services in connection with the performance of this Contract and any outstanding LOAs and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Contract. Architect/Engineer shall deliver all materials, supplies, and work products accumulated in performing this Contract to a place designated by the Director. Within thirty (30) days after receipt of the notice of termination, the Architect/Engineer shall submit a statement, showing in detail the services performed under this Contract prior to the effective date of termination. The City shall then pay the fees to Architect/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.
- 5.5.2 Reproducible copies of all completed or partially completed Documents prepared under this Contract prior to the effective date of termination shall be delivered to the Director as a precondition to final payment.
- 5.5.3 In the event of termination due to no fault of the Architect/Engineer and in accordance with this Agreement, the City shall compensate the Architect/Engineer for all services authorized by the Director and performed before or on the termination date, less previous compensation payments for services, together with Reimbursable Expenses then due.
- 5.5.4 Any installments on Fixed Lump Sum fees will be prorated in accordance with the progress of the work at the date of termination. Architect/Engineer may submit invoices for vendor and subcontractor charges incurred before the notice of termination and received by Architect/Engineer after its initial termination invoice.
- 5.5.5 **TERMINATION OF THIS CONTRACT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE ARCHITECT/ENGINEER'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS CONTRACT. ARCHITECT/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.**

## ARTICLE 6: MISCELLANEOUS

- 6.1 **INDEPENDENT CONTRACTOR.** Architect/Engineer shall perform its obligations under this Contract 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.**

- 6.1.1 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 Architect/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 Architect/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 Architect/Engineer to extra Reimbursable Expenses or payment.
- 6.2.1 This relief is not applicable unless the affected party does the following:
- 6.2.1.1 Uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
- 6.2.1.2 Provides the other party with prompt written notice of the cause and its anticipated effect.
- 6.2.2 The Director will review claims that a Force Majeure that directly impacts the City or Architect/Engineer has occurred and render a written decision within fourteen (14) days. The decision of the Director is final.
- 6.2.3 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.
- 6.2.4 If the Force Majeure continues for more than fourteen (14) days from the date performance is affected, the Director may terminate this Contract by giving seven days' written notice to Architect/Engineer. This termination is not a default or breach of this Contract. **ARCHITECT/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.**
- 6.2.5 Architect/Engineer is not relieved from performing its obligations under this Contract due to a strike or work slowdown of its employees. Architect/Engineer shall employ only fully trained and qualified personnel during a strike.
- 6.3 **SEVERABILITY.** 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.** 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.** Unless otherwise specified elsewhere in this Contract, this Contract may be amended only by written instrument executed on behalf of the City (by authority of an ordinance duly adopted by the City Council) and Architect/Engineer. The Director is authorized to perform only the functions specifically delegated to them in this Contract.

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

**6.7 NOTICES.** All notices to either party to the Contract 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** 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.** Captions contained in this Agreement are for reference only and therefore have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement

**6.9 NON-WAIVER**

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

**6.9.2** An approval by the Director, or by any other employee or agent of the City, of any part of Architect/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 inspections of all places where work is undertaken in connection with this Contract. Architect/Engineer shall maintain an acceptable job cost accounting system. City shall have access to any books, documents, papers, and records of the Architect/Engineer which are directly pertinent to this Contract for the purposes of making an audit, examination, excerpts, and transcriptions. If any books, documents, papers, or records are located outside of Harris County, Texas, Architect/Engineer agrees to make them available in Harris County, Texas. Architect/Engineer shall maintain all required records for seven (7) years after the City makes final payment and all other pending

matters are closed and shall keep its books and records available for this purpose for at least three years after this Agreement terminates.

**6.10.2** The City and City Controller shall have the right to examine and review the Architect/Engineer's books, records and billing Documents which are directly related to performance or payment under this Contract. The Architect/Engineer shall maintain such books, records, and billing Documents for three years after the cessation of Architect/Engineer's services and responsibilities under this Contract. Nothing in this Article shall affect the time for bringing a cause of action nor the applicable statute of limitations.

**6.10.3** These section does not affect the applicable statute of limitations.

**6.11 ENFORCEMENT.** The City Attorney or his or her designee shall have the right to enforce all legal rights and obligations under this Contract without further authorization. Architect/Engineer covenants to provide to the City Attorney all documents and records that the City Attorney deems necessary to assist in determining Architect/Engineer's compliance with this Contract, with the exception of those documents made confidential by federal or State law or regulation.

**6.12 AMBIGUITIES.** 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.** Architect/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.** This Contract is made for the benefit of the parties, and it does not create any right or benefit enforceable by any third party.

**6.15 SUCCESSORS.** This Contract binds and benefits the parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in **Section 6.16**. This Contract does not create any personal liability on the part of any officer or agent of the City.

## **6.16 BUSINESS STRUCTURE AND ASSIGNMENTS**

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

**6.17 REMEDIES CUMULATIVE.** Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of

all rights and remedies that exist now or in the future. Neither Party may terminate its duties under this Contract except in accordance with its provisions.

**6.18 ARCHITECT/ENGINEER DEBT. IF ARCHITECT/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 ARCHITECT/ENGINEER HAS INCURRED A DEBT, HE SHALL IMMEDIATELY NOTIFY ARCHITECT/ENGINEER IN WRITING. IF ARCHITECT/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 ARCHITECT/ENGINEER UNDER THIS CONTRACT, AND ARCHITECT/ENGINEER WAIVES ANY RECOURSE THEREFOR. ARCHITECT/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 AGREEMENT.**

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

**6.20 AIRPORT SECURITY AND BADGING**

**6.20.1** Architect/Engineer shall comply with all Houston Airport System (HAS), Transportation Security Administration (TSA), Federal Aviation Administration (FAA) and any other governmental agency security directives, rules and regulations. The FAA and/or the TSA may assess fines and/or penalties for the Architect/Engineer's non-compliance with the provisions of Title 49 Code of Federal Regulations, Parts 1540 and 1542, as amended from time to time, or by other agencies for non-compliance with laws or regulations applicable to the Architect/Engineer's operations. Within ten (10) days of notification in writing, Architect/Engineer shall reimburse the City for any fine or penalty assessed against the City because of Architect/Engineer's non-compliance with 49 CFR 1540 and 1542 or other applicable laws or regulations.

**6.20.2** Architect/Engineer shall be responsible for any requirements (and costs associated therewith) of the Federal Aviation Administration, Department of Homeland Security (DHS), and the Houston Airport System (as applicable) regarding employee background checks and badging.

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## EXHIBIT "A"

### SCOPE OF SERVICES

**Services in General** - The typical services requested by the City will be detailed in a Letter of Authorization.

**Services in Particular** - If required by the Director, the Architect/Engineer will also provide the deliverables as stated below:

#### 1. GENERALLY

a) The Architect/Engineer agrees to provide prompt and efficient professional services for the projects assigned by the City through one or more LOAs for the fees hereinafter specified and in accordance with each LOA Schedule. Each LOA Schedule will be drafted by the Architect/Engineer, in consultation with the City staff, approved by the Director and updated monthly and submitted at the time of invoice submittal. Each LOA shall contain a mutually agreed Maximum Total Fees for Basic Services, Reimbursable Expense, and if requested Additional Services.

b) Architect/Engineer will be responsible for services performed by subcontractors to the same extent as if the services were performed by Architect/Engineer. Architect/Engineer will replace any subcontractor when requested by the Director to do so, who will state the reasons for such request. Architect/Engineer will provide the City with a copy of any of its subcontractor's subcontracts at City's request.

c) The On-Call Design contract is performance-based. Architect/Engineer's performance reviews will be periodically performed to ensure projects are designed, developed and successfully implemented.

d) Architect/Engineer will fully participate in the Commissioning Process during all phases of project development, including, but not limited to: Pre-Design, Design, Construction, Closeout, and First Year Post-Occupancy, when required. The specific deliverables associated are described in the following Sections covering the general scope of services.

e) The Architect/Engineer will lead the efforts for creating and managing the Design BIM Model for the extended design team consultants. The Architect/Engineer will be the primary point of contact for the design team, including all Subconsultants, and represent the design team in the development and assembly of the BIM Project Execution Plan (BPxP). The Architect/Engineer will direct and coordinate the BIM performance of the Subconsultants to ensure the work is seamlessly integrated into the Project. The Architect/Engineer will verify the work of the Subconsultants is aligned with HAS BIM requirements and comply with the HAS BIM Standard Manual to produce accurate Construction Documents. The Architect/Engineer will work closely with the BIM Contractor and the HAS BIM Manager to incorporate design phase feedback, transition and integrate the Design Model into the construction phase, and develop accurate Record Models. The

Architect/Engineer represents the design team in all BIM related meetings and workshops.

**A. Monthly Invoice Deliverables:**

- (1) Updated OBO goal participation plan actuals will be submitted with every monthly invoice.
- (2) Updated LOA Design Dates tracking log and project schedule submitted with every monthly invoice.
- (3) Any required supporting documentation or additional information requested by the Director or Designee.

**B. Architect/Engineer may coordinate Commissioning Services, when requested by the Director, which is not limited to the following:**

The Commissioning Provider will conduct a comparative review of the OPR and BOD, either confirming alignment of the two guiding documents, or identify where they may conflict or differ. The Architect/Engineer will review and respond to the Commissioning Review of these documents. As necessary, the Architect/Engineer and their Subconsultants will meet with the Owner and the Commissioning Provider to discuss modification to the BOD or the OPR in order to achieve alignment prior to commencing Design Development.

The objective of commissioning (Cx) is to provide documented conformation that the facilities fulfill the functional and performance requirements of the Owner, occupants and operators. To reach this goal, it is necessary for the commissioning process to develop and document the Owner's criteria for system function, performance, and maintainability as well as, to verify and document compliance with these criteria throughout the phases of each project, design, construction, acceptance and the initial period of operation and the 12 month warranty phase.

**2. PHASE I SERVICES: DESIGN**

**General.** Phase I Design will be divided into three or more stages, including but not limited to Pre-Design, Schematic Design, and Design Development. The Architect/Engineer will, on behalf of the City, file all applications for utilities commitments and furnish any additional information necessary to obtain utility commitments.

**1. Pre-Design services may include, if requested by the Director, but are not limited to, the following:**

This submittal will include but not be restricted to the following where applicable: planning, programming, geotechnical and other site investigations, existing field conditions assessments, and any other Pre-Design services, information, or investigations required to establish a BOD and deliver the project design and construction, as intended.

- a) As part of the Pre-Design commissioning activities, when requested; a charrette to develop the Owner's Project Requirements (OPR) document will be held. The Architect/Engineer and their Subconsultants will participate in the development of the OPR.
- b) Referencing the OPR and documents coming out of the programming effort, the Architect/Engineer and their Subconsultants will develop a Basis of Design (BOD) document. This BOD will be a technical narrative describing how the design goals stated in the OPR are to be achieved.

**2. Schematic or Preliminary Design (30%) services may include, if requested by the Director, but are not limited to, the following:**

This submittal will include but not be restricted to the following where applicable:

- (a) General listing of the types, quantities and sizes of spaces included in the design. Prepare a comparison of these spaces with those listed in the Program, if there is a variance.
- (b) Scaled drawings of the site plan, floor plan(s), exterior elevations and transverse and longitudinal sections through the building, construction details, finishes, equipment and furniture schedules when required, and any other documentation required to complete the project design.
- (c) Preliminary Cost Estimate of the probable Construction Cost (Rough Order of Magnitude – ROM) of the LOA, based on proposed systems, quantities, and project requirements.
- (d) General statement or schedule of proposed finishes.
- (e) General statement of proposed structural system or systems in sufficient detail to demonstrate that spatial and functional requirements have been accommodated and to provide a valid basis for the preliminary estimate of Construction Cost.
- (f) General statement of proposed mechanical, electrical, and plumbing systems, in sufficient detail to demonstrate that spatial and functional requirements have been accommodated and to provide a valid basis for the preliminary estimate of Construction Cost.

**3. Design Development (60%) services may include, if requested by the Director, but are not limited to, the following:**

Based upon approved schematic or preliminary design Documents and any further adjustments in the scope or quality of the Project authorized by the Director, Design Development and Construction Documents services include, but are not limited to, the following:

- (a) Scaled drawings of the site plan, floor plans(s), exterior elevations and such sections and/or details necessary to demonstrate the Schematic Design. The

floor plan(s) will show all furniture, fixtures, equipment, door swings and main dimensions (if applicable).

- (b) Plan layout of the proposed structural system showing preliminary main member sizes.
- (c) Plan layouts, each on a separate sheet, of the proposed mechanical, electrical and plumbing systems in sufficient detail to show equipment, fixtures, lighting, devices and distribution/gathering systems.
- (d) Outline specifications of principal materials, systems and equipment proposed for inclusion into the LOA. Provide a schedule of proposed finishes.
- (e) Updated estimate of the probable Construction Cost (ROM) of the LOA in sufficient detail to demonstrate its inclusiveness and the proposed level of quality throughout all aspects of the LOA.
- (f) Submittals will be subject to a commissioning design review. As part of supporting this review, the Design Team will review and respond to the Commissioning Review comments. As necessary, the Architect/Engineers and their subconsultants will attend a meeting to review and discuss the Commissioning Review comments.

**Revisions.** The Architect/Engineer will make modifications to the Phase I Design Documents as may be required to obtain approval of the City and submit to the City the set of revised Phase I Design Documents.

### **3. PHASE II SERVICES: CONTRACT DOCUMENTS**

Architect/Engineer will proceed with the Phase II Contract Documents for a LOA upon the City's written approval of the Phase I Design for such LOA and upon City's written authorization to proceed. Documents suitable for solicitation of competitive construction bids, for incorporation into a contract for construction of the LOA, and will make clarifications and revisions necessary to obtain the building permit. Contract Documents are those Documents prepared for the purpose of obtaining bids and guiding the construction of the LOA. Contract Documents will generally include but not be limited to the following:

- (a) Drawings of plans, elevations, sections and details defining the dimensions and spatial relationships of all elements of the LOA.
- (b) A written Project Manual, which includes bidding requirements, sample forms, conditions of the construction contract and specifications. The City will provide the Architect/Engineer bidding requirements, sample forms and conditions of the construction contract for Architect/Engineer's inclusion in the Project Manual. Specifications will define the general requirements for the LOA, written descriptions of the technical nature of materials, equipment, construction systems, standards and workmanship. The Architect/Engineer will not include in either the general requirements or in other technical specification sections requirements that conflict with the bidding requirements, sample forms and

conditions of the construction contract provided by the City. Dollar allowances will not be used in the Project manual.

- (c) To the extent practicable for each item that requires a specific designation, the Architect/Engineer will specify the products of at least three manufacturers of each material and manufactured item acceptable for use in the LOA.
- (d) The specifications will also provide means by which the successful bidder can submit for approval products other than those specified which it considers equivalent to those specified in quality, including durability, serviceability, design, appearance, function, finish, performance, size and weight. The Architect/Engineer will advise the City as to whether or not products other than those listed in the specifications are equivalent to the products listed, and meet or exceed the minimum performance requirements.
- (e) The Architect/Engineer will attend review conferences with the Director and such others as the Director may designate to obtain the City's approval of the development of the Contract Documents.
- (f) The Architect/Engineer will advise the City of any adjustments to previous estimates of Construction Cost indicated by changes in the requirements or general market conditions.
- (g) The Architect/Engineer will, on behalf of the City, file all applications and Documents necessary to obtain approval from any and all governmental authorities having jurisdiction over the Project. This will include, but not be limited to, submittal of drawings to the Texas Department of Licensing and Regulations, TAS/ADA Architectural Barriers Section for review, and Building Permit application. The Architect/Engineer will provide the City with copies of Proof of Submission and Proof of Inspection filings.
- (h) The Architect/Engineer and Architect/Engineer's subcontractors will attend the Pre-Bid Conference and respond to bidders' questions. If required, the Architect/Engineer will issue Addenda to the Contract Documents during the bid period as necessary to respond to bidders' questions and to make clarifications. The Architect/Engineer will evaluate bids and bidders only when the City requests such evaluations in writing.
- (i) A written Project Manual, which includes bidding requirements, sample forms, conditions of the construction contract and specifications, will be submitted with every monthly invoice. The City will provide the Architect/Engineer bidding requirements, sample forms and conditions of the construction contract for Architect/Engineer's inclusion in the Project Manual. Specifications will define the general requirements for the LOA, written descriptions of the technical nature of materials, equipment, construction systems, standards and workmanship. The Architect/Engineer will not include in either the general requirements or in other technical specification sections requirements that conflict with the bidding requirements, sample forms and conditions of the construction contract provided by the City. Dollar allowances will not be used in the LOA manual.



**Procurement/ Bid Process.**

The Architect/Engineer will participate in the Procurement process during the bidding and selection of the Contractor as required.

**4. PHASE III SERVICES: CONSTRUCTION**

- A. The Architect/ Engineer will provide professional services during construction to assist in obtaining a completed Project in accordance with the purpose and intent of the Construction Documents. Architect/ Engineer will proceed with the Phase III Construction Services upon receipt of the City's written authorization to proceed. These services include, but are not limited to, the following:
- (1) The Architect/Engineer will present recommendations to the City as to the advisability of, or the need for, any of the Additional Services set out in **Section 2.6** thereof; and, upon the City's approval of such services will plan and supervise such Additional Services in relation to the Architect/Engineer's other tasks.
  - (2) Unless otherwise provided in this Contract, the Architect/Engineer will provide limited administration of the construction contract as set forth below.
  - (3) The Architect/Engineer will be a consultant of the City during Phase III Construction Services, and will advise and consult with the City. Instructions to the Contractor by the City will also be sent to the Architect/Engineer. The Architect/Engineer will have authority to act on behalf of the City only to the extent provided in this Contract.
  - (4) The Architect/Engineer will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed in writing by the City and the Architect/Engineer, to become generally familiar with the progress and quality of the work and to determine, in general, if the work is proceeding in a manner indicating that the work when completed will be in accordance with the Contract Documents. The Architect/Engineer will furnish to the City written reports of its on-site observations regarding the progress and quality of the work. However, the Architect/Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. On the basis of such on-site observations, the Architect/Engineer will keep the Director informed of the progress and quality of the work, and will notify the City immediately in writing, of any defects and deficiencies in the Contractor's work and work that is not performed in accordance with Contract Documents.
  - (5) The Architect/Engineer will review the Commissioning Provider's Site Observation Reports, and address any identified need for further clarification of intent.
  - (6) The Architect/Engineer will further support the Commissioning Process in the following ways:

- (a) Respond to Commissioning RFIs within two weeks of posting on the Commissioning Management Portal.
  - (b) Regularly review the Commissioning Provider's Log of Submittal Comments during scheduled Construction Progress Meetings, and respond to comments or questions regarding Commissioning requirements that need to be addressed.
  - (c) During Owner Training, provide a one to two-hour session to HAS O&M staff describing the primary concepts in Basis of Design narrative and the reasons for any deviations from it. A quarter portion of the time allotted for presentation will be reserved for questions from the audience. A provision in the specifications will be inserted to account for this presentation in the CM's management of the training program.
- (7) The Architect/Engineer will not have control or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, which are solely the Contractor's responsibility under the construction contract. Except as otherwise provided herein, the Architect/Engineer will not be responsible for the Contractor's schedules or failure to carry out the work in accordance with the Contract Documents. Except as otherwise provided herein, the Architect/Engineer will not have control over or charge of acts or omissions of the Contractor, the Contractor's subcontractors, or the Contractor's agents or employees, or of any other persons performing any portions of the work.
- (8) The Architect/Engineer will at all times have access to the work wherever it is in preparation or progress.
- (9) The Architect/Engineer will attend conferences at the City site with the City representatives and such others as the City may designate, to assist the City in the administration of the Contract.
- (10) When requested by the City, the Architect/Engineer will assist the City in determining the amounts owing to the Contractor based on Architect/Engineer's on-site observations and on evaluations of the Contractor's Architect/Engineer Services, Contract applications for payment, and will recommend to the Director issuance of Contractor in such amounts, as provided in the Contract Documents.
- (11) The Architect/Engineer's approval of the Contractor's application for payment will constitute the Architect/Engineer's representation to the City that based upon the Architect/Engineer's on-site observations as provided in **Section 2.4.5** and upon the data comprising the Contractor's application for payment, that the work has progressed to the point indicated; and that, to the best of the Architect/Engineer's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the work for conformance with the Contract Documents upon Substantial Completion,

to the results of any subsequent test required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to specific qualifications expressed by the Architect/Engineer. The Architect/Engineer's approval of the Contractor's application for payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the Architect/Engineer's approval of the Contractor's application for payment will not be a representation that the Architect/Engineer has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the work, (2) reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by the City to substantiate the Contractor's right to payment or (3) ascertained how or for what purpose the Contractor has used money previously paid pursuant to the Contract.

- (12) The Architect/Engineer will interpret the requirements of the Contract Documents. The Architect/Engineer will render interpretations necessary for the proper execution or progress of the work to the City with reasonable promptness upon written request of either the City or the Contractor; and, if requested by the City, will render written advice to the City within a reasonable time, on all claims, disputes and other matters in question between the City and the Contractor relating to the execution or progress of the work or interpretation of the Contract Documents.
- (13) Interpretations and advice of the Architect/Engineer will be consistent with the intent of, be reasonably inferable from the Contract Documents, and will be in written or graphic form. When making such interpretations and giving such advice, the Architect/Engineer will not show partiality to either City or the Contractor and will not be liable for the result of any interpretation or advice so rendered in good faith.
- (14) The Architect/Engineer will recommend to the City to reject work which does not conform to the Contract Documents. Whenever the Architect/Engineer considers it necessary or advisable for the implementation of the intent of the Contract Documents, the Architect/Engineer will recommend to the Director, to require special inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such work be then fabricated, installed or completed. However, neither this authority of the Architect/Engineer nor a decision made in good faith either to exercise or not to exercise such authority will give rise to a duty or responsibility of the Architect/Engineer to the Contractor, Contractor's subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the work.
- (15) The Architect/Engineer will review and recommend approval to the City or take other appropriate action upon Contractor's submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance information given and the design concept expressed in the Contract Documents. The Architect/Engineer's action will be taken with such reasonable promptness as to cause no delay in the

construction of the LOA by the City or by separate contractors, while allowing sufficient time in the Architect/Engineer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The Architect/Engineer's review will not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer, of construction means, methods, techniques, sequences or procedures. The Architect/Engineer's approval of a specific item will not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect/Engineer will be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

- (16) The Architect/Engineer will submit to the Director a schedule of colors and finishes for the LOA which the Architect/Engineer has selected from approved submittals. Wherever practicable, Architect/Engineer will supplement schedule of colors and finishes with color chips, swatches and samples. Provided the Contractor has submitted in a timely manner acceptable samples of products he proposes to use, the Architect/Engineer will submit a schedule of colors and finishes with sufficient lead time to permit a thirty (30) day review/approval period without risk of delay and the timely incorporation of the finishes, materials and similar items with other aspects of the LOA. During the review period, the Architect/Engineer will confer with the City and such others as the City may designate and make adjustment to the schedule of colors and finishes as necessary to obtain approval by the City.
- (17) The Architect/Engineer will review Contractor's requests and make recommendations to the City. When requested by the Director, the Architect/Engineer will prepare change orders for the Director's approval and execution in accordance with the Contract Documents, and will have authority, with the concurrence of the Director, to order minor changes in the work which do not involve an adjustment in the construction contract amount or an extension of the construction contract time for completion and which are not inconsistent with the intent of the Contract Documents. For the purpose of this section, "construction contract amount" will be that amount and "construction contract time" for completion will be that period as they appear in the Contract Documents initially or as they will have been lawfully and legitimately amended under the terms of that contract at the time of such Contractor's request.
- (18) The Architect/Engineer will conduct inspections to determine and recommend to the Director the dates of Substantial Completion and the date of final completion, and will receive and forward to the Director for the Director's review, written warranties, guarantees, releases, operating

instructions and maintenance manuals, keys, equipment data and related documents required by the Contract Documents and assembled by the Contractor, and will approve the Contractor's application for final payment upon compliance with the requirements of the Contract Documents.

- (19) The extent of the duties, responsibilities, and limitations of authority of the Architect/Engineer will not be restricted, modified or extended without written notice by the City to the Architect/Engineer and Contractor.
- (20) Architect/Engineer will continuously update the Model to include RFI's, HAS requested changes, changes provided by the Construction Contractor, HAS Shared Parameters values, coordination with existing conditions, and other design modifications affecting the Model. After receiving the As-Built drawings and As-Built Models from the Construction Contractor, the Architect/Engineer will update the BIM Design Model to deliver the final Record Model to HAS as part of project closeout documents. Prior to final payment of Phase III Construction Services, the Architect/Engineer will furnish to the City the Record Documents, including reproducible drawings, stamped "AS BUILT" Revit Model, AUTOCAD files, PDF and any file option, but not limited to a hard drive or a flash drive depending on the project size. The digital files will reflect all changes in the work including changes in scope made during construction. The Architect/Engineer will be able to rely on the accuracy of such changes and other information supplied by the Contractor and will not be required to perform studies to determine the completeness of such recorded changes, if any, supplied by the Contractor.

## **5. PHASE IV SERVICES: POST-CONSTRUCTION**

The Architect/Engineer will inspect the project site in the company of the Contractor, and the City or such others as the City may designate, no less than thirty (30) days and no more than forty-five (45) days prior to the expiration of the one-year general construction warranty established in the Contract Documents. On or before the 7th day after such inspection, the Architect/Engineer will furnish the City a written report identifying items which require repair or replacement under the general construction warranty provisions of the Contract Documents.

## **6. BIM PROVISIONS**

### **Definitions**

- i. Design Model: Model created and developed by the Architect/Engineer and used to develop the project design.
- ii. Construction Model: Model created by the construction team from the Design Model and used to develop and fulfill the construction needs
- iii. As-Built Model: Model prepared by the construction team and will be used to show on-site changes to the original Construction Model
- iv. Record Model: Model reflecting As-Built conditions at the prescribed level of development (LOD), prepared by the Architect/Engineer from

the Design Model and must reflect on-site changes noted in the As-Built Models and associated As-Built Drawings.

- B. Architect/ Engineer will use BIM technologies and methods to create Project design and record models, documents and drawings; respecting HAS CAD/Geospatial Standards and HAS BIM Standards when required by the Director. BIM execution plan will explain in detail the Project BIM utilization. Requirements by the Director may include, but is not limited to the following:
- (1) Meet the standards prevailing in the current Houston Airport System Design Standards Manual. All projects submitted by the Architect/Engineer will comply with the current HAS' Design Standards Manual, unless a variance is formally approved by the Change Review Committee.
  - (2) BIM projects will comply with the HAS BIM Standard Manual.
  - (3) BIM Model will meet the HAS Shared Parameters requirements and all HAS BIM requirements as well. BIM Model will contain all HAS required parameters as a minimum, accurately, comprehensively, and available for delivery to the EAMS. The Architect/Engineer will create, share with its consultants, and update the HAS Shared Parameters in the BIM Design Model and Record Model.
  - (4) The Architect/Engineer will input and update in the BIM Model, the components the equipment barcodes generated by HAS.
  - (5) Meet the requirements prevailing in the current Houston Airport System Shared Parameters. Their primary purpose is to capture project information for the building lifecycle and end-user applications. The HAS Shared Parameters are standardized parameters, provide value naming and Asset Naming Conventions, and help avoid confusing information and losing crucial data. As a minimum requirement, BIM Model will contain all HAS required parameters accurately, comprehensively, and available for delivery to the HAS EAMS.
  - (6) At regular predetermined intervals throughout the design and construction phases, HAS will require the Architect/Engineer to submit BIM Model and/or CADD/Geospatial in HAS' EDMS as contract deliverables, as determined by requirements in the HAS BIM Standards Manual. EDMS submissions will comply with the current HAS BIM Standards Manual.
  - (7) Design Models will be submitted electronically at each deliverable milestone in their native authoring format plus in a PDF format as any prescribed deliverable format. All supporting files including, but not limited to, MEP analysis, building performance, LEED calculation, GIS analysis tools, AIRTOP Terminal, Life Cycle Analysis, and other documents to create design submittal will be submitted in their native authoring format along with a PDF format as well. The Design Model will be authored, maintained, and kept accurate at all times by the Architect/Engineer during the design phases. The Architect/Engineer in collaboration with the team, will coordinate the Design Model in order to eliminate or minimize conflicts between design elements. Before every transmittal, the Architect/Engineer will coordinate the Design Models and check for clashes between model elements using the interference check tool. The Architect/Engineer will be responsible for presenting

and documenting interference checks/clashes and resolutions during the design phases. The Architect/Engineer will oversee the review of interference checking reports and note areas that require further coordination or redesign.

- (8) Record Model: also known as a BIM Handover Model, is a digital representation of a building or infrastructure project that documents its completed state, incorporating all As-Built information and relevant data required for Operation and Maintenance throughout the building's lifecycle. The Model is prepared by the Architect/Engineer from the Design Model and must reflect onsite changes, deviations, and feedback noted in the As-Built Models and associated As-Built Drawings at the prescribed level of development (LOD). The Record Model must, at a minimum, contain the HAS required systems information, comply with the HAS BIM requirements, and the HAS BIM Standard Manual. The Record Model will contain the same LOD and level of information as prescribed in the Design and Construction Model. Otherwise, it should be noted in the BPxP.
- (9) Any documents created by the Architect/Engineer or its subcontractors for the Work will become the property of the City upon their creation. In the event this transfer of ownership is ineffective for any reason, the City is hereby granted an irrevocable, non-exclusive, perpetual, royalty-free license to use said documents in conjunction with the Project. This provision will be in all contracts awarded by the Architect/Engineer, and the Architect/Engineer will require the provision in all contracts of lower tiers. BIM is a product of collaboration with many data types input from different sources. The City will take ownership of the final Model output and the BIM data contained in the Model. It includes, but is not limited to BIM Model, Construction Documents, renderings, calculations, Revit families, CAD files, Facility Data, videos, design tools, drawings, specifications, simulations of building and Model performances, etc. The City will have exclusive rights to use, edit, reproduce any portion, share with other stakeholders, modify, or transmit the BIM Model and its contents for Model re-use, avoidance of re-work, maintenance, operation, and future renovations.
- (10) The EDMS will be used by the Architect/Engineer and other Project participants as the medium for and repository for, but not be limited to, the following: formal communications (such as letters, memoranda, transmittals); notices; meeting minutes; emails in pdf format; records of project performance (e.g. daily reports, monthly reports, technical queries (TQ), requests for information (RFI), change and variation requests, change and variation orders, deficiency notice (DN), non-conformance report (NCR), non-compliance notice (NCN), photographs, videos, recordings, method statements, workflow processes, all submittals and deliverables, and documentation related to tracking and resolution of issues, risks, and actions). Note, also recommend including verbiage that indicates the EDMS is as dictated by management and the Work is produced in the City's EDMS
- (11) All notices required or permitted hereunder will be in writing and will be deemed received when actually received or no later than the day after the notice has been posted in HAS' electronic document management system ("EDMS"), whichever is earlier. If HAS' EDMS is not operable and Architect/Engineer otherwise agree, the parties may send notice via or by hand delivery to the other party. If transmittal is via the United States Postal Service, receipt of the notice will

be deemed to have occurred on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the other party at the address prescribed in the preamble hereof or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.

## 7. CONSTRUCTION COSTS DEFINITION

- (1) The Construction Cost will be the actual cost to the City of all elements of the LOA designed or specified by the Architect/Engineer.
- (2) Estimates of Construction Cost will include (1) the cost, at current market rates, of labor and materials furnished by the City, (2) equipment designed, specified, selected or specially provided for by the Architect/Engineer, (3) City building permit fees, and (4) a reasonable allowance for the cost of construction, including the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies will be included for market conditions at the time of bidding.
- (3) Construction Cost does not include the compensation of the Architect/Engineer and the Architect/Engineer's subcontractors, the cost of the land, rights-of-way, or other costs which are the responsibility of the City as provided in **Article 3**.

## 8. RESPONSIBILITY FOR CONSTRUCTION COST

A. Evaluations of the City's LOA budget, preliminary estimates of Construction Cost and detailed estimates of Construction Costs, if any, prepared by the Architect/Engineer, represent the Architect/Engineer's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect/Engineer nor the City has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding or market conditions. Accordingly, the Architect/Engineer cannot and does not warrant or represent that bids will not vary from the LOA budget proposed, established or approved by the City, if any, or from any estimates of Construction Cost or evaluation prepared by the Architect/Engineer.

- (1) When a Maximum Total Construction Cost is established as a condition of this Contract in **Section 2.1.6** or at any time prior to the taking of bids, the Architect/Engineer will be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, and, with written approval of the Director, to make reasonable adjustments in the scope of the LOA, or to include in the Contract Documents alternate bids to adjust the Construction Cost to the specified Maximum Total Construction Cost.
- (2) If bidding has not commenced within 6 months after the Architect/Engineer submits the Contract Documents to the City, any LOA budget or Maximum Total Construction Cost may, when warranted in the opinion of the Director, be adjusted to reflect any change in the general levels of prices in the construction industry between the date of submittal of the Contract Documents to the City and the date on which bid proposals are sought.



## **9. EXPENSES**

### **A. DIRECT PERSONNEL EXPENSE**

Direct Personnel Expense is defined as the direct salaries of the Architect/Engineer and all of the Architect/Engineer's personnel directly engaged on the LOA, plus the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits. For the purpose of this Contract the cost of such contributions and benefits is established as equal to **25%** direct salaries. Direct salary rates for the duration of this contract are shown on **Exhibit A** attached hereto and, by reference, incorporated.

### **B. REIMBURSABLE EXPENSES**

A maximum amount for each Reimbursable Expense will be proposed by the Architect/Engineer at the time that services requiring such expenses are requested by the Director and will be negotiated and agreed upon by the Architect/Engineer and the City prior to the expenses being incurred. The compensation for each such Reimbursable Expense will never exceed this agreed upon maximum amount. If authorized in advance in writing by the City, Reimbursable Expenses will be paid in addition to for Basic and Additional Services and include actual expenditures made by the Architect/Engineer and the Architect/Engineer's employees and subcontractors, including any sales tax Architect/Engineer is legally required to pay, in the interest of the LOA while performing services requested by the City. The City may approve the following reimbursable expenses:

(a) If authorized in advance by the Director, the expense of travel costs in connection with out-of-town travel to and from point outside the greater Houston area by representatives of the Architect/Engineer, not to exceed the amounts established in the City's then current travel reimbursement policy for its employees, long distance communications, and fees paid for securing approval of authorities having jurisdiction affecting the LOA;

(b) Expense of reproductions, postage and handling of drawings, specifications and other Documents, excluding reproductions for the office use of the Architect/Engineer and the Architect/Engineer's subcontractors, two (2) sets of Submittal Documents required by this Contract for the Phase I reviews by Director, two (2) sets of Submittal Documents required by this Contract for the Phase II reviews by Director, plus not more than two (2) sets containing corrections or revisions required by the City as a result of Phase I or Phase II reviews;

(c) If authorized in advance by the Director, the expense of overtime work requiring higher than regular rates.

(d) If authorized in advance by the Director, the expense of renderings, models and mock-ups.

(e) If authorized in advance by the Director, the expense of filing documents for governmental approval under Sections 2.2.1(e) and 2.3.6, except for building permits, required for the Project.

### **C. ADDITIONAL SERVICES.**

A. The following Additional Services will be performed by the Architect/Engineer, if authorized by the City, in addition to Architect/Engineer's Basic Services and will be paid for by the City as provided for in **Section 7.6** of this Contract, in addition to the compensation for Basic Services. Additional Services will only be provided when necessary and related to the purposes of this Contract, when authorized in writing by the City, and when sufficient funding has been allocated for such services.

(1) Additional Services may include, but is not limited to, the following:

(a) Providing analyses of the City's needs, and programming the requirements of the LOA beyond the scope of services provided in **Section 2.2.2**.

(b) Providing financial, feasibility or other special studies related to an LOA.

(c) Providing planning surveys, site evaluations, environmental studies or comparative studies of prospective sites, and preparing special surveys, studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project related to an LOA.

(d) Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Phase III Construction Services.

(e) Providing services to investigate existing conditions or facilities or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the City.

(f) Preparing Documents for alternate, separate or sequential bids or providing extra services in connection with bidding, negotiation or construction prior to the completion of the Phase II Construction Documents, when requested by the City.

(g) Providing detailed estimates of Construction Cost beyond the scope of estimate of Construction Cost based on current area, volume, or similar unit costs as required in **Sections 2.2.3(e), 2.3.5 and 2.3.7**; and providing analyses of owning and operating costs, or detailed quantity surveys or inventories of material, equipment and labor.

(h) Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and

- related equipment. (i) Providing services for planning leased tenant or rental spaces.
- (j) Making revisions in drawings, specifications or other Documents when such revisions are inconsistent with written approvals or instructions previously given, or during work , making revisions to the Contract Documents required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such Documents or due to other causes not within the control of the Architect/Engineer.
- (k) Preparing drawings, specifications and supporting data and providing other services in connection with a change to approved Phase II Contract Documents to the extent that such services are in excess of the Basic or other Additional Services required of the Architect/Engineer pursuant to this Contract and provided such changes are not necessitated by an act of error and/or omission of the Architect/Engineer. In the event a change order is caused by an act of error and/or omission of the Architect/Engineer, the Architect/Engineer will be required to prepare such drawings and specification and supporting data at no expense to the City.
- (l) Making investigations, surveys, valuations, inventories or detailed appraisals of existing facilities and services required in connection with construction performed by the City.
- (m) Providing consultation concerning replacement of any work damaged during construction by fire or any other cause not under the Architect/Engineer's control, and furnishing services as may be required in connection with the replacement of such work.
- (n) Providing services made necessary by the default of the Contractor, or by major defector deficiencies in the work of the Contractor, or by failure of performance of either the City or Contractor under the contract for construction.
- (o) Providing extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
- (p) Providing services of subcontractors for other than the normal Architect/Engineer services, and civil Design Consulting, structural Design Consulting, mechanical Design Consulting and electrical Design Consulting services for the LOA.
- (q) Providing additional construction phase services in the event that (i) the number of calendar days stipulated in the Contract Documents for Substantial Completion is exceeded due to no fault of the Architect/Engineer or (ii) the number of calendar days allowed for Substantial Completion under the Contract Documents is increased beyond the time period in Section 7.5.1 by change order due to no fault of the Architect/Engineer.

- (r) Providing inspection of the LOA in the company of the Contractor, and the City, or such others as the City may designate, no less than thirty (30) days and no more than forty-five (45) days prior to expiration of any special LOA warranty, but after expiration of the one-year general construction warranty established in the Contract Documents. On or before the seventh (7th) day after such inspection, the Architect/Engineer will furnish the Director a written report enumerating items which require repair or replacement under the special LOA warranty provisions of the Contract Documents.
- (s) Providing land survey services to supplement any legal description and site information provided by the City and to include, but not be limited to, as applicable to the LOA, grades of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, deed restrictions and contours of the site, locations, dimensions and complete data pertaining to existing buildings, other improvements and trees; and information concerning available services and utility lines both public and private, above and below grade, including inverts and depths in accordance with LOA requirements. The Architect/Engineer will commission a survey to be prepared by a registered land surveyor acceptable to the Director. The survey will be signed and sealed by the registered land surveyor.
- (t) Providing geotechnical investigation and Design Consulting services required for the design  
the LOA. Such services may include, as applicable to the LOA, test borings, test pits, soil bearing values, percolation tests, and similar investigations and Design Consulting services with reports and appropriate recommendations in accordance with the LOA requirements. The Architect/Engineer will commission a geotechnical investigation to be completed by a registered geotechnical subcontractor acceptable to the Director. The geotechnical report and appropriate recommendations will be signed and sealed by the registered geotechnical Architect/Engineer.
- (u) Providing Cultural Resource Reconnaissance or Surveying services as defined in the **General Rules of Practice and Procedures, Chapter 41 of the Texas Antiquities Committee**, to supplement the site information provided by the City and to identify potential historic or prehistoric sites in LOA areas to be affected by improvements planned as part of the LOA. The reconnaissance will be conducted in accordance with procedures promulgated by the Texas Antiquities Committee in conformance with the Antiquities Code of Texas and signed by a professional archaeologist acceptable to the Texas Antiquities Committee and the Director. For the purposes of this Contract, the Director or his delegate is authorized to approve the archaeologist's permit applications for such Cultural Resource Reconnaissance or Surveys on behalf of the City.
- (v) Providing data processing and photographic production techniques when used in connection with another Additional Service.
- (w) Providing other professional services beyond the scope of Basic Services of this Contract which are necessary and related to the purposes of this Contract.

- (2) Whenever the Architect/Engineer, in the course of performing Basic Services, is required to present recommendations to the Director with respect to the advisability of, or the need for, any Additional Service, such recommendation will include a recommended scope for the Additional Services and the recommended fee and expenses. If the Architect/Engineer recommends subcontract services, the recommendation will also include the names of the subcontractor(s) recommended by the Architect/Engineer. A maximum fee for each such subcontractor's service will be proposed by the Architect/Engineer at the time Additional Services requiring such expenses are requested by the City and will be negotiated and agreed upon by the Architect/Engineer and the City prior to the expense being incurred. The compensation for each such subcontractor's service expense will never exceed this agreed upon maximum amount.

**D. TIME**

- A. The Architect/Engineer will perform Basic and Additional Services as expeditiously as is consistent with professional skill and care, and the orderly progress of the work. Upon issuance of the LOA, the Architect/Engineer will submit for City's approval a calendar schedule of Architect/Engineer's services not exceeding the time limits set out in the LOA, and which will include allowances for periods of time required for City's review and for approval of submissions by authorities having jurisdiction over a project related to a LOA. Time limits established by this schedule approved by Director will not, except for reasonable cause, be exceeded by Architect/Engineer or by the City.
- B. Upon receipt of written authorization from the City to proceed, the Architect/Engineer agrees to perform the services and furnish to the City items called for in **Section 2.5** (Phase IV Post-Construction Services) of this Contract within the time specified in **Section 2.5.2** of this Contract.
- C. Extensions of any of the time-of-performance commitments by the Architect/Engineer as set out in an LOA will be granted only by the City, in written form, and will have the same force and effect as the time-of-performance commitments originally stated herein.
- D. The Architect/Engineer acknowledges and agrees that any services it provides to the City after the completion date established in the LOA schedule, unless an extension of time has been granted, will be deemed to be gratuitously provided, and the City will have no obligation to pay for such services unless the City Council approves an agreement to do so in its sole discretion.

**EXHIBIT "B"**  
**STAFFING SCHEDULE**

**[TO BE DETERMINED]**

## EXHIBIT "C"

### HOURLY BILLING RATES AND DIRECT LABOR MULTIPLIERS

**[TO BE DETERMINED AFTER QUALIFICATIONS ARE REVIEWED – DO NOT POPULATE]**

The Billing Rate for all Architect/Engineer and Architect/Engineer Subcontract firm principals shall be \$\_\_\_\_\_/hour. The maximum allowable billing rate for all Architect/Engineers and their Subcontracted firm principals billing shall be negotiated per contract. Increases to the Billing Rate for all Architect/Engineer and Architect/Engineer Subcontract firm principals shall be a maximum of -----% per year and must be submitted to the City for approval.

The Direct Labor Multiplier for all Architect/Engineer and Architect/Engineer Subcontract Firm non-principal employees shall be -----. This multiplier is not subject to audit.

If the Architect/Engineer or any Architect/Engineer Subcontract firm has an audited overhead rate that results in a multiplier that exceeds ----- times the direct labor rates of its employees, the Architect/Engineer or Architect/Engineer Subcontract firm has the option to submit the audit results and all backup data to the City for additional audit and consideration of the higher Direct Labor Multiplier. The Architect/Engineer's audit results can be no more than two years older than the date of submittal to the City. In its consideration of a higher Direct Labor Multiplier, profit is capped at a maximum of 10%. Unacceptable overhead costs include, but are not limited to, profit sharing and bonus payments. Based on its audit, the City will either accept the proposed Direct Labor Multiplier or offer an adjusted Direct Labor Multiplier to remove any unacceptable overhead costs. Upon acceptance by the City, the higher or adjusted Direct Labor Multiplier shall be listed in the first LOA and will be used throughout the duration of the Contract.

## EXHIBIT "D"

### TITLE VI: NON-DISCRIMINATION

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

1. Compliance with Regulations - The Architect/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 Agreement.
2. Non-discrimination - The Architect/Engineer, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Architect/Engineer shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment - In all solicitation, either by competitive bidding or negotiation, made by the Architect/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 Architect/Engineer of the Architect/Engineer's obligations under this Agreement and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports - The Architect/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 Architect/Engineer is in the exclusive possession of another who fails or refuses to furnish this information, the Architect/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 Architect/Engineer's noncompliance with the non-discrimination provisions of this Agreement, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including but not limited to:
  - 5.1. withholding of payments to the Architect/Engineer under the Agreement until the Architect/Engineer complies, and/or
  - 5.2. cancellation, termination, or suspension of the Agreement, in whole or in part.
6. Incorporation of Provisions - The Architect/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 Architect/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 Architect/Engineer becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Architect/Engineer may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the Architect/Engineer may request the United States of America to enter into such litigation to protect the interests of the United States.



**EXHIBIT "E"**

**DRUG POLICY COMPLIANCE AGREEMENT**

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

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

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

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

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**EXHIBIT "F"**

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

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

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

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

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

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

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

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

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

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

**EXHIBIT "G"**

**DRUG POLICY COMPLIANCE DECLARATION**

I, \_\_\_\_\_, as an owner or officer of \_\_\_\_\_ (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  
Initials Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees  
have been notified of such procedures.

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

\_\_\_\_\_ Appropriate safety impact positions have been designated for employee positions performing on  
Initials the City of Houston contract. The number of employees 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  
Initials with the Mayor's Policy and Executive Order No. 1-31.

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

**EXHIBIT H:**

**H-1 NON-AIP FEDERAL CONTRACT PROVISIONS**

**H-2 AIP MANDATORY FEDERAL CONTRACT PROVISIONS**

## Exhibit H-1

### NON AIP MANDATORY CONTRACT PROVISIONS

As used in this Exhibit, the term "contractor" or "Contractor" shall refer to Consultant. Consultant shall include the provisions of set out in this exhibit in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto.

#### I. GENERAL CIVIL RIGHTS PROVISIONS

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

#### II. TITLE VI CLAUSES COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

During the performance of this contract, Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. Non-discrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's

obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

4. Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the contractor under the contract until the contractor complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. Incorporation of Provisions: The contractor will include the provisions of paragraphs one

through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

### III. TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

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

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 — 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

## EXHIBIT H-2

### AIP FEDERAL MANDATORY CONTRACT PROVISIONS

As used in this Exhibit, the term "Contractor" shall also refer to Consultant. Consultant shall include the provisions of set out in this exhibit in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and Directives issued pursuant thereto.:

The following provisions are hereby included in and made a part of the attached Professional Services Contract between the City of Houston ("City") and the "Contractor/the ("Consultant").

#### **1. ACCESS TO AND INSPECTION OF RECORDS AND REPORTS – 2 CFR 200.34 and 2 CFR 200.337**

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the City, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives shall have access to any books, documents, paper, and records of the Contractor that are directly pertinent to the specific contract for the purposes of making an audit, examination, excerpts, and transcriptions. The Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed.

#### **2. GENERAL CIVIL RIGHTS PROVISIONS. – 49 USC 47123**

In all its activities within the scope of its airport program, Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall on the grounds of race,, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from federal assistance. This provision binds the Contractor and sub-tier contractors/consultants from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

#### **3. TERMINATION OF CONTRACT – 2 CFR, Part 200, Appendix II(B)**

3.1 The City may, by written notice, terminate this contract in whole or in part at any time, either for the City's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.

3.2 If the termination is for the convenience of the City, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

3.3 If the termination is due to failure to fulfill the Contractor's obligations, the City may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Contractor shall be liable to the City for any additional cost occasioned to the Sponsor thereby.

3.4 If, after notice of termination for failure to fulfill contract obligations, it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, adjustment in the contract price shall be made as provided in paragraph 3.2 of this clause.



3.5 The rights and remedies of the City provided in this Clause are in addition to any other rights and remedies provided by law or under this contract.

#### **4. TEXTING WHEN DRIVING.**

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving", (10/1/2009) and DOT Order 3902.10, "Text Messaging While Driving", (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the City encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include, the substance of this clause in all sub-tier contracts exceeding \$10,000 that involve driving, a motor vehicle in performance of work activities associated with the project.

#### **5. BREACH OF CONTRACT TERMS SANCTIONS – 2 CFR Part 200, Appendix II(A)**

Any violation or breach of the terms of this contract on the part of the Contractor or subcontractor may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide [Contractor | Consultant] written notice that describes the nature of the breach and corrective actions the [Contractor | Consultant] must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the [Contractor | Consultant] must correct the breach. Owner may proceed with termination of the contract if the [Contractor | Consultant] fails to correct the breach by the deadline indicated in the Owner's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

#### **6. RIGHTS TO INVENTIONS - 49 CFR PART 18**

All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the City of the Federal grant under which this contract is executed. Information regarding these rights is available from the FAA and the City. This clause is not applicable to construction, equipment, or professional service contracts unless the contract includes experimental, developmental, or research work.

#### **7. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)].

#### **8. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION – 2 CFR Part 180 (Subpart B)**

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

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

The Contractor by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”, must confirm each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally-assisted project. The Contractor will accomplish this by:

- a. Checking the System for Award Management at website: <http://www.sam.gov>.
- b. Collecting a certification statement similar to the Certification of Offeror /Bidder regarding Debarment, above.
- c. Inserting a clause or condition in the covered transaction with the lower tier contract.

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

## **10. CERTIFICATION REGARDING LOBBYING AND INFLUENCING FEDERAL EMPLOYEES - 49 CFR Part 20, Appendix A**

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

## **11. VETERAN’S PREFERENCE – 49 USC 47112(c)**

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

## **12. CERTIFICATION REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS**

1) Contractor represents that it is (  ) is not (  ) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

2) Contractor represents that it is (  ) is not (  ) a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

## **13. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

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

## **14. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE.**

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

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

## **15. CERTIFICATION REGARDING DOMESTIC PREFERENCES FOR PROCUREMENTS**

The Contractor certifies by signing and submitting this Agreement that, to the greatest extent practicable, the Contractor has provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products) in compliance with 2 CFR § 200.322.

## **16. CONTRACT ASSURANCE. 49 CFR § 26.13**

The Contractor, subrecipient or subcontractor certifies that it shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the

termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

**17. PROMPT PAYMENT. 49 CFR § 26.29**

The Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than [specify number of days, not to exceed 30] days from the receipt of each payment the prime contractor receives from [Name of recipient]. The Contractor agrees further to return retainage payments to each subcontractor within [specify number of days, not to exceed 30] days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the [Name of Recipient].

**18. TRADE RESTRICTION CERTIFICATION.**

Contractor certifies that with respect to this Agreement it,

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

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 USC § 1001.

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

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

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR; or

- 2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list; or
- 3) who incorporates in the public works project any product of a foreign country on such USTR list.

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

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

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

## **19. ENERGY CONSERVATION REQUIREMENTS**

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

## **20. TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS & AUTHORITIES**

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the

Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).