



**CITY OF HOUSTON**  
**HOUSTON AIRPORT SYSTEM**  
**INVITATION TO BID (ITB)**  
**SOLICITATION NO.: H06-IAHICC-2024-004**  
**IAH INTEGRATED COORDINATION CENTER**  
**AT GEORGE BUSH INTERCONTINENTAL AIRPORT (IAH)**

**Date Issued:** September 8, 2023

**Pre-Bid Conference:** September 21, 2023, at 1:00 P.M., CT

**In-Person** HAS Infrastructure Division Office (IDO) Building  
Auditorium No. 1  
111 Standifer Drive, Humble, Texas, 77338

**Questions Deadline:** September 28, 2023, at 12:00 P.M., CT

**Proposal Due Date:** November 2, 2023, at 10:30 A.M., CT  
City Secretary's Office, City of Houston City Hall Annex,  
900 Bagby Street, Room P101, Public Level  
Houston, TX 77002

**Solicitation Contact Person:** David Martinez  
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Supply Chain Management, Houston Airport System  
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**Project Summary:** This project will be to build a facility which can house both the Integrated Coordination Center (ICC) and Emergency Operations Center (EOC) in proximity, bringing together critical HAS partners, law enforcement, and federal partners to provide improved situational awareness, effective event coordination, collaborative decision making, and reduced response time. The facility shall utilize state-of-the-art technology to support industry best practices of operational coordination and emergency management. The facility will be operational 24/7 and shall be capable of sheltering its personnel for extended periods when required.

**NAICS Codes: 912-00**

**MWBE Goal: 6% (MBE: 4%, WBE: 2%)**

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CA

DocuSigned by:

Jedediah Greenfield

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Jedediah Greenfield  
Chief Procurement Officer  
City of Houston

Document 00010

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NOTE: Capitalized Specification Sections are included in <https://www.houstonpermittingcenter.org/media/6386/download>, and are incorporated in Project Manuals by reference as if copied verbatim. Documents listed "for filing" are to be provided by Bidder and are not included in this Project Manual unless indicated for example only. The Document numbers and titles hold places for actual documents to be submitted by Contractor during Bid, post-bid, or construction phase of the Project. Specification Sections marked with an asterisk (\*) are amended by a supplemental specification, printed on blue paper and placed in front of the Specification it amends. Documents in the 00200, 00300 and 00400 series of Division 00, except for Document 00410B – Bid Form, Part B, are not part of the Contract.

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02-01-2004

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## INSTRUCTIONS TO BIDDERS

Document 00200

### INSTRUCTIONS TO BIDDERS

#### 1.1 RELATED DOCUMENTS

- A. Document 00210, Supplementary Instructions to Bidders.
- B. Document 00320, Geotechnical Information.
- C. Document 00330, Existing Conditions.
- D. Document 00410 – Bid Form, Parts A & B.
- E. Document 00495, Post-Bid Procedures.
- F. Document 00520, Agreement.
- G. Document 00700, General Conditions.
- H. Document 00800, Supplementary Conditions.

#### 2.1 DEFINITIONS

- A. Definitions set forth in Document 00700, General Conditions, and in other documents of Project Manual, are applicable to Bid Documents.
- B. *Addendum*: Written or graphic instrument issued prior to Bid opening, which clarifies, modifies, corrects, or changes Bid Documents.
- C. *Alternate*: The total amount bid for additions to work, as described in Section 01110, Summary of Work. Each Alternate includes cost of effects on adjacent or related components, and Bidder's overhead and profit.
- D. *Bid*: A complete and properly signed offer to perform the Work in accordance with this Document and Document 00210, Supplementary Instructions to Bidders.
- E. *Bid Date*: Date and time set for receipt of Bids as stated in Document 00210, Supplementary Instructions to Bidders, or as modified by Addenda.
- F. *Bid Documents*: Project Manual, Drawings, and Addenda.
- G. *Bid Supplement*: A Bid submittal that is required in Document 00410, Bid Form.
- H. *Bidder*: Person or firm, identified in Document 00410B, Bid Form, Part B, including its successors, and its authorized representative.

I. *Code*: Code of Ordinances, Houston, Texas.

J. *Low Bidder*: Apparent successful Bidder that qualifies as a responsible Bidder and that submits Bid with lowest Total Bid Price.

K. *Project Manager*: Person designated in Document 00100, Advertisement for Bids, and Document 00220, Request for Bid Information, to represent the City during bidding and post-bid periods.

L. *Project Manual*: Volume assembled for the Work that includes the bidding requirements, sample forms, Conditions of the Contract, and Specifications.

M. *Security Deposit*: A certified check, cashier's check, or bid bond in the amount of 10 percent of the Total Bid Price.

N. *Total Bid Price*: Total amount bid for performing the Work as identified by Bidder in Document 00410B, Bid Form, Part B, which amount includes:

1. Stipulated Price;
2. Total Base Unit Prices;
3. Total Extra Unit Prices;
4. Total Cash Allowances; and
5. Total Alternates.

#### 3.1 NOTICE TO BIDDERS

A. Chapter 18, Ethics and Financial Disclosure, of the City of Houston Code of Ordinances makes it unlawful for a Contractor to offer any contribution to a candidate for City elective office (including elected officers and officers-elect) during a certain period of time prior to and following the award of the Contract by the City Council. The term "Contractor" includes proprietors of proprietorships, all partners of partnerships, and all officers, directors, and holders of 10 percent or more of the outstanding shares of corporations. A statement disclosing the names and business addresses of each of those persons will be required to be submitted with each bid or proposal; for a City Contract. Bidder shall complete and submit Document 00455, Ownership Information Form, with its Bid to comply with this requirement. See Chapter 18 of



## INSTRUCTIONS TO BIDDERS

the Code for further information.

- B. Chapter 15, Article VIII, of the City's Code provides that no contract shall be let, nor any other business transaction entered into, by the City with any person indebted to the City or a qualifying entity, if the contractor or transaction comes within the provisions of Section 15-1 (c) of the Code. Exceptions are provided in Section 15-126 of the Code. Bidder shall complete and submit Document 00455, Ownership Information Form, with its Bid to comply with this requirement.
- C. Neither bidder(s) nor any person acting on bidder(s)'s behalf shall attempt to influence the outcome of the award by the offer, presentation or promise of gratuities, favors, or anything of value to any appointed or elected official or employee of the City of Houston, their families or staff members. All inquiries regarding the solicitation are to be directed to the designated City Representative identified on the first page of the solicitation. Upon issuance of the solicitation through the pre-award phase and up to the date the City Secretary publicly posts notice of any City Council agenda containing the applicable award, aside from bidder's formal response to the solicitation, through the pre-award phase, written requests for clarification during the period officially designated for such purpose by the City Representative, neither bidder(s) nor persons acting on their behalf shall communicate with any appointed or elected official or employee of the City of Houston, their families or staff through written or oral means in an attempt to persuade or influence the outcome of the award or to obtain or deliver information intended to or which could reasonably result in an advantage to any bidder. However, nothing in this paragraph shall prevent a bidder from making public statements to the City Council convened for a regularly scheduled session after the official selection has been made and placed on the City Council agenda for action, or to a City Council committee convened to discuss a recommendation regarding the solicitation.
- D. **Compliance with Certain State Law Requirements.**
1. *Anti-Boycott of Israel.* Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.
  2. *Anti-Boycott of Energy Companies.* Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.
  3. *Anti-Boycott of Firearm Entities or Firearm Trade Associations.* Contractor certifies that Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.
  4. *Certification of No Business with Foreign Terrorist Organizations.* For purposes of Section 2252.152 of the Code, Contractor certifies that, at the time of this Agreement neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code as a company known to have contracts with or provide supplies to a foreign terrorist organization.
- E. **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. Bidder has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Contract's effective date. Bidder shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Bidder or its subcontractors providing services or goods under this Contract within 7 days of Bidder becoming aware of or having a

reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

- F. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this bid and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.
- G. **Prospective Vendor Responsibility.** The City will award contracts only to the responsible vendor possessing the ability to perform successfully under the terms and conditions of a proposed procurement. The City's policy is to award contracts only to a prospective vendor whom the City's contracting department has determined to be responsible, considering the following non-exhaustive factors:
- Record of integrity and business ethics, including timely payments to subcontractors/subconsultants, business judgment, reputation, and reliability.
  - History of compliance with public policy and applicable laws, or the lack thereof.
  - Record of past performance, including but not limited to, poor performance, failure to achieve reasonable progress, or defaulting on existing or previous City of Houston contracts, if any.
  - Capacity to perform the required work or provide the required goods or services, which may include having (or having the ability to obtain) adequate financial and technical resources to perform the contract and any necessary equipment, facilities, organization, experience, efficiency, operational control, or technical skills, as applicable.
  - Financial responsibility, including the ability to provide adequate bonds and insurance, as applicable.
  - History of compliance with prevailing wage and other labor standards requirements.
  - Record of failure to make good faith efforts to meet MWBE goals.
  - Qualification and eligibility to receive an award under applicable laws and regulations, including any federal rules or regulations (e.g., 2 CFR Part 200).
  - Ineligibility due to being suspended or debarred by federal, state, city, or county governmental agencies.

#### 4.1 *BID DOCUMENTS*

- A. The Bid Documents may be obtained at

## INSTRUCTIONS TO BIDDERS

location specified in Document 00210, Supplementary Instructions to Bidders.

- B. The Bid Documents are made available only for the purpose of bidding on the Work. Receipt of Bid Documents does not grant a license for other purposes.
- C. On receipt of Bid Documents, Bidder shall verify that documents are legible and complete, compare contents of Project Manual with Document 00010, Table of Contents, and compare Index of Drawings with Document 00015, List of Drawings. Bidder shall notify Project Manager if Bid Documents are incomplete.
- D. If City of Houston Standard Specifications or Standard Details are required by the Project Manual, Bidder shall refer to Document 00210, Supplementary Instructions to Bidders for purchase information.

#### 5.1 *EXAMINATION OF DOCUMENTS, SITE, AND LOCAL CONDITIONS*

- A. Bidder shall examine Project site, become familiar with local conditions under which the Work shall be performed, conduct appropriate investigations, and correlate personal observations with requirements of the Bid Documents before submitting a Bid.
- B. Bidder shall make site investigations to the extent Bidder deems necessary to ascertain extent of subsurface conditions.
- C. Failure of Bidder to perform the investigations prior to submitting a Bid does not relieve Bidder of responsibility for investigations, interpretations and proper use of available information in the preparation of its Bid.
- D. Bidder shall observe limitations of access to occupied or restricted site as stated in Document 00210, Supplementary Instructions to Bidders.

#### 6.1 *INTERPRETATIONS DURING BIDDING*

- A. Bidder shall immediately submit Document 00220, Request for Bid Information, to Project Manager upon finding errors, discrepancies, or omissions in Bid Documents. Confirmation of receipt of questions by the City is the responsibility of Bidder. Verbal discussions and answers are not binding.
- B. Document 00220, Request for Bid Information, must be received at least 10 days before the Bid Date to allow issuance of Addenda in accordance with Paragraph 7.O.D. Replies, if issued, are by Addenda.

## INSTRUCTIONS TO BIDDERS

### 7.1 ADDENDA

- A. Addenda that affect bidding requirements are applicable only through issuance of the Notice to Proceed. Addenda that affect the Contract are a part of the Contract.
- B. BIDDERS WHO SUBMIT A BID ON THIS PROJECT SHALL BE PRESUMED TO HAVE RECEIVED ALL ADDENDA AND TO HAVE INCLUDED ANY COST THEREOF IN THEIR BIDS, REGARDLESS OF WHETHER THEY ACKNOWLEDGE THE ADDENDA OR NOT.
- C. The City will make Addenda available at same location where the Bid Documents may be obtained. The City will notify plan holders of record when Addenda are available. Bidders are responsible for obtaining Addenda after notification.
- D. No Addendum will be issued later than noon on Monday before Bid Date, except Addenda with minor clarifications, withdrawing request for Bids, or postponing Bid Date.

### 8.1 SUBSTITUTION OF PRODUCTS

- A. No substitutions of Products will be considered during the bidding period.

### 9.1 PREPARATION OF BIDS

- A. Bidder shall fill in applicable blanks in Document 00410A&B, Bid Form, Parts A & B, and Bid Supplements. In addition, Bidder shall bid all Alternates. Bidder shall properly sign Document 00410B, Bid Form.
- B. Bidder shall initial all pages, except signature page, of Document 00410B, Bid Form, Part B.
- C. Bidder is responsible for all costs incurred by the Bidder, associated with preparation of its Bid and compliance with Post-bid Procedures.
- D. Bidder may not adjust preprinted price on line items stating "Fixed Unit Price" in the description on the Bid Form.
- E. Bidder may increase, but not decrease, preprinted price on line items stating "Minimum Bid Price" in the description on the Bid Form by crossing out the minimum and inserting revised price on the line above. Bidder **may not** decrease the preprinted price on line items stating "Minimum Bid Price".

- F. Bidder may decrease, but not increase, preprinted price on line items stating "Maximum Bid Price" in the description on the Bid Form by crossing out the maximum and inserting revised price on the line above. Bidder **may not** increase the preprinted price on line items stating "Maximum Bid Price".

- G. Bidder shall insert a price no greater than the maximum preprinted range and no less than the preprinted range for line items stating "Fixed Range Unit Price" in the description on the Bid Form by crossing out prices noted and inserting revised price on the line above.

- H. Bidder may not adjust Cash Allowance amounts.

### 10.1 BID SUBMISSION

- A. City Secretary will receive Bids on Bid Date at location specified in Document 00210, Supplementary Instructions to Bidders.

- B. Bids submitted after Bid Date will be returned to Bidder unopened.

- C. Verbal, facsimile, or electronic Bids are invalid and will not be considered.

- D. Bidder shall submit in person or by mail one copy of the signed Document 00410, Bid Form, Parts A and B, along with required Security Deposit, and required Bid Supplements, in a sealed, opaque envelope. In addition, Bidder shall clearly identify Project, Bid Date and Bidder's name on outside of envelope. If forwarded by mail, the sealed envelope containing the Bid must be enclosed in another envelope addressed for postal delivery.

### 11.1 BID SECURITY

- A. Bidder shall submit a Security Deposit with its Bid.

- B. Certified Check or Cashier's Check

- 1. Bidder shall make check payable to the City of Houston.

- 2. A check is submitted on the condition that if Bidder is named Low Bidder and fails either to timely and properly submit documents required in Document 00495, Post-Bid Procedures, the City will cash the check in accordance with Paragraph 11.0.E.

- C. Bid Bond

- 1. The bid bond must be a valid and

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enforceable bond, signed by a surety that complies with other requirements set out by law.

2. The bid bond must name the City of Houston as obligee, and be signed by the Bidder as principal and signed and sealed by the surety.
3. The bid bond must be conditioned such that if Bidder is named Low Bidder and then fails to timely and properly submit documents required in Document 00495, Post-Bid Procedures, surety will be obligated to pay to the City an amount in accordance with Paragraph 11.0.E.

- D. Security Deposits will be retained until after the Contract is awarded or all Bids are rejected.
- E. Low Bidder forfeits Security Deposit if it fails to timely and properly submit documents required in Document 00495, Post-Bid Procedures. The City may claim an amount equal to the difference between the Total Bid Price of the defaulting Bidder and the Total Bid Price of the Bidder awarded the Contract. If Security Deposit is a check, the City will reimburse any remaining balance to the defaulting Bidder.

### 12.0 SUBCONTRACTORS AND SUPPLIERS

- A. The City may reject proposed Subcontractors or Suppliers.
- B. Refer to Document 00800,– Supplementary Conditions, for MWBE, PDBE, DBE and SBE goals.

### 13.0 MODIFICATION OR WITHDRAWAL OF BID

- A. A Bidder may modify or withdraw a Bid submitted before the Bid Date by written notice to the City Secretary. The notice may not reveal the amount of the original Bid and must be signed by the Bidder.
- B. Bidder may not modify or withdraw its Bid by verbal, facsimile, or electronic means.
- C. A withdrawn Bid may be resubmitted up to the time designated for receipt of Bids.

### 14.1 BID DISQUALIFICATION

- A. The City may disqualify a Bid if the Bidder:
  1. fails to provide required Security Deposit in the proper amount;
  2. improperly or illegibly completes

information required by the Bid Documents;

3. fails to sign Bid or improperly signs Bid;
4. qualifies its Bid; or
5. improperly submits its Bid.

- B. When requested, Low Bidder shall present satisfactory evidence that Bidder has regularly engaged in performing construction work as proposed, and has the capital, labor, equipment, and material to perform the Work.

### 15.0 PREBID MEETING

- A. A prebid meeting is scheduled to be held at the place, time, and date listed in Document 00210, Supplementary Instructions to Bidders.
- B. All Bidders, subcontractors, and suppliers are invited to attend.
- C. Representatives of City Engineer will attend.

### 16.0 OPENING OF BIDS

- A. Bids are opened by the City Secretary and publicly read in City Council Chambers on the Public Level in City Hall Annex at 11:00 a.m. on Bid Date.
- B. Place and date of Bid opening may be changed in accordance with Sections 15-45(c) of the City Code.

### 17.0 EVALUATION AND CONSIDERATION OF BIDS

- A. Project Manager will tabulate, record and evaluate Bids.
- B. The City may reject all Bids or may reject any defective Bid.

### 18.1 ACCEPTANCE OF THE BID

- A. The City will send to Low Bidder Document 00498, Notice of Intent to Award. Acceptance by the City is conditioned upon Bidder's timely and proper submittal of documents required in Document 00495, Post-Bid Procedures.
- B. The Bid remains open to acceptance and is irrevocable for the period of time stated in Document 00410A, Bid Form, Part A.

END OF DOCUMENT

Document 00210

**SUPPLEMENTARY INSTRUCTIONS TO BIDDERS**

*The following Paragraphs modify Document 00200 - Instructions to Bidders. Where a portion of the Instructions to Bidders is modified or deleted by these Supplementary Instructions, the unaltered portions of the Instructions to Bidders remains in effect.*

**PARAGRAPH 2.0 – DEFINITIONS:**

Add the following sub-Paragraphs to this Paragraph:

- O. *Office of Business Opportunity (OBO):* All references to Affirmative Action Contract Compliance Division (AACC) set forth in Document 00700 – General Conditions and in other documents of the Project Manual, shall refer to, and include, the Office of Business Opportunity.

If there is no bid of a Local Business that meets these criteria, the City will award the contract to the lowest responsible bidder.

**PARAGRAPH 4.0 – BID DOCUMENTS**

Add the following sub-Paragraphs to this Paragraph:

- A. Add the following Paragraph A.1:

- 1. Bid documents may only be obtained electronically at the Houston Airport System's website: <https://www.fly2houston.com/biz/opportunities/solicitations/>

**D. Add the following Paragraph D.1:**

- 1. Copies of the City Standard Specifications and Details may be acquired at no cost on the Houston Airport System's website <https://www.fly2houston.com/biz/resources/building-standards-and-permits/>)  
" *HOUSTON AIRPORTS DESIGN STANDARDS*"

- E. The following plan rooms, whose names, addresses, phone and fax numbers were last updated on April 9, 2007, have been authorized by the City to display Bid Documents for examination:

(Note: The Bid Documents furnished to the plan rooms for examination can be in electronic format, in hard copies, or in any other formats pertaining to each City Contracting Division's discretion.)

1. Associated General Contractors (AGC-HHUI), Highway, Heavy Utilities and Industrial Branch, 2400 Augusta St., Suite 305 , Houston, TX 77057, 713-334-7100, Fax 713-334-7130. Email: [msimons@agctx.org](mailto:msimons@agctx.org)  
(Attention: Mellora Connelly)
2. Houston Minority Business Development Center, 2900 Woodridge, Suite 124, Houston, TX 77087, 713-644-0821, Fax 713-644-3523. Email: [gtamez@gacompanies.com](mailto:gtamez@gacompanies.com)
3. The Builders' Exchange of Texas, Inc., 4047 Naco Perrin Blvd., Ste. 100 San Antonio, TX 78217, 210-564-6900, Email: [editor@virtualbx.com](mailto:editor@virtualbx.com)

**PARAGRAPH 5.0 – EXAMINATION OF DOCUMENTS, SITE, AND LOCAL CONDITIONS**

D. Add the following sub-Paragraph D.1:

1. Area within contract limits is currently restricted. Access for examination is restricted to times, durations, routes and presence of City authorities, occurring at the conclusion of the Prebid Meeting or as otherwise directed by City Engineer. See Paragraph 15.0 below.

**PARAGRAPH 9.0 – PREPARATION OF BIDS**

Add the following sub-Paragraph I to this Paragraph:

- I. For math errors the City encounters in analyzing Bids, the following guidance will be used:

In the event of a conflict between:

The Bid Price is:

- |   |   |
|---|---|
| 1. Individual Unit Price and Extension of that Unit Price   | Individual Unit Price times Estimated Quantity  |
| 2. A Unit Price extension and total of Unit Price Extensions  | Sum of all Individual Unit Price Extensions   |
| 3. Individual Alternate and total of Alternates   | Sum of all Individual Alternates  |
| 4. Individual subtotals for Stipulated Price, Base Unit Prices, Extra Unit Prices, Contractor Bonus, Cash Allowances, and Alternates; and the Total Bid Price | Sum of Individual subtotals for Stipulated Price, Base Unit Prices, Extra Unit Prices, Contractor Bonus, Cash Allowances and Alternates |

PARAGRAPH 10.0 – BID SUBMISSION

Add the following sub-Paragraph A.1 to this Paragraph:

A. Add the following sub-Paragraph A.1:

1. Sealed bids, in triplicate, one (1) original marked “Original” and two (2) copies of the bids (also includes two (2) USB drives of all required submittals identified in Document 00410 Section 1.0 Offer) will be received by the City Secretary of the City of Houston, in the City Hall Annex, Public Level, 900 Bagby, Room P101, Houston, Texas 77002, until 10:30 a.m., (Local Time) on November 2, 2023.

E. Add the following Paragraph “E.” to Section 10:

E. Bidders shall submit Document 00470 Bidder’s MWSBE Participation Plan (or 00470D Bidder’s DBE Participation Plan if FAA funded project) with the bid. If the MWSBE goal is not met, the Document 00471 Pre-bid Good Faith Efforts, and Document 00472 Bidder’s MWSBE Goal Deviation Request form shall also be included in the submission with the bid (If the DBE goal is not met, following Section 2.A.12. of Document 00806).

11.0 – BID SECURITY: Add the following Paragraph 1. to Section 11.0.A.:

1. Bidder shall submit a Security Deposit in the form of:
  - a.) Certified Check;
  - b.) Cashier’s Check; or
  - c.) Bid BondBidder should submit just one form of Security Deposit among the three listed above, and such form shall be issued according to Section 11.0.B and 11.0.C.

PARAGRAPH 12.0 – SUBCONTRACTORS AND SUPPLIERS

PARAGRAPH 15.0 – PREBID MEETING

Add the following sub-Paragraph A.1 to this Paragraph:

A. Add the following Paragraph A.1:

1. A Prebid Meeting will be held at Houston Airport System, HAS Infrastructure Division Office (IDO), Auditorium No. 1, 111 Standifer Drive Humble, TX 77338 at 1:00 p.m. (local time) September 21, 2023.
2. Pre-bid Meeting Questions will be due from bidders at 3:00 p.m. (local time), September 28, 2023.
3. A Site Visit will begin after the Pre-bid Meeting. The meeting and site visit are the only opportunity for bidders to see the site prior to Bid Due Date.

16.0 – OPENING OF BIDS: Replace Section B with the following:

- B. Place and date of Bid opening may be changed in accordance with Section 15-45(c) of the City Code.

The following Section is added as part of this solicitation:

3.0 – NOTICE TO BIDDERS

F. RESOLVING PROTESTS

1. Protests will be handled in accordance with City of Houston Administrative Policy AP 5-12. <http://www.houstontx.gov/adminpolicies/5-12.pdf>.

END OF DOCUMENT



Document 00220

REQUEST FOR BID INFORMATION

PROJECT: IAH Integrated Coordination Center

PROJECT No.: PN793

TO: David Martinez, Senior Procurement Specialist  
18600 Lee Road  
Humble, Texas 77338

Phone No. 281-230-8013  
Fax No. N/A  
Email [david.martinez@houstontx.gov](mailto:david.martinez@houstontx.gov)

(Type or Print question legibly; use back if more space is needed)

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This request relates to \_\_\_\_\_ and/or \_\_\_\_\_  
Drawing / Detail No. Specification Section No.

Attachments to this request: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
(Type or Print Name)

\_\_\_\_\_  
(Type or Print Company Name)

Document 00410A

BID FORM – PART A

To: **The Honorable Mayor and City Council of the City of Houston City  
Hall Annex  
900 Bagby Street  
Houston, Texas 77002**

Project: IAH Integrated Coordination Center

Project No.: PN 793

Bidder: \_\_\_\_\_

(Print or type full name of business entity, such as corporation, LLC,  
etc)

**1.1 OFFER**

- A. Total Bid Price:** Having examined the Project location and all matters referred to in Bid Documents for the Project, we, the undersigned, offer to enter into a Contract to perform the Work for the Total Bid Price shown on the signature page of this Document
- B. Security Deposit:** Included with the Bid is a Security Deposit in the amount of 10 percent of the Total Bid Price subject to terms described in Document 00200 – Instructions to Bidders.
- C. Period for Bid Acceptance:** This offer is open to acceptance and is irrevocable for 180 days from Bid Date. That period may be extended by mutual written agreement of the City and Bidder.
- D. Addenda:** All Addenda have been received. Modifications to Bid Documents have been considered and all related costs are included in the Total Bid Price.
- E. Bid Supplements:** The following documents are attached:
- Security Deposit (*as defined in Document 00200 – Instructions to Bidders*)
  - Document 00450 - Bidder's Statement of MBE/WBE/DBE/SBE Status
  - Document 00454 - Affidavit of Non-interest
  - Document 00455 - Ownership Information Form
  - Document 00456 - Bidder's Certificate of Compliance with Buy American Program (*required for AIP funded project*)
  - Document 00457 – Conflicts of Interest Questionnaire (CIQ)
  - Document 00458 - Bidder's Certificate Regarding Foreign Trade Restriction (*required for AIP funded project*)
  - Document 00459 - Contractor's Statement Regarding Previous Contracts Subject to EEO (*required for AIP funded project*)
  - Document 00460 – Pay or Play Acknowledgement Form (POP 1-A)
  - Document 00461 – Hire Houston First Affidavit
  - Document 00470 – Bidder's MWSBE Participation Plan (*required unless no MWSBE participation goal is provided in Document 00800 (the "Goal")*).
  - Document 00470D - Bidder's DBE Participation Plan (*required for AIP funded project*)

00410-A1

02-12-2020

- Document 00471 – Bidder’s Record of Good Faith Efforts (*required if the goal in Bidder’s Participation Plan–Document 00470 is lower than the Goal*).
- Document 00472 – Bidder’s Goal Deviation Request (*required if the goal in Bidder’s Participation Plan–Document 00470 is lower than the Goal*).
- Document 00480 – Form SCM-1 Reference Verification
- Document 00481 – Non-Collusion Statement
- Document 00842 – Letter of Intent
- Others as listed: \_\_\_\_\_

**2.1 CONTRACT TIME**

- A.** If offer is accepted, Contractor shall achieve Date of Substantial Completion within **250 calendar days** after Date of Commencement of the Work, subject to adjustments of Contract Time as provided in the Contract.

Document 00410B

**BID FORM – PART B**

**1.1 TOTAL BID PRICE HAS BEEN CALCULATED BY BIDDER, USING THE FOLLOWING COMPONENT PRICES AND PROCESS (PRINT OR TYPE NUMERICAL AMOUNTS):**

**A. STIPULATED PRICE (HOU):** \$ \_\_\_\_\_

(Total Bid Price; minus Base Unit Prices, Extra Unit Prices, Cash Allowances and All Alternates, if any)

CATEGORY	SCOPE <i>(REFER TO DWGS SECTIONS BELOW ALONG W/ ASSOC SPECS)</i>	TOTALS (\$)
IT/TELECOM	T	
AUDIO VISUAL	TA	
SECURITY	TY	
MEP	M, E, P	
ARCHITECTURAL	A, AD, G	
GENERAL (General Conditions / Mobilization / Etc)		
<b>COST OF WORK SUBTOTAL</b>		
Contractor O & M		
<b>TOTAL COST OF WORK</b>		

**B. BASE UNIT PRICE TABLE: Not applicable.**

Item No.	Spec Ref.	Base Unit Short Title	Unit of Measure	Estimated Quantity	Unit Price (this column controls)	Total in figures
<b><u>TOTAL BASE UNIT PRICES</u></b>						\$ _____

**C. EXTRA UNIT PRICE TABLE: Not applicable.**

Item No.	Spec Ref.	Extra Unit Short Title	Unit of Measure	Estimated Quantity	Unit Price (this column controls)	Total in figures
<b><u>TOTAL EXTRA UNIT PRICES</u></b>						\$ _____

REST OF PAGE INTENTIONALLY LEFT BLANK

**D. CASH ALLOWANCE TABLE:**

Item No.	Spec Ref.	Cash Allowance Short Title	Cash Allowance in figures (1)
[1]		Building permit	\$25,000
[1]		City Furnished Products (Damage to)	\$10,000
<b><u>TOTAL CASH ALLOWANCES</u></b>			\$35,000

REST OF PAGE INTENTIONALLY LEFT BLANK

**E. ALTERNATES TABLE: Not applicable.**

Item No.	Spec Ref.	Alternate Short Title	Unit of Measure	Estimated Quantity	Unit Price (this column controls)	Total Price for Alternate in figures
<b><u>TOTAL ALTERNATES</u></b>						\$ _____

REST OF PAGE INTENTIONALLY LEFT BLANK

**F. TOTAL BID PRICE:**

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

(Add Totals for Stipulated Price, Base Unit Price, Extra Unit Price, Cash Allowance, and All Alternates, if any)

**2.0 SIGNATURES:** By signing this Document, I agree that I have received and reviewed all Addenda and considered all costs associated with the Addenda in calculating the Total Bid Price.

Bidder:

\_\_\_\_\_  
(Print or type full name of your proprietorship, partnership, corporation, or joint venture.\*)

\*\* By:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name:

\_\_\_\_\_  
(Print or type name)

\_\_\_\_\_  
Title

Address:

\_\_\_\_\_  
(Mailing)

\_\_\_\_\_  
(Street, if different)

Telephone and Fax Number:

\_\_\_\_\_  
(Print or type numbers)

- \* If Bid is a joint venture, add additional Bid Form signature sheets for each member of the joint venture.
- \*\* Bidder certifies that the only person or parties interested in this offer as principals are those named above. Bidder has not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding.

**Note:** This document constitutes a government record, as defined by § 37.01 of the Texas Penal Code. Submission of a false government record is punishable as provided in § 37.10 of the Texas Penal Code.

Footnotes for Tables B through E:

- (1) Fixed Unit Price determined prior to Bid. Cannot be adjusted by the Bidder.
- (2) Minimum Bid Price determined prior to Bid. Can be increased by the Bidder, but not decreased, by crossing out the Minimum and inserting revised price on the line above. **Cannot** be decreased by the Bidder.
- (3) Maximum Bid Price determined prior to Bid. Can be decreased by the Bidder, but not increased, by crossing out the Maximum and inserting revised price on the line above. A Bid that increases the Maximum Bid Price may be found non-conforming and non-responsive. **Cannot** be increased by the Bidder.
- (4) Fixed Range Bid Price determined prior to Bid. Unit Price can be adjusted by Bidder to any amount within the range defined by crossing out prices noted and noting revised price on the line above.



Document 00430

**BIDDER'S BOND**

THAT WE, \_\_\_\_\_, as Principal,  
(Bidder)  
("Bidder"), and the other subscriber hereto, \_\_\_\_\_, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Houston, a municipal corporation, in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (an amount equal to 10 percent of the Total Bid Price, including Cash Allowances and Alternates, if any), for the payment of which sum, well and truly to be made to the City of Houston and its successors, the Bidder and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

**THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:**

**WHEREAS**, the Bidder has submitted on or about this day a proposal offering to perform the following:

\_\_\_\_\_

(Project Name, Location and Number)

in accordance with the Drawings, Specifications, and terms and conditions related thereto to which reference is hereby made.

**NOW, THEREFORE**, if the Bidder's offer as stated in the Document 00410 – Bid Form is accepted by the City, and the Bidder executes and returns to the City Document 00520 – Agreement, required by the City, on the forms prepared by the City, for the Work and also executes and returns the same number of the Performance, Payment and Maintenance Bonds (such bonds to be executed by a Corporate Surety authorized by the State Board of Insurance to conduct insurance business in the State of Texas, and having an underwriting limitation in at least the amount of the bond) and other submittals as required by Document 00495 - Post-Bid Procedures, in connection with the Work, within the Contract Time, then this obligation shall become null and void; otherwise it is to remain in full force and effect.

If Bidder is unable to or fails to perform the obligations undertaken herein, the undersigned Bidder and Surety shall be liable to the City for the full amount of this obligation which is hereby acknowledged as the amount of damages which will be suffered by the City on account of the failure of such Bidder to perform such obligations, the actual amount of such damages being difficult to ascertain.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, 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 respective other Party at the address prescribed in the Contract documents, or at such other address as the receiving Party may hereafter prescribe by written notice to the sending Party.

**IN WITNESS THEREOF**, the Bidder and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

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

\_\_\_\_\_  
(Name of Bidder)

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

ATTEST/SURETY WITNESS: (SEAL)

\_\_\_\_\_  
(Full Name of Surety)

\_\_\_\_\_  
(Address of Surety for Notice)

\_\_\_\_\_  
(Telephone Number of Surety)

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

Document 00450

**BIDDER'S STATEMENT OF MBE/WBE/PDBE/DBE/SBE STATUS**

This certifies that the status of the Bidder, \_\_\_\_\_, in  
(Bidder's Name)

regard to the City of Houston Code of Ordinances, Chapter 15, Article V, relating to City-wide percentage goals for contracting with Minority and Women-owned Business Enterprises (MWBE) and Disadvantaged Business Enterprises (DBE), Chapter 15, Article VI, relating to City-wide percentage goals for contracting with Persons with Disabilities Business Enterprises (PDBE) and Chapter 15, Article IX, relating to City-wide percentage goals for contracting with a Small Business Enterprise (SBE) is as follows:

1. Bidder (individual, partnership, corporation) is  is not  a Minority Business Enterprise as certified by the Affirmative Action and Contract Compliance Division.
2. Bidder (individual, partnership, corporation) is  is not  a Women-owned Business Enterprise as certified by the Affirmative Action and Contract Compliance Division.
3. Bidder (individual, partnership, corporation) does  does not  declare itself to be a Persons with Disabilities Business Enterprise as defined above.
4. Bidder (individual, partnership, corporation) does  does not  declare itself to be a Disadvantaged Business Enterprise as defined above.
5. Bidder (individual, partnership, corporation) does  does not  declare itself to be a Small Business Enterprise as defined above.

Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_

END OF DOCUMENT

Document 00454

AFFIDAVIT OF NON-INTEREST

**BEFORE ME**, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared \_\_\_\_\_, who  
Affiant

being by me duly sworn on his oath stated that he is \_\_\_\_\_ of  
Title

\_\_\_\_\_  
Name of Firm

the firm named and referred to and in the foregoing; and that he knows of no officer, agent, or employee of the City of Houston being in any manner interested either directly or indirectly in such Contract.

\_\_\_\_\_  
Affiant's Signature

SWORN AND SUBSCRIBED before me on \_\_\_\_\_.  
Date

\_\_\_\_\_  
Notary Public in and for the State of TEXAS

\_\_\_\_\_  
Print or type name

My Commission Expires: \_\_\_\_\_  
Expiration Date

END OF DOCUMENT

Document 00455

OWNERSHIP INFORMATION FORM

The City of Houston Ownership Information Form is used to gather information to comply with:

- a. The City of Houston Contractor Ownership Disclosure Ordinance ([Chapter 15 of the Code of Ordinances, Article VIII. City Contracts; Indebtedness to City](#));
- b. The City of Houston Fair Campaign Ordinance ([Chapter 18 of the Code of Ordinances](#)); and,
- c. The State of Texas Statement of Residency Requirements ([Tex. Govt. Code Chapter 2252](#)).

**Please complete the form, in its entirety, and submit it with the Official Bid or Proposal Form. Except as noted below regarding the Statement of Residency, failure to provide this information may be just cause for rejection of your bid or proposal.**

NOTICE OF AFFIRMATIVE ACCEPTANCE OF THE CITY OF HOUSTON FAIR CAMPAIGN ORDINANCE

By submitting a bid or proposal to the City of Houston for a Contract in excess of \$50,000 or for which a request is presented to City Council for approval, all respondents agree to comply with the Chapter 18 of the Code of Ordinances.

Further, pursuant to Section 18-36 of the Code of Ordinances, it shall be unlawful either for any person who submits a bid or proposal to contribute or offer any contribution to a candidate or for any candidate to solicit or accept any contribution from such person for a period commencing at the time of posting of the City Council Meeting Agenda including an item for the award of the Contract and ending upon the 30th day after the award of the Contract by City Council.

INSTRUCTIONS

1. Please **type** or **legibly print in dark ink** responses. Individuals and entities should disclose their full, legal names (not initials) and all required corporate letters ("Inc", "LLP", etc.).
  - a. If a firm is operating under an assumed name, the following format is recommended:  
*Corporate/Legal Name DBA Assumed Name.*
2. Full addresses are required, including street types ("St", "Rd", etc.) and unit number.
3. Individuals or entities with 10% or more ownership of the corporation, partnership, or joint venture (including persons who own 100%) are required to be disclosed with their full name and full address. All officers and directors are also required to be disclosed with their full name and full address.

PROJECT AND BID/PROPOSAL PREPARER INFORMATION

**Project or Matter Being Bid:** \_\_\_\_\_

**Bidder's complete firm/company business information**

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

Business Address [No./Street] \_\_\_\_\_

City / State / Zip Code \_\_\_\_\_

Telephone Number \_\_\_\_\_

**Bidder's email address**

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

STATEMENT OF RESIDENCY

(THE STATEMENT OF RESIDENCY PORTION OF THIS DOCUMENT IS **NOT APPLICABLE** IF THE SOLICITATION INDICATES FEDERAL FUNDS WILL BE USED)

**TEX. GOV'T CODE** §2252.001(4) defines a "**Resident bidder**" as a bidder whose principal place of business\* is in this state, and includes a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

**TEX. GOV'T CODE** §2252.001(3) defines a "**Nonresident bidder**" as a bidder who is not a resident in this state.

\* Principal Place of Business in Texas means that the business entity:

- has at least one permanent office located within the **State of Texas**, from which business activities other than submitting bids to governmental agencies are conducted and from which the bid is submitted; and
- has at least one employee who works in the Texas office.

Based on the definitions above, your business is a:

- TEXAS RESIDENT BIDDER  
 NONRESIDENT BIDDER

If you are a Nonresident Bidder, does your home state have a statute giving preference to resident bidders? If so, you must attach a copy of the statute to this Document.

A copy of the State of \_\_\_\_\_ statute is attached.

**NOTE:** The State of residency of a bidder is not used in the decision-making criteria for the award of contracts for projects receiving federal funding, whether in whole or in part.

CONTRACTING ENTITY ORGANIZATIONAL ENTITY TYPE

**FOR PROFIT ENTITY:**

**NON-PROFIT ENTITY:**

- SOLE PROPRIETORSHIP
- CORPORATION
- PARTNERSHIP
- LIMITED PARTNERSHIP
- JOINT VENTURE
- LIMITED LIABILITY COMPANY
- OTHER (*specify in space below*)

- NON-PROFIT CORPORATION
- UNINCORPORATED ASSOCIATION

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LISTING OF ADDRESSES

List all current and prior addresses where the bidder does/has done business or owns property (real estate and/or business personal property) in the city of Houston ("Houston") in the past 3 years from the date of submittal of this form. If within the past 3 years from the date of submitting this form, the bidder does not and has not done business and has not or does not own property (real estate and/or business personal property) in Houston, please state "None" on the first line below.

---

Address

---

Address

---

Address

**ATTACH ADDITIONAL SHEETS AS NEEDED.**

LISTING OF OFFICERS

LIST ALL OFFICERS OF THE ENTITY, REGARDLESS OF THE AMOUNT OF OWNERSHIP (IF NONE STATE "NONE")

Name _____ Officer	_____
Name _____ Officer	_____
Name _____ Officer	_____
Name _____ Officer	_____
Name _____ Officer	_____
Name _____ Officer	_____

LISTING OF DIRECTORS OR MEMBERS

LIST ALL DIRECTORS OF THE ENTITY, REGARDLESS OF THE AMOUNT OF OWNERSHIP (IF NONE STATE "NONE")

Name _____ Director or Member	_____
Name _____ Director or Member	_____
Name _____ Director or Member	_____
Name _____ Director or Member	_____
Name _____ Director or Member	_____

DISCLOSURE OF OWNERSHIP (OR NON-PROFIT OFFICERS)

Bidders are required to disclose all owners of 10% or more of the Contracting Entity. For non-profit entities, please provide the complete information for the President, Vice-President, Secretary, and Treasurer.

**IN ALL CASES, USE FULL NAMES, LOCAL BUSINESS AND RESIDENCE ADDRESSES AND TELEPHONE NUMBERS. DO NOT USE POST OFFICE BOXES FOR ANY ADDRESS. INCLUSION OF E-MAIL ADDRESSES IS OPTIONAL, BUT RECOMMENDED.**

**ATTACH ADDITIONAL SHEETS AS NEEDED.**

**Contracting Entity:**

Name: \_\_\_\_\_  
Business Address [No./Street] \_\_\_\_\_  
City / State / Zip Code \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Email Address: \_\_\_\_\_

DISCLOSURE OF OWNERSHIP (OR NON-PROFIT OFFICERS) *continued.*

**Owner(s) of 10% or More (IF NONE, STATE "NONE."):**

Name: \_\_\_\_\_  
Business Address [No./Street] \_\_\_\_\_  
City / State / Zip Code \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Residence Address [No./Street] \_\_\_\_\_  
City / State / Zip Code \_\_\_\_\_

**Owner(s) of 10% or More (IF NONE, STATE "NONE."):**

Name: \_\_\_\_\_  
Business Address [No./Street] \_\_\_\_\_  
City / State / Zip Code \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Residence Address [No./Street] \_\_\_\_\_  
City / State / Zip Code \_\_\_\_\_

**ATTACH ADDITIONAL SHEETS AS NEEDED.**



OPTIONAL: TAX APPEAL INFORMATION

If the firm/company or an owner/officer is actively protesting, challenging, or appealing the accuracy and/or amount of taxes levied with a tax appraisal district, please provide the following information:

Debtor (Firm or Owner Name):	
Tax Account Nos.:	
Case or File Nos.:	
Attorney/Agent Name:	
Attorney/Agent Phone No.:	
Tax Years:	

Status of Appeal [*DESCRIBE*]:

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**If an appeal of taxes has been filed on behalf of your company, please include a copy of the official form received by the appropriate agency.**

REQUIRED: UNSWORN DECLARATION

I certify that I am duly authorized to submit this form on behalf of the firm, that I am associated with the firm in the capacity noted below, and that I have personal knowledge of the accuracy of the information provided herein. I affirm that all the information contained herein is true and correct to the best of my knowledge. I understand that failure to submit accurate information with my submission may result in my submission being considered non-responsive and non-responsible.

---

<b>Preparer's Signature</b>	<b>Date</b>
<hr/>	<hr/>
<b>Printed name</b>	
<hr/>	
<b>Title</b>	
<hr/>	

**NOTE:** This form constitutes a governmental record, as defined by Section 37.01 of the Texas Penal Code. Submission of a false government record and falsification of a governmental record are crimes, punishable as provided in Section 37.10 of the Texas Penal Code.

Document 00457

Conflict of Interest Questionnaire

Local Government Code Chapter 176 requires Bidders with the City of Houston ("City") to file a Conflict of Interest Questionnaire with the City Secretary of the City of Houston.

The Conflict of Interest Questionnaire is available for downloading on the Texas Ethics Commission's website at: <http://www.ethics.state.tx.us>

The completed Conflict of Interest Questionnaire will be posted on the City Secretary's website. Also you will find a list of the City Local Government Officers on the City Secretary's website.

For your convenience the CIQ form is attached as part of this document. Although the City has provided this document for the Bidders convenience, it is the Bidders responsibility to submit the latest version of the CIQ form as promulgated by the Texas Ethics Commission.

The Failure of any Bidder to comply with this law is a Class C misdemeanor.

END OF DOCUMENT

00457  
10-30-2020



## City of Houston Pay or Play Program Acknowledgement Form



It has been determined that the project currently open for bidding meets the criteria of the City of Houston Pay or Play program. This form acknowledges your awareness of the Pay or Play program which is authorized by Ordinance 2007-534. Your signature below affirms that you will comply with the requirements of the program upon contract award and ensure the same on behalf of your subcontractors that may be subject to the Pay or Play Program.

I declare under penalty of perjury under the laws of the State of Texas that if awarded this contract which meets the criteria for the City of Houston's Pay or Play Program, I will comply with all requirements of the Pay or Play Program in accordance with Executive Order 1-7.

**Fill out all information below and submit this form with your bid/proposal packet.**

\_\_\_\_\_  
Solicitation Number

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
City Vendor ID

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Email Address

For more information about the Pay or Play program please visit  
<http://www.houstontx.gov/obo/popforms.html>.

Questions about the Pay or Play Program should be referred to the Department POP Liaison; an updated contact list is available on the Office of Business Opportunity website or call the POP Contract Administrator at 832-393-0633.

**DOCUMENT 00480**

**REFERENCE VERIFICATION**

**1.0 REFERENCES**

- 1.1 Contractor must be able to demonstrate that they have sufficient expertise, qualified personnel experienced and that their company has done or currently providing the services of similar size as specified in the statement of work. Contractor must have been actively engaged as an actual business entity in the activities described in the bid document for at least the five (5) years immediately prior to the submission of their bid.
- 1.2 The reference(s) must be included in the space provided below. Additional pages may be added if necessary. References must be included at the time of bidsubmittal.

**LIST OF CURRENT/PREVIOUS CUSTOMERS**

- 1. Company Name: \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_ Phone No.: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contract Award Date: \_\_\_\_\_ Contract Completion Date: \_\_\_\_\_  
Contract Name/Title: \_\_\_\_\_  
Project Description: \_\_\_\_\_  
\_\_\_\_\_
- 2. Company Name: \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_ Phone No.: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contract Award Date: \_\_\_\_\_ Contract Completion Date: \_\_\_\_\_  
Contract Name/Title: \_\_\_\_\_  
Project Description: \_\_\_\_\_  
\_\_\_\_\_
- 3. Company Name: \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_ Phone No.: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contract Award Date: \_\_\_\_\_ Contract Completion Date: \_\_\_\_\_  
Contract Name/Title: \_\_\_\_\_  
Project Description: \_\_\_\_\_  
\_\_\_\_\_

**DOCUMENT 00480**

**REFERENCE VERIFICATION**

Houston Airport System
Planning, Design & Construction
Reference Verification for _____ (Respondent's Company Name)
<b>Name of Company:</b>
<b>Name of Contact:</b>
<b>Phone Number of Contact:</b>
<b>E-Mail Address of Contact:</b>
<b>QUESTIONS TO BE ASKED BY HOUSTON AIRPORT SYSTEM</b>
1. When did this company perform work for you?
2. What type of service did this company perform for you?
3. Did they perform the work as agreed?
4. Was the company timely with responding to your needs?
5. How many instances of services has this company provided for you?
6. Did company representatives conduct themselves in a professional manner?
7. Would you do business with this company again?
Additional Comments:
Name/Phone Number of Person conducting Reference Verification:
SIGNATURE: _____ DATE: _____

**DOCUMENT 00481**  
**Anti-Collusion Statement**

The undersigned, as Proposer, certifies that the only person or parties interested in this Proposal as principals are those named herein; that the Proposer has not, either directly or indirectly entered into any Agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the award of this Contract.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Proposer Signature

Document 00495

POST-BID PROCEDURES

1.0 DOCUMENT ADDRESSES

- A. Notice of Intent to Award.
- B. Monitoring Authority
- C. Requirements of Bidder.
- D. Failure of Bidder to comply with requirements.
- E. Notice to Proceed.

2.0 NOTICE OF INTENT TO AWARD

- A. The City will provide written Notice of Intent to Award to Low Bidder.

3.0 DEFINITIONS

- A. The "Monitoring Authority" for this Project is:

Houston Airport System  
Office of Business Opportunity  
Contract Compliance Section  
18600 Lee Road, Suite 131  
Humble, Texas 77338

4.0 REQUIREMENTS OF BIDDER

- A. Within 10 workdays of receipt of Notice of Intent to Award, Low Bidder shall execute and deliver to David Martinez, Senior Procurement Specialist (Supply Chain Management) and Monitoring Authority, for the City's approval, documents indicated by an "X" below:

- Document 00501 - Resolution of Contractor
- Document 00520 – Agreement
- Document 00570 – Revised MWSBE Participation Plan *(Only submit if you have changed your MWBE participation plan from the original 00470)*
- Document 00571 – Post-Bid Good Faith Efforts *(Only submit if you could not meet MWBE participation goals from the 00570)*

- Document 00572 – Contractor’s Goal Deviation Request (*Only submit if you could not meet MWBE participation goals from the 00570*)
- Document 00600 - List of Proposed Subcontractors and Suppliers
- Document 00601 - Drug Policy Compliance Agreement
- Document 00602 - Contractor's Drug-free Workplace Policy (*Contractor creates this document.*)
- Document 00604 - History of OSHA Actions and List of On-the-job Injuries
- Document 00605 - List of Safety Impact Positions (*Contractor completes this list. Do not submit if submitting Document 00606.*)
- Document 00606 - Contractor's Certification of No Safety Impact Positions (*Do not submit if submitting Document 00605.*)
- Document 00607 - Certification Regarding Debarment, Suspension, and Other Responsibility Matters (For AIP Grant only)
- Document 00608 - Contractor's Certification Regarding Non-segregated Facilities for Project Funded by AIP Grant (For AIP Grant only)
- Document 00609 – List of Nonroad Diesel Equipment (Do not need to submit if not participating in Clean Air Incentive under Document 00800 Section 9.13.2)
- Document 00610 - Performance Bond (100% of total amount of bid)
- Document 00611 - Statutory Payment Bond (100% of total amount of bid)
- Document 00612 - One-year Maintenance Bond (100% of total amount of bid)
- Document 00613 - One-year Surface Correction Bond (4% of total amount of bid)
- Document 00620 - Affidavit of Insurance
- Document 00621 – City of Houston *Certificate of Insurance (for guidance, see Document 00800, Article 11)*
- Document 00622 - Name and Qualifications of Proposed Superintendent (*Contractor creates this document.*)
- Document 00628 - Affidavit of Compliance with DBE Program (For AIP Grant only)
- Document 00629 - Affidavit for FAA Form 7460-1
- Document 00630 – Agreement to comply with POP Program
- Document 00631 - City of Houston Pay or Play Program – List of Participating Subcontractors
- Document 00632 – EEO Certification by Material Suppliers, Professional Service Providers
- Document 00636 – Certificate of Interested Parties FORM 1295
- Document 00810 – Wage Scale for Engineering Construction; Exhibit B, Certificate from Contractor Appointing Officer or Employee to Supervise Payment of Employees; Exhibit C, Certificate from Subcontractor Appointing Officer or Employee to Supervise Payment of Employees (For AIP Grant only)



- [ ] Document 00811 – Wage Scale for Building Construction; Exhibit B, Certificate from Contractor Appointing Officer or Employee to Supervise Payment of Employees; Exhibit C, Certificate from Subcontractor Appointing Officer or Employee to Supervise Payment of Employees (For AIP Grant only)
  - [ ] Document 00812 – Wage Scale for Engineering Heavy Construction [For Water and Sewer]; Exhibit B, Certificate from Contractor Appointing Officer or Employee to Supervise Payment of Employees; Exhibit C, Certificate from Subcontractor Appointing Officer or Employee to Supervise Payment of Employees
  - [ ] Document 00814 – Wage Scale for Engineering Heavy Construction [For Flood Control]; Exhibit B, Certificate from Contractor Appointing Officer or Employee to Supervise Payment of Employees; Exhibit C, Certificate from Subcontractor Appointing Officer or Employee to Supervise Payment of Employees
  - [ ] Document 00820 – Wage Scale for Civil Engineering Construction [For CIP Funded Project]; Exhibit B, Certificate from Contractor Appointing Officer or Employee to Supervise Payment of Employees; Exhibit C, Certificate from Subcontractor Appointing Officer or Employee to Supervise Payment of Employees
  - [ ] Document 00821 – Wage Scale for Building Construction [For CIP Funded Project]; Exhibit B, Certificate from Contractor Appointing Officer or Employee to Supervise Payment of Employees; Exhibit C, Certificate from Subcontractor Appointing Officer or Employee to Supervise Payment of Employees
- B. Original forms contained in Document 00805 - Equal Employment Opportunity Program Requirements:
1. Original forms contained in Document 00805 - Equal Employment Opportunity Program Requirements:
    - [ X ] EEO-3, Certification by Bidder Regarding Equal Employment Opportunity
    - [ X ] EEO-6, Total Work Force Composition of the Company or in lieu thereof, a copy of the latest Equal Employment Opportunity Commission's EEO-1 form (This information is required only if the Contractor has a work force of 50 or more people and the Contract is \$50,000 or more.)
    - [ X ] EEO-7, Company's Equal Employment Opportunity Compliance Program
    - [ X ] EEO-26, Certification by Proposed Subcontractor Regarding Equal Employment Opportunity

- C. Designations of Subcontractors and Suppliers, who have been selected by Bidder in Part B - Schedule of Non-MWBE/PDBE/DBE/SBE Subcontractors and Suppliers of Document 00600 - List of Proposed Subcontractors and Suppliers, and accepted by the City, may be changed only with prior notice and acceptance by Project Manager as provided in Conditions of the Contract.
- D. On Bidder's written request, David Martinez, Senior Procurement Specialist may grant an extension of time, not to exceed 5 days, to furnish documents specified in Paragraphs 4.0.A and 4.0.B. If Bidder is required to resubmit documents specified in Paragraph 4.0.A or 4.0.B, Bidder shall do so within time limits provided in the request for resubmission.
- E. Designations of Subcontractors and Suppliers, who have been selected by Bidder in its Participation Plan, and accepted by the City, may be changed only with prior notice and acceptance by the Monitoring Authority as provided in Document 00808 - Minority and Women-owned Business Enterprise (MWBE), Persons with Disabilities Business Enterprise (PDBE) and Small Business Enterprise (SBE) Program.

5.0 FAILURE OF BIDDER TO COMPLY WITH REQUIREMENTS

- A. Should Bidder, on receipt of Notice of Intent to Award, fail to comply with requirements of this Document 00495 within stated time, the City may declare award in default and require forfeiture of the Security Deposit.
- B. After the City's written notice of default to Low Bidder, the City may award the Contract to Bidder whose offer is the next lowest bid, and Security Deposit of Bidder in default shall be forfeited to the City in accordance with provisions of Document 00200 - Instructions to Bidders.

6.0 NOTICE TO PROCEED

- A. Upon the City's execution of the Agreement and delivery to Contractor, SCM will give Document 00551 - Notice to Proceed to Contractor, which establishes Date of Commencement of the Work.

END OF DOCUMENT

Document 00501

**RESOLUTION OF CONTRACTOR**

\_\_\_\_\_ (“Contractor”),  
 (Name of Contractor, e.g., “Biz. Inc.”, “Biz LLP”)  
 is a \_\_\_\_\_,  
 (Type of Organization, e.g.: Corporation, Limited Partnership, Limited Liability Partnership, Limited Liability Company, etc.)  
 which is bound by acts of \_\_\_\_\_,  
 (Name and Form of Governing Entity, e.g., “Biz Inc. Board of Directors”, “Bill Smith, GP”,  
 etc.)  
 (“Governing Entity”).

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the Governing Entity resolved, in accordance with all documents, rules, and laws applicable to the Contractor, that \_\_\_\_\_, is authorized to act as the  
 (Contractor’s Representative)  
 Contractor’s Representative in all business transactions (initial one) \_\_\_\_\_ conducted in the State of Texas OR \_\_\_\_\_ related to this Contract; and

The Governing Entity warrants that the above resolution (a) was entered into without dissent or reservation by the Governing Entity, (b) has not been rescinded or amended, and (c) is now in full force and effect; and

In authentication of the adoption of this resolution, I subscribe my name on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
 (Authorized Signature for Governing Entity)

\_\_\_\_\_  
 (Print or Type Name and Title of Authorized Signatory)

**SWORN AND SUBSCRIBED** before me on \_\_\_\_\_  
 Date

\_\_\_\_\_  
 Notary Public in and for the State of Texas

My Commission Expires: \_\_\_\_\_  
 Expiration Date                      Print or Type Name of Notary Public

**INSTRUCTIONS:** Contractor must execute a Resolution of Contractor for each individual authorized to sign Contract Documents related to this Contract. Contractor may rescind Resolutions of Contractor through a written document in similar form.

Document 00520

**AGREEMENT**

**Project:** IAH Integrated Coordination Center

**Project Location:** General Services Facility 4551 Will Clayton Pkwy, Humble, TX 77396

**Project No:** PN793

**The City:** THE CITY OF HOUSTON, 900 Bagby Street, Houston, Texas 77002 (the "City")  
and

**Contractor:** \_\_\_\_\_

(Address for Written Notice) \_\_\_\_\_

**Phone Number:** \_\_\_\_\_

Fax #: N/A

**E-mail Address:** \_\_\_\_\_

**City Engineer, with respect to Section 4.1.9 and 4.3 thru 4.5 of the General Conditions, is:**

Eren Selcen, P.E., – HAS City Engineer, City of Houston Airport. Aviation Department, Infrastructure  
Division (or his or her successor)

Address for Written Notice: 111 Standifer Drive, Humble, TX 77338

Phone Number: 281-233-1605 Fax #: N/A

Email Address: eren.selcen@houstontx.gov

**City Engineer, City Employee designated by the Director of Department of Aviation to represent the City Engineer, with respect to all other terms of the General Conditions, is:**

**Susan Keil, AIA (or his or her successor)**

Phone Number: 281-233-1753

E-mail Address: susan.keil@houstontx.gov

**THE CITY AND CONTRACTOR AGREE AS FOLLOWS:**

**ARTICLE 1**

**THE WORK OF THE CONTRACT**

1.1 Contractor shall perform the Work in accordance with the Contract.

**ARTICLE 2**

**CONTRACT TIME**

2.1 Contractor shall achieve Date of Substantial Completion within **250** days after Date of Commencement of the Work, subject to adjustments of Contract Time as provided in the Contract.

2.2 The Parties recognize that time is of the essence for this Agreement and that the City will suffer financial loss if the Work is not completed within the Contract Time. Parties also recognize delays, expense, and difficulties involved in proving in a legal or arbitration proceeding actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Parties agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay the City the amount stipulated in Document 00800 – Supplementary Conditions, for each day beyond Contract Time.

**ARTICLE 3**

**CONTRACT PRICE**

3.1 Subject to terms of the Contract, the City will pay Contractor in current funds for Contractor's performance of the Contract, Contract Price of \$ [Original Contract Price], which includes Alternates, if any, accepted below.

3.2 The City accepts Alternates as follows:

Alternate No. 1	<u>[Accepted, Not Accepted or Not Applicable]</u>
Alternate No. 2	<u>[Accepted or Not Accepted]</u>
Alternate No. 3	<u>[Accepted or Not Accepted]</u>

**ARTICLE 4  
PAYMENTS**

4.1 The City will make progress payments to Contractor as provided below and in Conditions of the Contract.

4.2 The Period covered by each progress payment is one calendar month ending on the **25th** day of the month.

4.3 The City will issue Certificates for Payment and will make progress payments on the basis of such Certificates as provided in Conditions of the Contract.

4.4 Final payment, constituting entire unpaid balance of Contract Price, will be made by the City to Contractor as provided in Conditions of the Contract.

**ARTICLE 5**  
**CONTRACTOR REPRESENTATIONS**

5.1 Contractor represents:

5.1.1 Contractor has examined and carefully studied Contract documents and other related data identified in Bid Documents.

5.1.2 Contractor has visited the site and become familiar with and is satisfied as to general, local, and site conditions that may affect cost, progress, and performance of the Work.

5.1.3 Contractor is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress, and performance of the Work.

5.1.4 Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in Contract documents and (2) reports and drawings of a hazardous environmental condition, if any, at the site which has been identified in Contract documents.

5.1.5 Contractor has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including applying specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract to be employed by Contractor, and safety precautions and programs incident thereto

5.1.6 Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for performance of the Work at Contract Price, within Contract Time, and in accordance with the Contract.

5.1.7 Contractor is aware of general nature of work to be performed by the City and others at the site that relates to the Work as indicated in Contract documents.

5.1.8 Contractor has correlated information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract.

5.1.9 Contractor has given City Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract, and written resolution thereof by City Engineer is acceptable to Contractor.

5.1.10 Contract documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

**ARTICLE 6**

**MISCELLANEOUS PROVISIONS**

- 6.1 The Contract may be terminated by either Party as provided in Conditions of the Contract.
- 6.2 The Work may be suspended by the City as provided in Conditions of the Contract.

**ARTICLE 7**

**ENUMERATION OF CONTRACT DOCUMENTS**

- 7.1 The following documents are incorporated into this Agreement:
  - 7.1.1 Document 00700 - General Conditions.
  - 7.1.2 Document 00800 - Supplementary Conditions.
  - 7.1.3 General Requirements Division 01.
  - 7.1.4 Technical Specs: Divisions 02 through 17 of Specifications (Division 17 – Telecommunications - may be substituted by the Division 27 under the CSI Masterformat 04 numbering system.)
  - 7.1.5 Drawings listed in Document 00015 - List of Drawings and bound separately.
  - 7.1.6 Addenda which apply to the Contract, are as follows:

Addendum No. 1, dated [\_\_\_\_\_]

Addendum No. 2, dated [\_\_\_\_\_]

Addendum No. 3, dated [\_\_\_\_\_]

- 7.1.7 Other documents:

<u>Document No.</u>	<u>Title</u>
[ X ] 00410B	Bid Form – Part B
[ X ] 00470	Pre-bid MWSBE Participation Plan
[ ] 00470D	Pre-bid DBE Participation Plan for Project Funded by AIP Grant
[ ] 00471	Pre-bid Good Faith Efforts
[ ] 00472	Pre-bid Goal Deviation Request
[ X ] 00501	Resolution of Corporation (if a corporation)
[ ] 00570	Post-bid MWSBE Participation Plan
[ ] 00571	Post-bid Good Faith Efforts
[ ] 00572	Post-bid Goal Deviation Request
[ ] 00607	Contractor's Certification Regarding Debarment, Suspension for Project Funded by AIP Grant
[ ] 00608	Contractor's Certification Regarding Non-Segregated Facilities for Project Funded by AIP Grant
[ X ] 00610	Performance Bond
[ X ] 00611	Statutory Payment Bond
[ X ] 00612	One-year Maintenance Bond

- 00613 One-year Surface Correction Bond
- 00620 Affidavit of Insurance
- 00621 City of Houston Certificate of Insurance
- 00628 Affidavit of Compliance with Disadvantaged Business Enterprise (DBE) Program for Project Funded By AIP Grant
- 00630 Agreement to Comply with Pay or Play Program
- 00631 List of Participating Subcontractors (POP-3)
- 00801 FAA Supplementary Conditions (for AIP Only)
- 00804 ARRA requirements (for ARRA grants Only)
- 00805 EEO Program Requirements
- 00806 Disadvantaged Business Enterprise (DBE) Program (For AIP Only)
- 00807 Bidder/Contractor Requirements For Disadvantaged Business Enterprise (DBE) Program (For AIP Only)
- 00808 Bidder Requirements for MWSBE Program
- 00810 Federal Wage Rate - Highway
- 00811 Federal Wage Rate - Building
- 00812 Wage Rate for Engineering Heavy – Water & Sewer Line
- 00814 Wage Rate for Engineering Heavy – Flood Control
- 00820 Wage Rate for Engineering Construction
- 00821 Wage Rate for Building Construction
- 00840 Pay or Play Program
- 00842 Letter of Intent



**ARTICLE 8  
SIGNATURES**

8.1 This Agreement is executed in two original copies and is effective as of the date of countersignature by City Controller.

**CONTRACTOR:**

(If Joint Venture)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Tax Identification Number: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Tax Identification Number: \_\_\_\_\_

**CITY OF HOUSTON, TEXAS**

**APPROVED:**

**SIGNED:**

By: \_\_\_\_\_  
Director, Department of Aviation

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

**COUNTERSIGNED:**

By: \_\_\_\_\_  
City Controller

**ATTEST/SEAL:**

Date Countersigned:

By: \_\_\_\_\_  
City Secretary

\_\_\_\_\_

8.2 This Contract and Ordinance have been reviewed as to form by the undersigned legal assistant and have been found to meet established Legal Department criteria. Legal Department has not reviewed the content of these documents.

\_\_\_\_\_  
Legal Assistant

\_\_\_\_\_  
Date

**END OF DOCUMENT**

Document 00600

LIST OF PROPOSED SUBCONTRACTORS AND SUPPLIERS

PROJECT NAME: IAH INTEGRATED COORDINATION CENTER TOTAL DBE AWARD: \$ \_\_\_\_\_  
 ORIG. CONTRACT PRICE: \$ \_\_\_\_\_ TOTAL MWSBE AWARD: \$ \_\_\_\_\_  
 PROJECT NO.: PN793 TOTAL HUB AWARD: \$ \_\_\_\_\_  
 DATE OF REPORT: \_\_\_\_\_ TOTAL PDBE AWARD: \$ \_\_\_\_\_

NAICS (6 digits)	SUBCONTRACTOR OR SUPPLIER (INCLUDE "MWSBE", "PDBE", "DBE", OR "HUB" DESIGNATION) <sup>2</sup>	ADDRESS	SCOPE OF WORK <sup>3</sup>

- NOTES:**
1. RETURN FOR ALL PROJECTS AS REQUIRED IN DOCUMENT 00800 – SUPPLEMENTARY CONDITIONS. RETURN WITHIN THE SPECIFIED NUMBER OF DAYS AFTER RECEIPT OF NOTICE OF INTENT TO AWARD.
  2. DESIGNATE FIRMS CERTIFIED BY THE CITY OFFICE OF BUSINESS OPPORTUNITY ON THIS FORM.
  3. DESCRIBE THE WORK TO BE PERFORMED, FOR WHICH THE FIRM IS CERTIFIED, SUCH AS "PAVING", "ELECTRICAL", ETC.
  4. **CONTRACTOR SHALL EXECUTE CONTRACTS WITH APPROVED SUBCONTRACTORS AND SUPPLIERS WITHIN 30 DAYS AFTER THE DATE OF THE NOTICE TO PROCEED. COPIES OF CONTRACTS WITH DESIGNNATED FIRMS MUST BE SENT TO THE OFFICE OF BUSINESS OPPORTUNITY.**

SIGNATURE: \_\_\_\_\_ COMPANY NAME: \_\_\_\_\_

NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_  
(Type or Print)

Document 00600 Continuation

PROJECT NAME: IAH INTEGRATED COORDINATION CENTER

DATE OF REPORT: \_\_\_\_\_

PROJECT NO.: PN793

NAICS (6 digits)	SUBCONTRACTOR OR SUPPLIER (INCLUDE "MWSBE", "PDBE", "DBE", OR "HUB" DESIGNATION) <sup>2</sup>	ADDRESS	SCOPE OF WORK <sup>3</sup>

SIGNATURE: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

NAME: \_\_\_\_\_  
(Type or Print)

TITLE: \_\_\_\_\_

END OF DOCUMENT

Document 00601

**DRUG POLICY COMPLIANCE AGREEMENT**

I, \_\_\_\_\_, \_\_\_\_\_,  
Name Title

of \_\_\_\_\_  
Contractor

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

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for 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 an HHS-certified drug-testing laboratory to perform drug tests.
3. Monitor and keep records of drug tests given and results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

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

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

\_\_\_\_\_  
Contractor Title

\_\_\_\_\_  
Signature Date

END OF DOCUMENT

Document 00604

HISTORY OF OSHA ACTIONS AND LIST OF ON-THE-JOB INJURIES

Prior to award of the Contract, Low Bidder will be required to file the following with the City:

1. A history of all OSHA actions, advisories, etc., Contractor has received on all jobs worked in any capacity, prime or subcontractor. The history shall be for the two-year period preceding the Bid Date of the Project.
2. A list of all on-the-job injuries, accidents, and fatalities suffered by any present or former employees of Contractor during the same two-year period.
3. If less than the two-year period, give the date Contractor started doing business.

This information must be submitted to the City within the time period stated in Document 00498 - Notice of Intent to Award. An officer of the company must certify in a notarized statement that the information submitted is true and correct.

END OF DOCUMENT

Document 00605

LIST OF SAFETY IMPACT POSITIONS

\*\*\*\*\*

*Contractor is to provide a complete List of Employee Classifications that are considered in a "Safety Impact Position" and the number of employees in each of those classifications.*

\*\*\*\*\*

**Employee Classification**

**Number of Employees**

END OF DOCUMENT

00605-1  
02-01-2004

Document 00610

**PERFORMANCE BOND**

**THAT WE,** \_\_\_\_\_, as Principal, (the "Contractor"), and the other subscriber hereto, \_\_\_\_\_, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Houston (the "City"), a municipal corporation, in the penal sum of \$\_\_\_\_\_ for the payment of which sum, well and truly to be made to the City, its successors and assigns, Contractor and Surety do bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

**THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:**

**WHEREAS,** the Contractor has on or about this day executed a Contract in writing with the City for \_\_\_\_\_, \_\_\_\_\_, all of such work to be done as set out in full in said Contract documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

**NOW THEREFORE,** if the said Contractor shall faithfully and strictly perform the Contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the Contract documents referred to therein and shall comply strictly with each and every provision of the Contract and with this Bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect. Should the Contractor fail to faithfully and strictly perform the Contract in all its terms, including but not limited to the indemnifications thereunder, the Surety shall be liable for all damages, losses, expenses and liabilities that the City may suffer in consequence thereof, as more fully set forth herein.

It is further understood and agreed that the Surety does hereby relieve the City or its representatives from the exercise of any diligence whatever in securing compliance on the part of the Contractor with the terms of the Contract, and the Surety agrees that it shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the Contractor in all matters pertaining to the Contract. The Surety understands and agrees that the provision in the Contract that the City will retain certain amounts due the Contractor until the expiration of 30 days from the acceptance of the Work is intended for the City's benefit, and the City will have the right to pay or withhold such retained amounts or any other amount owing under the Contract without changing or affecting the liability of the Surety hereon in any degree.

It is further expressly agreed by Surety that the City or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Contract documents and in the Work to be done thereunder, as provided in the Contract, and in

the terms and conditions thereof, or to make any change in, addition to, or deduction from the Work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this Bond and undertaking or release the Surety therefrom.

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify and save harmless the City from any liability, loss, cost, expense, or damage arising out of Contractor's performance of the Contract.

If the City gives Surety notice of Contractor's default, Surety shall, within 45 days, take one of the following actions:

1. Arrange for Contractor, with consent of the City, to perform and complete the Contract; or
2. Take over and assume completion of the Contract itself, through its agents or through independent contractors, and become entitled to the payment of the balance of the Contract Price.

If the Surety fails to take either of the actions set out above, it shall be deemed to have waived its right to perform and complete the Contract and receive payment of the balance of the Contract Price and the City shall be entitled to enforce any remedies available at law, including but not limited to completing the Contract itself and recovering any cost in excess of the Original Contract Price from the Surety.

This Bond and all obligations created hereunder shall be performable in Harris County, Texas. This Bond is given in compliance with the provisions of Chapter 2253, Texas Government Code, as amended, which is incorporated herein by this reference.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, 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 respective other Party at the address prescribed in the Contract documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

**[Any party wishing to file a claim may call the Texas Department of Insurance at 1-800-252-3439 to obtain Surety's address for claims processing.](#)**



**IN WITNESS THEREOF**, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

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

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

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

ATTEST/SURETY WITNESS:  
(SEAL)

\_\_\_\_\_  
Full Name of Surety

\_\_\_\_\_  
Address of Surety for Notice

\_\_\_\_\_  
Telephone Number of Surety

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title: Attorney-in-Fact  
Date:

This Ordinance or Contract has been reviewed as to form by the undersigned legal assistant and have been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

\_\_\_\_\_  
Legal Assistant

\_\_\_\_\_  
Date

END OF DOCUMENT

Document 00611

**STATUTORY PAYMENT BOND**

**THAT WE,** \_\_\_\_\_, as Principal, hereinafter called Contractor and the other subscriber hereto, \_\_\_\_\_, as Surety, do hereby acknowledge ourselves to be held and firmly bound unto the City of Houston, a municipal corporation, in the sum of \$\_\_\_\_\_ for the payment of which sum, well and truly to be made to the City of Houston, and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, jointly and severally.

**THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:**

**WHEREAS,** the Contractor has on or about this day executed a contract in writing with the City of Houston for \_\_\_\_\_, all of such work to be done as set out in full in said Contract documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein;

**NOW, THEREFORE,** if the said Contractor shall pay all claimants supplying labor and materials to him or a Subcontractor in the prosecution of the Work provided for in the Contract, then, this obligation shall be void; otherwise the same is to remain in full force and effect;

**PROVIDED HOWEVER,** that this Bond is executed pursuant to the provisions of Chapter 2253, Texas Government Code, as amended, and all liabilities on this Bond shall be determined in accordance with the provisions of said Article to the same extent as if it were copied at length herein.

**IN WITNESS THEREOF,** the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

**Any party wishing to file a claim may obtain Surety's address for claims processing on file with the Texas Department of Insurance by calling [1-800-252-3439](tel:1-800-252-3439).**

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

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

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

ATTEST/SURETY WITNESS:  
(SEAL)

\_\_\_\_\_  
Full Name of Surety

\_\_\_\_\_  
Address of Surety for Notice

\_\_\_\_\_  
Telephone Number of Surety

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title: Attorney-in-Fact  
Date:

This Ordinance or Contract has been reviewed as to form by the undersigned legal assistant and have been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

\_\_\_\_\_  
Legal Assistant

\_\_\_\_\_  
Date

END OF DOCUMENT

Document 00612

**ONE-YEAR MAINTENANCE BOND**

**THAT WE,** \_\_\_\_\_, as Principal, hereinafter called Contractor, and the other subscriber hereto, \_\_\_\_\_, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Houston, a municipal corporation, in the sum of \$\_\_\_\_\_, for the payment of which sum well and truly to be made to the City of Houston and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, jointly and severally.

**THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:**

**WHEREAS,** the Contractor has on or about this day executed a Contract in writing with the City of Houston for \_\_\_\_\_, all of such work to be done as set out in full in said Contract documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

**NOW THEREFORE,** if the said Contractor shall comply with the provisions of Paragraph 11.5.1 of the General Conditions, and correct work not in accordance with the Contract documents discovered within the established one-year period, then this obligation shall become null and void, and shall be of no further force and effect; otherwise, the same is to remain in full force and effect.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, 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 respective other party at the address prescribed in the Contract documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

**IN WITNESS THEREOF,** the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

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

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

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

ATTEST/SURETY WITNESS:

(SEAL)

\_\_\_\_\_  
Full Name of Surety

\_\_\_\_\_  
Address of Surety for Notice

\_\_\_\_\_  
Telephone Number of Surety

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

Name:

Title:

Date:

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

Name:

Title: Attorney-in-Fact

Date:

This Ordinance or Contract has been reviewed as to form by the undersigned legal assistant and have been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

\_\_\_\_\_  
Legal Assistant

\_\_\_\_\_  
Date

END OF DOCUMENT

Document 00620

AFFIDAVIT OF INSURANCE

**BEFORE ME**, the undersigned authority, on this day personally appeared

\_\_\_\_\_, who  
Affiant

being by me duly sworn on his oath stated that he is \_\_\_\_\_, of  
Title

\_\_\_\_\_,  
Contractor's Company Name

the Contractor named and referred to within the Contract documents; that he is fully competent and authorized to give this affidavit and that the attached original insurance certificate truly and accurately reflects the insurance coverage that is now available and will be available during the term of the Contract.

\_\_\_\_\_  
Affiant's Signature

SWORN AND SUBSCRIBED before me on \_\_\_\_\_.  
Date

\_\_\_\_\_  
Notary Public in and for the State of TEXAS

\_\_\_\_\_  
Print or type Notary Public name

My Commission Expires: \_\_\_\_\_  
Expiration Date

END OF DOCUMENT



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:		
	PHONE (A/C, No, Ext):	FAX (A/C, No):	
	E-MAIL ADDRESS:		
	INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED	INSURER A :		
	INSURER B :		
	INSURER C :		
	INSURER D :		
	INSURER E :		
	INSURER F :		

**COVERAGES**                      **CERTIFICATE NUMBER:**                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS  <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE  <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICE/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				<input type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Project Name:  
Project No.:

<b>CERTIFICATE HOLDER</b>  City of Houston Aviation Division 611 Walker Street Houston, Texas 77002	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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# City of Houston Pay or Play Program Certification of Compliance



Prime Contractor: \_\_\_\_\_ Subcontractor: \_\_\_\_\_

Address: \_\_\_\_\_

Outline Number: PN793 Contract Amount: \$ \_\_\_\_\_

Project Name: IAH Integrated Coordination Center

Contracting Department: \_\_\_\_\_

In accordance with the City of Houston Pay or Play Program authorized by Ordinance 2007-534 and Executive Order 1-7, Prime/Subcontractor agrees to abide by the terms of this Program. This certification is required of all contractors for contracts subject to the program. You must agree either to PAY, PLAY or BOTH for all covered employees. If selecting BOTH, the Contractor/Subcontractor may Pay on behalf of some covered employees and Play on behalf of the remaining covered employees.

The Prime/Subcontractor will comply with all provisions of the Pay or Play Program Requirements and will furnish all information and reports requested to determine compliance of the Pay or Play Program (See Executive Order 1-7 for the terms of the Pay or Play program).

The Prime/Subcontractor may agree to **“Pay”** \$1.00 per hour for work performed by covered employees under the contract with the City. If independent contract labor is utilized the Contractor/Subcontractor agrees to report hours worked by the independent contract laborer and pay \$1.00 per hour for work performed.

The Prime/Subcontractor may agree to **“Play”** by providing health benefits to each covered employee. The health benefits must meet the following criteria:

- The employer contributes no less than 75% of the total premium costs per covered employee per month toward the total premium cost.
- The covered employee contributes, if any amount, no greater than 25% of the total monthly premium costs.

<b>Please select whether you choose to:</b>	<b>Pay</b>	<b>Play</b>	<b>Both</b>

The Prime/Subcontractor will file compliance reports with the City, which will include activity for covered employees subject to the program, in the form and to the extent requested by the administering department. Compliance reports shall contain information including, but not limited to, documentation showing employee health coverage and employee work records.

**Note: The contractor is responsible to the City for compliance of covered employees of covered subcontractors.**

Please indicate the estimated number of:	PRIME	SUB
Total Employees on City Job		
Covered Employees		
Non-Covered Employees		
Exempt Employees		

I hereby certify that the above information is true and correct.

\_\_\_\_\_  
**Please Sign**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Please Print Name & Title**



City of Houston  
Pay or Play Program  
List of Subcontractors



Prime Contractor: \_\_\_\_\_  
 Project Number/Description: \_\_\_\_\_  
 POP Contact Person: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Email: \_\_\_\_\_  
 Phone: \_\_\_\_\_

Note: Include ALL subcontractors (use additional form if necessary)

Subcontractor Name	Supplier Y/N?	Amount of Subcontract	Check One			Contact Person	Phone	Email Address	Mailing Address
			Pay	Both (Pay and Play)	N/A				

\*If the above information is found to be submitted fraudulently with the intent to bypass or deceive the purpose of the Pay or Play Program the contractor will be held liable for all compliance requirements from the inception of the contract. All subcontractors that surpass the \$200,000.00 threshold will be responsible for Pay or Play compliance from the inception of the contract.

**Affidavit**

I hereby solemnly affirm, certify and confirm that the total sub-contract value stated above is the final value of the contract (\*) including all material costs, fuel, payroll, taxes, fees, profit sharing, labor or any payments in relation to the contracted work and no separate payment or contract has been made for the sub-contract under contract no. \_\_\_\_\_. The above sub-contract value includes all the costs related to work under the contract. The contractor and sub-contractor(s) agree to inform The Mayor's Office of Business Opportunity of any related cost(s) added to the contracted work and re-submit POP-3 with the current value of the sub-contract. I understand that compliance with "Pay or Play" program is mandatory and nothing has been hidden to circumvent the program requirements.

Contractor Authorized Representative & Title \_\_\_\_\_ Date \_\_\_\_\_  
 Name & Signature

**CITY OF HOUSTON  
STANDARD SPECIFICATION**

**OFFICE OF BUSINESS OPPORTUNITY  
CERTIFICATION BY MATERIAL SUPPLIERS**

Document 00632

**CERTIFICATION BY PROPOSED MATERIAL SUPPLIERS,  
LESSORS, AND PROFESSIONAL SERVICE PROVIDERS  
REGARDING EQUAL EMPLOYMENT OPPORTUNITY**

Company Name: \_\_\_\_\_ \$ \_\_\_\_\_  
(Supplier, Lessor, Professional Service Provider) (Amount of Contract)

Company Address: \_\_\_\_\_

Company Telephone Number: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Web Page/URL Address: \_\_\_\_\_

Company Tax Identification Number: \_\_\_\_\_

Project Name & No.: \_\_\_\_\_

Materials/Services Provided: \_\_\_\_\_

In accordance with Chapter 15 of the City of Houston's Code of Ordinances, Supplier/Lessor/Professional Service Provider represents to be an equal opportunity employer and agrees to abide by the terms of the Ordinance. This certification is required of all Suppliers/Lessors/Professional Service Providers providing goods or service to this project with agreements \$50,000 or more.

Yes  No Supplier agrees not to discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age.

Yes  No Supplier agrees that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, or age.

Yes  No Supplier will comply with all provisions of **Executive Order No. 11246** and rules, regulations and applicable orders of the Department of Labor or other Federal Agency responsible for enforcement of applicable equal opportunity and affirmative action provisions and will likewise furnish all information and reports required by the Mayor or Contract Compliance Officers for the purpose of investigation to ascertain and effect compliance with the City of Houston's Office of Business of Opportunity.

Yes  No The Supplier shall file and cause their sub-tier contractors to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor or Contract Compliance Officers. Compliance reports filed at such times as directed shall contain information including, but not limited to, the practices, policies, programs, and employment policies.

I hereby certify that the above information is true and correct.

\_\_\_\_\_  
COMPANY OFFICER (Signature) DATE

\_\_\_\_\_  
NAME AND TITLE (Print or type)

END OF DOCUMENT

Document 00636

Certificate of Interested Parties

In accordance with Texas Gov't Code §2252.908, the successful bidder must complete Form 1295, Certificate of Interested Parties. Form 1295 is available for downloading on the Texas Ethics Commission's (TEC) website: <https://www.ethics.state.tx.us/forms/1295.pdf>.

The successful bidder must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number.

No later than 30 days after the contract's effective date, the City will upload the successful bidder's completed Form 1295. The TEC will post the Contractor's completed Form 1295 within seven business days of receipt.

For your reference, Form 1295 is attached as part of this document.

END OF DOCUMENT

# CERTIFICATE OF INTERESTED PARTIES

**FORM 1295**

Complete Nos. 1 - 4 and 6 if there are interested parties.  
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY**

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services to be provided under the contract.

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO interested Party.

6 **AFFIDAVIT** I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

\_\_\_\_\_  
 Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said \_\_\_\_\_, this the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, to certify which, witness my hand and seal of office.

\_\_\_\_\_  
 Signature of officer administering oath      Printed name of officer administering oath      Title of officer administering oath

**ADD ADDITIONAL PAGES AS NECESSARY**

Document 00700

**GENERAL CONDITIONS**

AUGUST 7, 2023 EDITION

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**ARTICLE1**  
**GENERAL PROVISIONS**

1.1 **DEFINITIONS.**

- 1.1.1 **Agreement:** Document signed by the Parties and binding the Parties, containing the name of Contractor, title and location of the Project, Original Contract Time, Original Contract Price, enumeration of documents included in the Contract, and other provisions.
- 1.1.2 **Bonds:** Performance Bond, Payment Bond, Maintenance Bond, and other Surety instruments executed by Surety. When in singular form, refers to individual instrument.
- 1.1.3 **Business Enterprise:** Any business entity registered in a program authorized by 49 C.F.R. § 26 (where applicable) or City Code of Ordinances, Chapter 15, Article II, relating to Equal Opportunity Employment and taking affirmative action to ensure that applicants are employed and employees are treated without regard to race, religion, color, sex, national origin, or age. The term "Business Enterprise" may include any Disadvantaged Business Enterprise ("DBE"), Minority Business Enterprise ("MBE"), Woman Business Enterprise ("WBE"), Small Business Enterprise ("SBE"), Person with Disability Enterprise ("PDBE"), and any Historically Underutilized Business ("HUB").
- 1.1.4 **Business Enterprise Policy:** Contract documents and applicable policies relating to Business Enterprises and authorized under 49 C.F.R. § 26 or City Code of Ordinances, Chapter 15, Article V.
- 1.1.5 **Cash Allowance:** An estimated sum of money to be used only for a limited class of expenditures such as utility relocation costs, fees for special licenses or permits, or other "pass-through" costs that would be the same for any contractor. Cash Allowances may not be used to purchase goods or services that are not specified in the Contract. The unspecified items must be purchased according to the terms of Article 7.
- 1.1.6 **Change Order:** Written instrument prepared by the City and signed by City Engineer and Contractor, specifying the following:  
1.1.6.1 a change in the Work;  
1.1.6.2 a change in Contract Price, if any; and  
1.1.6.3 a change in Contract Time, if any.  
The value of a Change Order is the net amount after offsetting all deductions against all additions effected by the Change Order.
- 1.1.7 **City:** The City of Houston, a home rule municipality located principally within Harris County, Texas, including its successors and its authorized representatives.
- 1.1.8 **City Engineer:** The City Engineer, or the City employee representing the City Engineer, designated in the Agreement and authorized to represent the City, or successors.
- 1.1.9 **Claim:** Written demand or written assertion by one Party seeking adjustment of the Contract, payment of money, extension of time, or other relief under the Contract and includes, but is not limited to, claims for materials, labor, equipment, delay, changes, adjustments, substitutions, fees and third party claims. The Party making the Claim has the responsibility to substantiate the Claim.
- 1.1.10 **Conditions of the Contract:** General Conditions and Supplementary Conditions.



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- 1.1.11 *Construction Manager:* Person or firm under contract with the City as its authorized representative to oversee and administer construction of the Work, and who may perform the role of Project Manager and Inspector, as designated by City Engineer in writing.
- 1.1.12 *Contract:* The Agreement; documents enumerated in and incorporated into the Agreement, Modifications, and amendments.
- 1.1.13 *Contract Price:* The monetary amount stated in the Agreement adjusted by Change Order, and increases or decreases in Unit Price Quantities, if any.
- 1.1.14 *Contract Time:* The number of days stated in the Agreement to substantially complete the Work, plus days authorized by Change Order.
- 1.1.15 *Contractor:* Person or firm identified as such in the Agreement including its successors and its authorized representatives.
- 1.1.16 *Date of Commencement of the Work:* Date established in Notice to Proceed on which Contract Time will commence. This date will not be changed by failure of Contractor, or persons or entities for whom Contractor is responsible, to act.
- 1.1.17 *Date of Substantial Completion:* Date that construction, or portion thereof designated by City Engineer, is certified by City Engineer to be substantially complete.
- 1.1.18 *Design Consultant:* Person or firm, under contract with the City, to provide professional services during construction and its authorized representatives. If a Design Consultant is not employed for services during construction, Project Manager will perform duties of Design Consultant designated in the Contract in addition to usual duties of Project Manager.
- 1.1.19 *Drawings:* Graphic and pictorial portions of the Contract that define the character and scope of the Work.
- 1.1.20 *Extra Unit Price:* Unit Prices, which may be required for completion of the Work. These Unit Prices and Unit Price Quantities are in the Contract and are included in Original Contract Price.
- 1.1.21 *Furnish:* To supply, pay for, deliver to the site, and unload.
- 1.1.22 *General Requirements:* The sections of Division 01 Specifications that specify administrative and procedural requirements and temporary facilities required for the Work.
- 1.1.23 *Inspector:* City's employee or agent authorized to assist with inspection of the Work.
- 1.1.24 *Install:* Unpack, assemble, erect, place, anchor, apply, work to dimension, finish, cure, clean, protect, and similar operations.
- 1.1.25 *Legal Holiday:* Day established by the City Council as a holiday.
- 1.1.26 *Major Unit Price Work:* An individual Unit Price item,  
1.1.26.1 whose value is greater than five percent of Original Contract Price,  
1.1.26.2 whose value becomes greater than five percent of Original Contract Price as the result of an increase in quantity, or  
1.1.26.3 whose value is \$100,000, whichever is least.

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- 1.1.27 *Mayor's Office of Business Opportunity*: any reference to, or use of, the "Office of Affirmative Action" shall mean the Mayor's Office of Business Opportunity, or any such future name to which it is changed.
- 1.1.28 *Minor Change in the Work*: A written change in the Work, ordered by City Engineer, that does not change Contract Price or Contract Time, and that is consistent with the general scope of the Contract.
- 1.1.29 *Modification*: Change Order, Work Change Directive, or Minor Change in the Work.
- 1.1.30 *Notice of Noncompliance*: A written notice by City Engineer to Contractor regarding defective or nonconforming work that does not meet the Contract requirements, and that establishes a time by which Contractor shall correct the defective or nonconforming work.
- 1.1.31 *Notice to Proceed*: A written notice by City Engineer to Contractor establishing Date of Commencement of the Work.
- 1.1.32 *Original Contract Price*: The monetary amount originally stated in the Agreement.
- 1.1.33 *Parties*: Contractor and the City. When in singular form, refers to Contractor or the City.
- 1.1.34 *Pollutant*: Any materials subject to the Texas Solid Waste Disposal Act.
- 1.1.35 *Pollutant Facility*: Any facility regulated by the State of Texas to protect the health and environment from contamination by Pollutants, including without limitation, landfills, oil and gas production and storage facilities, wastewater facilities, waste injection wells, and storage tanks (including drums).
- 1.1.36 *Product*: Materials, equipment, or systems incorporated into the Work or to be incorporated into the Work.
- 1.1.37 *Product Data*: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Contractor to illustrate a Product.
- 1.1.38 *Project*: Total construction, of which the Work performed under the Contract may be the whole or a part, and which may include construction by the City or by separate contractors.
- 1.1.39 *Project Manager*: City Engineer's authorized representative for administration of the Work. Titles used within the City's departments may be different than those used in this definition.
- 1.1.40 *Provide*: Furnish and Install, complete, ready for intended use.
- 1.1.41 *Samples*: Physical examples that illustrate Products, or workmanship, and establish standards by which the Work is judged.
- 1.1.42 *Shop Drawings*: Drawings, diagrams, schedules, and other data specially prepared for the Work by Contractor, Subcontractor or Supplier, to illustrate a portion of the Work.
- 1.1.43 *Specifications*: Divisions 01 through 16 of the documents that are incorporated into the Agreement, consisting of written General Requirements and requirements for Products, standards, and workmanship for the Work, and performance of related services.

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- 1.1.44 *Stipulated Price:* Single lump sum amount stated in the Contract for completion of the Work, or for designated portion of the Work.
- 1.1.45 *Subcontractor:* Person or firm that has direct or indirect contract with Contractor or with another Subcontractor to perform a portion of the Work and its authorized representatives.
- 1.1.46 *Superintendent:* Employee of Contractor having authority and responsibility to act for and represent Contractor.
- 1.1.47 *Supplementary Conditions:* Part of Conditions of the Contract that amends or supplements General Conditions.
- 1.1.48 *Supplier:* Manufacturer, distributor, materialman, or vendor having a direct agreement with Contractor or Subcontractor for Products, or services and its authorized representatives.
- 1.1.49 *Surety:* Corporate entity that is bound by one or more Bonds, and is responsible for completion of the Work, including the correction period, and for payment of debts incurred in fulfilling the Contract. Surety shall include co-surety or reinsurer, as applicable.
- 1.1.50 *Underground Facilities:* Pipes, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments and encasements containing such facilities that exist below ground level.
- 1.1.51 *Unit Price:* An amount stated in the Contract for an individual, measurable item of work, which, when multiplied by actual quantity incorporated into the Work, amounts to full compensation for completion of the item, including work incidental to it.
- 1.1.52 *Unit Price Quantities:* Quantities indicated in the Contract that are approximations made by the City for contracting purposes.
- 1.1.53 *Work:* Entire construction required by the Contract, including all labor, Products, and services provided by Contractor to fulfill Contractor's obligations. The Work may constitute the whole or a portion of the Project.
- 1.1.54 *Work Change Directive:* A written change in the Work, ordered by City Engineer, that is within the general scope of the Contract and consisting of additions, deletions, or other revisions. A Work Change Directive will state proposed basis for adjustment, if any, in Contract Price or Contract Time, or both.
- 1.2 **EXECUTION, CORRELATION, AND INTENT.**
- 1.2.1 Execution of the Contract by Contractor is conclusive that Contractor has visited the Work site, become familiar with local conditions under which the Work will be performed, and fully informed itself as to conditions and matters which can affect the Work or costs. Contractor further agrees that it has carefully correlated personal observations with requirements of the Contract.
- 1.2.2 The Contract and Modifications have been read and carefully considered by Contractor, who understands and agrees to their sufficiency for the Work. The Contract may not be more strongly construed against the City than against Contractor and Surety.
- 1.2.3 Contractor shall include all items necessary for proper execution and completion of the Work.

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- 1.2.4 Reference to standard specifications, manuals, or codes of a technical society, organization, or association, or to laws or regulations of a governmental authority, whether specific or implied, mean the latest edition in effect as of date of receipt of bids, except as may be otherwise specifically stated in the Contract.
- 1.2.5 No provision of any referenced standard, specification, or manual changes the duties and responsibilities of the City, City Engineer, Contractor, or Design Consultant from those set forth in the Contract. Nor do these provisions assign to Design Consultant any duty or authority to supervise or direct performance of the Work or any duty or authority to undertake any actions contrary to provisions of the Contract.
- 1.2.6 Organization of Specifications into divisions, sections, and articles and arrangement of Drawings does not control Contractor in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.
- 1.2.7 Unless otherwise defined in the Contract, words which have well-known construction industry technical meanings are used in the Contract in accordance with these recognized meanings.
- 1.3 **OWNERSHIP AND USE OF DOCUMENTS.**
- 1.3.1 Drawings, Specifications, and other documents prepared by the City or by Design Consultant are instruments of service through which the Work to be executed by Contractor is described. Contractor may retain one Contract record set.
- 1.3.2 Neither Contractor, Subcontractor, nor Supplier will own or claim a copyright to documents contained in the Contract or any part of the Contract.
- 1.3.3 Documents contained in the Contract, prepared by the City or by Design Consultant, and copies furnished to Contractor, are for use solely with respect to the Work. They may not be used by Contractor, Subcontractor or Supplier on other projects or for additions to the Work, outside the scope of the Work, without the specific written consent of City Engineer, and Design Consultant, when applicable.
- 1.3.4 Contractor, Subcontractors, and Suppliers are granted a limited license to use and reproduce applicable portions of the Contract appropriate to and for use in execution of their work under the Contract.
- 1.4 **INTERPRETATION.**
- 1.4.1 Specifications are written in an imperative streamlined form and are directed to Contractor, unless noted otherwise. When written in this form, words "shall be" are included by inference where a colon (:) is used within sentences or phrases.
- 1.4.2 In the interest of brevity, the Contract frequently omits modifying words such as "all" and "any" and articles such as "the" and "an", but an absent modifier or article is not intended to affect interpretation of a statement.

## **ARTICLE 2**

### **THE CITY**

- 2.1 **LIMITATIONS OF THE CITY'S OFFICERS AND EMPLOYEES.** No officer or employee of the City may authorize Contractor to perform an act or work contrary to the Contract, except as otherwise provided in the Contract.
- 2.2 **DUTIES OF THE CITY.**

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- 2.2.1 If a building permit is required, the City will process an application for, and Contractor shall purchase the building permit before Date of Commencement of the Work.
- 2.2.2 The City will make available to Contractor a reproducible set of Drawings. Additional copies will be furnished, on Contractor's request, at the cost of reproduction.
- 2.2.3 When necessary for performance of the Work, the City will provide surveys describing physical characteristics, legal limitations, legal description of site, and horizontal and vertical control adequate to lay out the Work.
- 2.2.4 Information or services that the City is required to provide under the Contract will be provided by the City with reasonable promptness to avoid delay in orderly progress of the Work.
- 2.2.5 The Contract imposes no implied duty on the City. The City does not warrant any plans or specifications associated with the Contract.
- 2.2.6 Except as expressly stated in this Article, the City owes no duty to the Contractor or any subcontractor.
- 2.3 **AVAILABILITY OF LAND AND USE OF SITE.**
- 2.3.1 The City will furnish, as indicated in the Contract, rights-of-way, land on which the Work is to be performed, and other land designated in the Contract for use by Contractor unless otherwise provided in the Contract.
- 2.3.2 Contractor shall confine operations at site to those areas permitted by law, ordinances, permits, and the Contract, and may not unreasonably encumber site with materials or equipment.
- 2.3.3 In addition to land provided by the City under Section 2.3, Contractor shall provide all land and access to land that may be required for use by Contractor for temporary construction facilities or for storage of materials and equipment, and shall indemnify the City during its use of the land as stated in Section 3.25.
- 2.4 **THE CITY'S RIGHT TO STOP THE WORK.** If Contractor fails to carry out the Work in accordance with the Contract, or fails to correct work which is not in accordance with requirements of the Contract as required in Sections 12.1 and 12.2, the City may, by Notice of Noncompliance, order Contractor to stop the Work or any portion of the Work until the cause for the order has been eliminated. However, the right of the City to stop the Work will not give rise to a Claim for delay or to a duty on the part of the City to exercise this right for the benefit of Contractor or any other person or entity, except to the extent required by Section 6.2. If Contractor corrects the defective or nonconforming work within the time established in Notice of Noncompliance, City Engineer will give written notice to Contractor to resume performance of the Work.
- 2.5 **THE CITY'S RIGHT TO CARRY OUT WORK.**
- 2.5.1 If Contractor fails to carry out work in accordance with the Contract, and fails within the period established in a Notice of Noncompliance to correct the nonconforming work, the City may, after expiration of the required period, correct the deficiencies without prejudice to other remedies the City may have, including rights of the City under Section 14.1.
- 2.5.1.1 When the City corrects deficiencies, City Engineer will issue an appropriate Change Order and deduct from payments then or thereafter due Contractor the cost of correcting the deficiencies, including compensation for Design Consultant's and Construction Manager's additional services and expenses made necessary by such default, neglect, or failure. This action by the City and amounts charged to

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Contractor are both subject to prior approval of City Engineer. If payments, then or thereafter due Contractor, are not sufficient to cover these amounts, Contractor shall pay the difference to the City.

- 2.5.2 Notwithstanding the City's right to carry out work, maintenance and protection of the Work remains Contractor's responsibility, as provided in the Contract.

**ARTICLE 3**  
**CONTRACTOR**

3.1 *RESPONSIBILITIES.*

3.1.1 Contractor shall maintain office with agent in the greater City of Houston area during the Contractor's performance under the Contract. Contractor shall file its street address with City Engineer.

3.1.2 Contractor and Contractor's employees shall not give or lend money or anything of value to an officer or employee of the City. Should this Paragraph 3.1.2 be violated, City Engineer may terminate the Contract under Section 14.1.

3.2 *REVIEW OF CONTRACT AND FIELD CONDITIONS BY CONTRACTOR.*

3.2.1 Contractor shall carefully study and compare documents contained in the Contract with each other and with information furnished by the City pursuant to Section 2.2 and shall immediately report, in writing, any errors, inconsistencies, or omissions to City Engineer. If work is affected, Contractor shall obtain a written interpretation or clarification from City Engineer before proceeding with the affected work. However, Contractor will not be liable to the City for failure to report an error, inconsistency, or omission in the Contract unless Contractor had actual knowledge or should have had knowledge of the error, inconsistency, or omission.

3.2.2 Contractor shall take field measurements and verify field conditions, and shall carefully compare the conditions and other information known to Contractor with the Contract, before commencing activities. Contractor shall immediately report, in writing, to City Engineer for interpretation or clarification of discrepancies, inconsistencies, or omissions discovered during this process.

3.2.3 Contractor shall make a reasonable attempt to understand the Contract before requesting interpretation from City Engineer.

3.3 *SUPERVISION AND CONSTRUCTION PROCEDURES.*

3.3.1 Contractor shall supervise, direct, and inspect the Work competently and efficiently, devoting the attention and applying the skills and expertise as necessary to perform the Work in accordance with the Contract. Contractor is solely responsible and has control over construction means, methods, techniques, sequences, and procedures of construction; for safety precautions and programs in connection with the Work; and for coordinating all work under the Contract.

3.3.2 Regardless of observations or inspections by the City or City's consultants, Contractor shall perform and complete the Work in accordance with the Contract and submittals approved pursuant to Section 3.18. The City is not liable or responsible to Contractor or Surety for work performed by Contractor that is not in accordance with the Contract regardless of whether discovered during construction or after acceptance of the Work.

3.4 *SUPERINTENDENT.*

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- 3.4.1 Contractor shall employ a competent Superintendent and necessary assistants who shall be present at the site during performance of the Work. Communications given to Superintendent are binding on the Contractor.
- 3.4.2 Contractor shall notify City Engineer in writing of its intent to replace the Superintendent. Contractor may not replace the Superintendent if City Engineer makes a reasonable objection in writing.
- 3.5 **LABOR; MINORITY AND WOMEN BUSINESS ENTERPRISE COMPLIANCE.**
- 3.5.1 Contractor shall provide competent, qualified personnel to survey and lay out the Work and perform construction as required by the Contract. The City may, by written notice, require Contractor to remove from the Work any employee of Contractor or Subcontractors to whom City Engineer makes reasonable objection.
- 3.5.2 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs set out in this Agreement and in the Supplementary Conditions, and as set out in Chapter 15, Article V of the City of Houston Code of Ordinances, and the applicable Office of Business Opportunity's ("OBO") Policies and Procedures. When Original Contract Price is greater than \$1,000,000, Contractor shall make Good Faith Efforts to award subcontracts or supply agreements in at least the percentages set out in the Supplementary Conditions for Business Enterprise Policy ("Stated MWBE goal(s)"). If the Contractor is a certified MBE or WBE, Contractor may count toward goals the work that it commits to perform with its own work force, capped at 50% of the total advertised goal. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with OBO and will comply with them.
- 3.5.2.1 Contractor shall require written subcontracts with Business Enterprises and shall submit all disputes with Business Enterprises to voluntary mediation. Business Enterprise subcontracts complying with City Code of Ordinances Chapter 15, Article II must contain the terms set out in Subparagraph 3.5.3.2. If Contractor is an individual person, as distinguished from a corporation, partnership, or other legal entity, and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.
- 3.5.3 For purposes of this paragraph, "Contract Year" means a 12-month period during the term of the contract commencing on the Countersignature Date of this Agreement and each anniversary thereof. If the term of this Agreement exceeds one Contract Year and Contractor's MWBE participation level in a Contract Year is less than the Stated MWBE goal(s), then within 30 calendar days of the end of each Contract Year Contractor must provide a written explanation to both the Director and Office of Business Opportunity Director ("OBO Director") of the following: (1) the discrepancy between Contractor's MWBE participation level and the Stated MWBE goal(s); (2) the reason for the discrepancy; and (3) Contractor's good faith efforts (in accordance with the City's policy) towards achieving the Stated MWBE goal(s). As part of the good faith efforts assessment, the OBO Director may consider Contractor's failure to timely submit the notice or explanation required by this provision and the OBO Director may impose sanctions or other penalties on Contractor for said failures in accordance with this Section of this Agreement and Chapter 15 of the Code of Ordinances, OBO's policies and procedures, and the City's good faith efforts policy.
- 3.5.4 The OBO Director, in consultation with the Director may review, at any time during the Term of this Agreement, Contractor's progress toward attainment of the Stated MWBE goal(s), by reviewing the percentage of work to MWBE subcontractors and the payments Contractor has made to such MWBE subcontractors. If the OBO Director determines that Contractor is not in compliance with this Section of this Agreement, Chapter 15 of the Code of Ordinances, OBO's policies and procedures, and the City's good faith efforts

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policy, the OBO Director may:

- 3.5.4.1 After consultation with the Director and the Chief Procurement Officer, determine whether any of the following actions should be taken and notify Contractor of such determination:
  - 3.5.4.1.1 Enter a written agreement with Contractor allowing Contractor to cure the noncompliance matter;
  - 3.5.4.1.2 Suspend Contractor from engaging in any contract with the City for a period up to, but not to exceed, five years, pursuant to Section 15-86 of the City's Code of Ordinances, as may be amended from time to time; or
  - 3.5.4.1.3 Take any other appropriate remedy.
- 3.5.4.2 Make a recommendation to the Director and the Chief Procurement Officer, to:
  - 3.5.4.2.1 Withhold payment or reimbursement under this Agreement;
  - 3.5.4.2.2 Make a finding that Contractor is in default or has breached this Agreement;
  - 3.5.4.2.3 Determine not to renew this Agreement;
  - 3.5.4.2.4 Terminate for cause this Agreement; or
  - 3.5.4.2.5 Take any other appropriate remedy.
- 3.5.5 Contractor shall maintain records showing:
  - 3.5.5.1 Subcontracts and supply agreements with Minority Business Enterprises;
  - 3.5.5.2 Subcontracts and supply agreements with Women Business Enterprises;
  - 3.5.5.3 Subcontracts and supply agreements with Small Business Enterprises (if any);
  - 3.5.5.4 Written confirmation from MWBE subcontractors and suppliers that they are participants on the contract; and
  - 3.5.5.5 Specific efforts to identify and award subcontracts and supply agreements to MWBEs. Contractor shall submit periodic reports of its efforts under this Section to the OBO Director in the form and at the times he or she prescribes.
- 3.5.6 Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:

[Name of MWBE subcontractor] shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

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



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

- 3.5.7 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 the Contract for all purposes. Contractor has reviewed Executive Order 1-7 and shall comply with its terms and conditions. **IF CONTRACTOR DOES NOT PAY IN ACCORDANCE WITH THE PAY OR PLAY PROGRAM WITHIN 30 DAYS OF THE DATE CITY ENGINEER SENDS CONTRACTOR WRITTEN NOTIFICATION, CITY CONTROLLER MAY DEDUCT FUNDS UP TO THE AMOUNT OWED FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS CONTRACT, AND CONTRACTOR WAIVES ANY RECOURSE.**
- 3.6 **PREVAILING WAGE RATES.**
- 3.6.1 Contractor shall comply with governing statutes providing for labor classification of wage scales for each craft or type of laborer, worker, or mechanic.
- 3.6.2 Prevailing wage rates applicable to the Work may be one or a combination of the following wage rates identified in Division 00:
- 3.6.2.1 Federal Wage Rate General Decisions
    - 3.6.2.1.1 Highway Rates
    - 3.6.2.1.2 Building Rates
    - 3.6.2.1.3 Heavy Construction Rates
    - 3.6.2.1.4 Residential Rates
  - 3.6.2.2 City Prevailing Wage Rates
    - 3.6.2.2.1 Building Construction Rates
    - 3.6.2.2.2 Engineering Construction Rates
    - 3.6.2.2.3 Asbestos Worker Rates
- 3.6.3 Each week Contractor shall submit to the City's Mayor's Office of Business Opportunity certified copies of payrolls showing classifications and wages paid by Contractor, Subcontractors, and Suppliers for each employee under the Contract, for any day included in the Contract.
- 3.7 **LABOR CONDITIONS.**
- 3.7.1 In the event of labor disputes affecting Contractor or Contractor's employees, Contractor shall utilize all possible means to resolve disputes in order that the Work not be delayed to any extent. These means will include seeking injunctive relief and filing unfair labor practice charges, and any other action available to Contractor.
- 3.7.2 When Contractor has knowledge that any actual or potential labor dispute is delaying or is threatening to delay timely performance of the Work, Contractor shall immediately notify City Engineer in writing. No Claims will be accepted by City Engineer for costs incurred as a result of jurisdictional or labor disputes.
- 3.8 **DRUG DETECTION AND DETERRENCE.**
- 3.8.1 It is the policy of the City to achieve a drug-free work force and to provide a workplace that is free from the use of illegal drugs and alcohol. It is also the policy of the City that manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on the City's premises is prohibited. By executing the

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Contract, Contractor represents and certifies that it meets and will comply with all requirements and procedures set forth in the Mayor's Policy on Drug Detection and Deterrence, City Council Motion No. 92-1971 ("Mayor's Policy") and the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31, (Revised) ("Executive Order"). Mayor's Policy is on file in the office of the City Secretary. Copies of Executive Order may be obtained at the location specified in the Advertisement for Bids.

- 3.8.1.1 The Executive Order applies to the City's contracts for labor or services except the following:
  - 3.8.1.1.1 contracts authorized by Emergency Purchase Orders,
  - 3.8.1.1.2 contracts in which imposition of requirements of the Executive Order would exclude all potential bidders or proposers, or would eliminate meaningful competition for the Contract,
  - 3.8.1.1.3 contracts with companies that have fewer than 15 employees during any 20-week period during a calendar year and no safety impact positions,
  - 3.8.1.1.4 contracts with non-profit organizations providing services at no cost or reduced cost to the public, and
  - 3.8.1.1.5 contracts with federal, state, or local governmental entities.
- 3.8.1.2 Prior to execution of the Contract, Contractor shall have filed with the City:
  - 3.8.1.2.1 a Drug Policy Compliance Agreement form (Attachment "A" to the Executive Order), and
  - 3.8.1.2.2 a copy of Contractor's drug free workplace policy, and
  - 3.8.1.2.3 a written designation of all safety impact positions, if applicable, or a Contractor's Certification of a No Safety Impact Positions form (Attachment "C" to the Executive Order).
- 3.8.1.3 Every six months during performance of the Contract and upon completion of the Contract, Contractor shall file a Drug Policy Compliance Declaration form (Attachment "B" to the Executive Order). The Contractor shall submit the Drug Policy Compliance Declaration within 30 days of expiration of each six-month period of performance and within 30 days of completion of the Contract. The first six-month period shall begin on Date of Commencement of the Work.
- 3.8.1.4 Contractor shall have a continuing obligation to file updated designation of safety impact positions when additional safety impact positions are added to Contractor's employee workforce during performance of the Work.
- 3.8.1.5 Contractor shall require its Subcontractors and Suppliers to comply with the Mayor's Policy and Executive Order. Contractor is responsible for securing and maintaining required documents from Subcontractors and Suppliers for the City inspection throughout the term of the Contract.
- 3.8.1.6 Failure of Contractor to comply with requirements will be a material breach of the Contract entitling the City to terminate in accordance with Section 14.1.

3.9 **MATERIALS & EQUIPMENT.**

- 3.9.1 Unless otherwise provided in the Contract, Contractor shall provide and assume full responsibility for Products, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, transportation, temporary facilities, supplies, and other facilities and incidentals necessary for Furnishing, performing, testing, starting-up, and completing the Work.

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- 3.9.1.1 Contractor, Subcontractors, and Suppliers shall use Ultra Low Sulfur Diesel Fuel in all diesel operating vehicles and motorized equipment utilized in performing the Work. Ultra Low Sulfur Diesel Fuel is defined as diesel fuel having 15 ppm or the applicable standard set by state or federal law or rules and regulations of the Texas Commission on Environmental Quality, or the Environmental Protection Agency, whichever is less in sulfur content. Off-road Ultra Low Sulfur Diesel Fuel may be used in lieu of on-road Ultra Low Sulfur Diesel Fuel. Contractor shall provide, upon request by City Engineer, proof that Contractor, Subcontractors, and Suppliers are using Ultra Low Sulfur Diesel Fuel.
- 3.9.2 Contractor shall provide Products that are:
- 3.9.2.1 new, unless otherwise required or permitted by the Contract, and
- 3.9.2.2 of specified quality.
- If required by City Engineer, Contractor shall furnish satisfactory evidence, including reports of required tests, as to kind and quality of Products.
- 3.9.3 Contractor shall store Products in a safe, neat, compact, and protected manner. Contractor shall also store Products delivered during the work, along the right-of-way:
- 3.9.3.1 so as to cause the least inconvenience to property owners, tenants, and general public; and
- 3.9.3.2 so as not to block access to, or be closer than, three feet to any fire hydrant.
- Contractor shall protect trees, lawns, walks, drives, streets, and other improvements that are to remain, from damage. If private or public property is damaged by Contractor, Contractor shall, at its sole expense, restore the damaged property to at least its original condition.
- 3.9.3.3 Contractor shall obtain City Engineer's approval for storage areas used for Products for which payment has been requested under Paragraph 9.6.1. Contractor shall provide the City access to the storage areas for inspection purposes. Products, once paid for by the City, become the property of the City and may not be removed from place of storage, without City Engineer's written permission except for a movement to the site. Contractor's Installation Floater, required under Section 11.2, shall cover all perils, including loss or damage to Products during storage, loading, unloading, and transit to the site.
- 3.10 *PRODUCT OPTIONS AND SUBSTITUTIONS.*
- 3.10.1 For Products specified by reference standards or by description only, Contractor may provide any Product meeting those standards or description.
- 3.10.2 For Products specified by naming one or more manufacturers with provision for substitutions or equal, Contractor may submit a request for substitution for any manufacturer not named.
- 3.10.3 City Engineer will consider requests for substitutions only within the first 15 percent of Contract Time, or first 90 days after date of Notice to Proceed, whichever is less.
- 3.10.4 Contractor shall document each request for substitution with complete data substantiating compliance of proposed substitution with the Contract.
- 3.10.5 A request for substitution constitutes a representation that Contractor:
- 3.10.5.1 has investigated the proposed Product and determined that it meets or exceeds the quality level of the specified Product;
- 3.10.5.2 shall provide the same warranty for the substitution as for the specified Product;

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- 3.10.5.3 shall coordinate installation of the proposed substitution and make changes to other work which may be required for the Work to be completed, with no additional cost or increase in time to the City;
  - 3.10.5.4 confirms that cost data is complete and includes all related costs under the Contract;
  - 3.10.5.5 waives Claim for additional costs or time extensions that may subsequently become apparent; and
  - 3.10.5.6 shall provide review or redesign services by a design consultant with appropriate professional license and shall obtain re-approval and permits from authorities.
- 3.10.6 City Engineer will not consider and will not approve substitutions when:
- 3.10.6.1 they are indicated or implied on Shop Drawing or Product Data submittals without separate written request; or
  - 3.10.6.2 acceptance will require revision to the Contract.
- 3.10.7 City Engineer may reject requests for substitution, and his decision will be final and binding on the Parties.
- 3.11 **CASH ALLOWANCES.**
- 3.11.1 Contract Price includes Cash Allowances as identified in the Contract.
- 3.11.2 The City will pay the actual costs of Cash Allowance item exclusive of profit, overhead or administrative costs. If actual costs exceed the Cash Allowance, City Engineer must approve a Change Order for the additional costs.
- 3.12 **WARRANTY.**
- 3.12.1 Contractor warrants to the City that Products furnished under the Contract are:
- 3.12.1.1 free of defects in title;
  - 3.12.1.2 of good quality; and
  - 3.12.1.3 new, unless otherwise required or permitted by the Contract.
- If required by the City Engineer, Contractor shall furnish satisfactory evidence as to kind, quality and title of Products, and that Products conform to requirements of the Contract.
- 3.12.2 In the event of a defect in a Product, either during construction or warranty period, Contractor shall take appropriate action with manufacturer of Product to assure correction or replacement of defective Product with minimum delay.
- 3.12.3 Contractor warrants that the Work is free of defects not inherent in the quality required or permitted, and that the Work does conform with the requirements of the Contract. Contractor further warrants that the Work has been performed in a thorough and workmanlike manner.
- 3.12.4 Contractor warrants that the Work is free of concentrations on polychlorinated biphenyl (PCB) and other substances defined as hazardous by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or any other applicable law or regulation.
- 3.12.5 Work not conforming to requirements of Section 3.12, including substitutions not properly approved and authorized, may be considered nonconforming work.
- 3.12.6 Contractor's warranty excludes remedy for damage or defect caused by:
- 3.12.6.1 improper or insufficient maintenance by the City;
  - 3.12.6.2 normal wear and tear under normal usage; or
  - 3.12.6.3 claim that hazardous material was incorporated into the Work, if that material was specified in the Contract.

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- 3.12.7 Contractor warrants that title to all work covered by Contractor's request for payment passes to the City upon incorporation into the Work or upon Contractor's receipt of payment, whichever occurs first. The Contractor further warrants that the title is free of all liens, claims, security interests or other interests ("Encumbrances"). If not, upon written demand from City Engineer, Contractor shall immediately take legal action necessary to remove Encumbrances.
- 3.13 **TAXES.**
- 3.13.1 Contractor shall pay all sales, consumer, use, and similar taxes, which are in effect or scheduled to go into effect on or before bids are received, related to work provided by Contractor.
- 3.13.2 Contractor shall obtain, and require Subcontractors and Suppliers to obtain, necessary permits from the state and local taxing authorities to perform contractual obligations under the Contract, including sales tax permits.
- 3.13.3 The City is exempt from the Federal Transportation and Excise Tax. Contractor shall comply with federal regulations governing the exemptions.
- 3.13.4 Products incorporated into the Work are exempt from state sales tax according to provisions of the TEX. TAX CODE ANN. CH. 151, Subsection H.
- 3.14 **PERMITS, FEES, AND NOTICES.** Unless otherwise provided in the Contract, Contractor shall secure and pay for all construction permits, licenses, and inspections:
- 3.14.1 necessary for proper execution and completion of the Work; and
- 3.14.2 legally required at time bids are received.
- 3.15 **CONSTRUCTION SCHEDULES.**
- 3.15.1 On receipt of Notice to Proceed, Contractor shall promptly prepare and submit construction schedule for the Work for City Engineer's review. The schedule must reflect the minimum time required to complete the Work not to exceed Contract Time.
- 3.15.2 Contractor shall give 24-hour written notice to City Engineer before commencing work or resuming work where work has been stopped. Contractor shall also give the same notice to inspectors.
- 3.15.3 Contractor shall incorporate milestones specified in Summary of Work Specification into the construction schedule. Contractor's failure to meet a milestone, as determined by City Engineer, may be considered a material breach of the Contract.
- 3.15.4 Each month, Contractor shall submit to City Engineer a copy of an updated construction schedule indicating actual progress, incorporating applicable changes, and indicating courses of action required to assure completion of the Work within Contract Time.
- 3.15.5 Contractor shall keep a current schedule of submittals that coordinates with the construction schedule, and shall submit the initial schedule of submittals to City Engineer for approval.
- 3.16 **DOCUMENTS AND SAMPLES AT THE SITE.**
- 3.16.1 Contractor shall maintain at the site, and make available to City Engineer, one record copy of Drawings, Specifications, and Modifications. Contractor shall maintain the documents in good order and marked currently to record changes and selections made during construction. In addition, Contractor shall maintain at the site, approved Shop Drawings, Product Data, Samples, and similar submittals, which will be delivered to City Engineer prior to final inspection as required in Paragraph 9.11.4.

- 3.16.2 Contractor shall maintain all books, documents, papers, accounting records, and other relevant documentation pursuant to the Work and shall make the books, documents, papers, and accounting records available to representatives of the City for review and audits during the Contract term and for the greater of three years following Date of Substantial Completion or until all litigation or audits are fully resolved.
- 3.16.3 Contractor shall provide to City Attorney all documents and records that City Attorney deems necessary to assist in determining Contractor's compliance with the Contract, with the exception of those documents made confidential by federal or state law or regulation.
- 3.17 *MANUFACTURER'S SPECIFICATIONS.*
- 3.17.1 Contractor shall handle, store, and Install Products and perform all work in the manner required by Product manufacturer. Should the Contract and manufacturer's instructions conflict, Contractor shall report conflict to City Engineer for resolution prior to proceeding with the affected work.
- 3.17.1 References in the Contract to the manufacturer's specifications, directions, or recommendations, mean manufacturer's current published documents in effect as of date of receipt of bids, or in the case of a Modification, as of date of Modification.
- 3.18 *SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES.*
- 3.18.1 Shop Drawings, Product Data, and Samples are not part of the Contract. The purpose of Contractor submittals is to demonstrate, for those portions of the Work for which submittals are required, the way Contractor proposes to conform to information given and design concept expressed in the Contract.
- 3.18.2 Contractor shall submit to Project Manager for review the Shop Drawings, Product Data, and Samples, which are required by the Contract. Review by Project Manager is subject to limitations of Paragraph 4.1.4. Contractor shall transmit the submittals to the Project Manager with reasonable promptness and in a sequence, so as to cause no delay in the Work or in activities of the City or of separate contractors. Contractor shall transmit submittals in time to allow a minimum of 30 days for Project Manager's review prior to date Contractor needs reviewed submittals returned. This time may be shortened for a particular job requirement if approved by Project Manager in advance of submittal.
- 3.18.3 Contractor shall certify that the content of submittals conforms to the Contract without exception by affixing Contractor's approval stamp and signature. By certifying and submitting Shop Drawings, Product Data, and Samples, Contractor represents, and Contractor's stamp of approval shall state, that Contractor has determined and verified materials, quantities, field measurements, and field construction criteria related to the submittal, and has checked and coordinated information contained within the submittals with requirements of the Contract.
- 3.18.4 Contractor may not perform any work requiring submittal and review of Shop Drawings, Product Data, or Samples until the submittal has been returned with appropriate review decision by the Project Manager. Contractor shall perform work in accordance with the review.
- 3.18.5 If Contractor performs any work requiring submittals prior to review and acceptance of the submittals by Project Manager, such work is at Contractor's risk and the City is not obligated to accept work if the submittals are later found to be unacceptable.
- 3.18.6 If, in the opinion of Project Manager, the submittals are incomplete, or demonstrate an inadequate understanding of the Work or lack of review by the Contractor, then submittals may be returned to the Contractor for correction and resubmittal.

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- 3.18.7 Contractor shall direct specific attention in writing and on the resubmitted Shop Drawings, Product Data, or Samples to any additional proposed revisions, other than those revisions requested by Project Manager on previous submittals.
- 3.18.8 Contractor is not relieved of responsibility for deviations from requirements of the Contract by Project Manager's review of Shop Drawings, Product Data, or Samples unless Contractor has specifically informed Project Manager in writing of the deviation at the time of the submittal, and Project Manager has given written approval of the deviation.
- 3.18.9 When professional certification of performance criteria of Products is required by the Contract, the City may rely upon accuracy and completeness of the calculations and certifications.
- 3.18.10 For Product colors or textures to be selected by the City, Contractor shall submit all samples together to allow preparation of a complete selection schedule.
- 3.18.11 Contractor shall submit informational submittals, on which Project Manager is not expected to take responsive action, as required by the Contract.
- 3.18.12 Submittals made by Contractor which are not required by the Contract may be returned to Contractor without action.
- 3.19 *CULTURAL RESOURCES AND ENDANGERED SPECIES.*
- 3.19.1 Contractor may not remove or disturb, or cause to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, vestiges, remains, or objects of antiquity. If Contractor discovers one of these items, Contractor shall immediately notify City Engineer and further comply with the requirements of 13 Tex. Admin. Code Chs. 25 and 26 (2002), or successor regulation. Contractor shall protect site and cultural resources from further disturbance until professional examination can be made or until clearance to proceed is authorized in writing by City Engineer.
- 3.19.2 Should either threatened or endangered plant or animal species be encountered, Contractor shall cease work immediately in the area of encounter and notify City Engineer.
- 3.20 *CUTTING AND PATCHING.*
- 3.20.1 Contractor is responsible for necessary cutting, fitting, and patching to accomplish the Work and shall suitably support, anchor, attach, match, and trim or seal materials to work of other contractors. Contractor shall coordinate the Work with work of other contractors to minimize conflicts, as provided in Article 6.
- 3.20.2 Contractor may not endanger work by cutting, digging, or other action, and may not cut or alter work of other contractors except by written consent of City Engineer and affected contractor.
- 3.21 *CLEANING.*
- 3.21.1 Contractor shall perform daily cleanup of all dirt, debris, scrap materials and other disposable items resulting from Contractor's operations, whether on-site or off-site. Unless otherwise authorized in writing by City Engineer, Contractor shall keep all streets, access streets, driveways, areas of public access, walkways, and other designated areas clean and open at all times.
- 3.21.2 Failure of Contractor to maintain a clean site, including access streets, is the basis for City Engineer to issue a Notice of Noncompliance. Should compliance not be attained

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within the time period in the Notice of Noncompliance, City Engineer may authorize necessary cleanup to be performed by others and the cost of the cleanup will be deducted from monies due Contractor.

Contractor shall legally dispose off-site, all waste materials and other excess materials resulting from Contractor's operations.

3.22 **SANITATION.** Contractor shall provide and maintain sanitary facilities at site for use of all construction forces under the Contract. Newly-constructed or existing sanitary facilities may not be used by Contractor.

3.23 **ACCESS TO WORK AND TO INFORMATION.**

3.23.1 Contractor shall provide the City, Design Consultant, testing laboratories, and governmental agencies which have jurisdictional interests, access to the Work in preparation and in progress wherever located. Contractor shall provide proper and safe conditions for the access.

3.23.2 If required by City Engineer, Contractor shall furnish information concerning character of Products and progress and manner of the Work, including information necessary to determine cost of the Work, such as number of employees, pay of employees, and time employees worked on various classes of the Work.

3.24 **TRADE SECRETS.** Contractor will not make any claim of ownership of trade secrets as to products used in the Work, or preparation of any mixture for the Work. City Engineer will at all times have the right to demand and Contractor shall furnish information concerning materials or samples of ingredients of any materials used, or proposed to be used, in preparation of concrete placed or other work to be done. Mixtures, once agreed on, shall not be changed in any manner without knowledge and consent of City Engineer. The City will make its best efforts to protect confidentiality of proprietary information.

3.25 **INDEMNIFICATION.**

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

3.25.1.1 CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED SUBPARAGRAPHS .1 through .3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

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

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

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THE CONTRACT AND FOR FOUR YEARS AFTER THE CONTRACT TERMINATES. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.



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- 3.25.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE LIABILITY OF CONTRACTOR FOR THE CITY'S CONCURRENT NEGLIGENCE SHALL NOT EXCEED \$1,000,000.
- 3.26 *RELEASE AND INDEMNIFICATION – PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT.*
- 3.26.1 UNLESS OTHERWISE SPECIFICALLY REQUIRED BY THE CONTRACT, CONTRACTOR 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 CONTRACTOR, ALLEGING THAT THE CITY’S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THE CONTRACT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.
- 3.26.2 CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, OR PRODUCT WITHOUT THE CITY ENGINEER'S PRIOR WRITTEN CONSENT.
- 3.26.3 UNLESS OTHERWISE SPECIFICALLY REQUIRED BY THE CONTRACT, WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER:
- 3.26.3.1 OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, OR PRODUCT, OR
- 3.26.3.2 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 PRODUCT, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.
- 3.27 *INDEMNIFICATION PROCEDURES.*
- 3.27.1 *Notice of Indemnification Claims:* If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other Party within 10 days. The notice must include the following:
- 3.27.1.1 a description of the indemnification event in reasonable detail,
- 3.27.1.2 the basis on which indemnification may be due, and
- 3.27.1.3 the anticipated amount of the indemnified loss.
- This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10-day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.
- 3.27.2 *Defense of Indemnification Claims:*
- 3.27.2.1 *Assumption of Defense:* Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnified loss.

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- 3.27.2.2 *Continued Participation:* If Contractor elects to defend the claim, the City may retain separate counsel to participate in, but not control, the defense and to participate in, but not control, any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it:
- 3.27.2.2.1 would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City;
  - 3.27.2.2.2 would require the City to pay amounts that Contractor does not fund in full; or
  - 3.27.2.2.3 would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

**3.28 CONTRACTOR DEBT. IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY CITY CONTROLLER IN WRITING. IF CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, IT SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR. CONTRACTOR 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 THE CONTRACT.**

**3.29 PRESERVATION OF CONTRACTING INFORMATION.**

3.29.1 The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that this Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. If the requirements of Subchapter J, Chapter 552, Texas Government Code, apply to this Agreement, then for the duration of this Agreement (including the initial term, any renewal terms, and any extensions), Contractor shall preserve all Contracting Information, as defined by Section 552.003 of the Texas Government Code, related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy, which record retention requirements include but are not limited to those set forth in Chapters 201 and 205 of the Texas Local Government Code and Texas Administrative Code Title 13, Chapter 7. Within five business days after receiving a request from the Director, Contractor shall provide any Contracting Information related to this Agreement that is in the custody or possession of Contractor. Upon the expiration or termination of this Agreement, Contractor shall, at the Director's election, either (a) provide, at no cost to the City, all Contracting Information related to this Agreement that is in the custody or possession of Contractor, or (b) preserve the Contracting Information related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy.

3.29.2 If Contractor fails to comply with any one or more of the requirements of this Section, *PRESERVATION OF CONTRACTING INFORMATION*, or Subchapter J, Chapter 552, Texas Government Code, then, in accordance with and pursuant to the processes and procedures set forth in Sections 552.373 and 552.374 of the Texas Government Code, the Director shall provide notice to the Contractor and may terminate this Agreement. To effect final termination, the Director must notify Contractor in writing with a copy of the notice to the CPO. After receiving the notice, Contractor shall, unless the notice directs

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

#### **ARTICLE 4**

#### **ADMINISTRATION OF THE CONTRACT**

##### **4.1 *CONTRACT ADMINISTRATION.***

4.1.1 City Engineer will provide administration of the Contract and City Engineer is authorized to issue Change Orders, Work Change Directives, and Minor Changes in the Work.

4.1.2 City Engineer may act through Project Manager, Design Consultant, or Inspector. When the term "City Engineer" is used in the Contract, action by City Engineer is required unless City Engineer delegates his authority in writing. The City Engineer may not delegate authority to render decisions under Section 4.4.

The City does not have control over or charge of, and is not responsible for, supervision, construction, and safety procedures enumerated in Section 3.3. The City does not have control over or charge of and is not responsible for acts or omissions of Contractor, Subcontractors, or Suppliers.

4.1.3 The City and Design Consultant may attend project meetings and visit the site to observe progress and quality of the Work. The City and Design Consultant are not required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work.

4.1.4 Project Manager will review and approve or take other appropriate action on Contractor's submittals, but only for limited purpose of checking for conformance with information given and design concept expressed in the Contract.

4.1.5 Project Manager's review of the submittals is not conducted for purpose of determining accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of Products, all of which remain the responsibility of Contractor.

4.1.6 Project Manager's review of submittals does not relieve Contractor of its obligations under Sections 3.3, 3.12, and 3.18. Review does not constitute approval of safety precautions or, unless otherwise specifically stated by Project Manager in writing, of construction means, methods, techniques, sequences, or procedures. Project Manager's review of a specific item does not indicate approval of an assembly of which the item is a component.

4.1.7 Based on field observations and evaluations, Project Manager will process Contractor's progress payments, certify amounts due Contractor, and issue Certificates for Payment in the amount certified.

4.1.8 Project Manager will receive and forward to City Engineer for his review and records, written warranties and related documents required by the Contract and assembled by Contractor.

4.1.9 Upon written request by Contractor or Project Manager, City Engineer will resolve matters of interpretation of or performance of the Contract, which are not Claims. City Engineer's decisions are final and binding on the Parties.

4.1.10 City Engineer may reject work which does not conform to the Contract.

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- 4.1.11 When City Engineer considers it necessary to implement the intent of the Contract, City Engineer may require additional inspection or testing of work in accordance with Paragraphs 13.6.3 and 13.6.4, whether such work is fabricated, Installed, or completed.
- 4.2 **COMMUNICATIONS IN ADMINISTRATION OF THE CONTRACT.** Except as otherwise provided in the Contract or when authorized by City Engineer in writing, Contractor shall communicate with Project Manager. Contractor shall communicate with Design Consultant, Design Consultant's subconsultants, and separate contractors through Project Manager. The City will communicate with Subcontractors and Suppliers through Contractor.
- 4.3 **CLAIMS AND DISPUTES.**
- 4.3.1 **Documentation by Project Manager:** Contractor shall submit Claims, including those alleging an error or omission by Project Manager or Design Consultant, to Project Manager for documentation and recommendation to City Engineer.
- 4.3.2 **Decision of City Engineer:** Upon submission of Claim by Project Manager or Contractor, City Engineer will resolve Claims in accordance with Section 4.4.
- 4.3.3 **Time Limits on Claims:** Claims by Contractor must be made within 90 days after occurrence of event giving rise to the Claim.
- 4.3.4 **Continuing the Contract Performance:** Pending final resolution of a Claim including referral to non-binding mediation, unless otherwise agreed in writing, Contractor shall proceed diligently with the performance of the Contract and the City will continue to make payments in accordance with the Contract.
- 4.3.4.1 Pending final resolution of a Claim including referral to non-binding mediation, Contractor is responsible for safety and protection of physical properties and conditions at site.
- 4.3.5 **Claims for Concealed or Unknown Conditions:** Concealed or unknown physical conditions include utility lines, other man-made structures, storage facilities, Pollutants and Pollutant Facilities, and the like, but do not include conditions arising from Contractor operations, or failure of Contractor to properly protect and safeguard subsurface facilities. Concealed conditions also include naturally-occurring soil conditions outside the range of soil conditions identified through geotechnical investigations, but do not include conditions arising from groundwater, rain, or flood.
- 4.3.5.1 If conditions are encountered at the site which are Underground Facilities or otherwise concealed or unknown conditions which differ materially from:
- 4.3.5.1.1 those indicated by the Contract; or
- 4.3.5.1.2 conditions which Contractor could have discovered through site inspection, geotechnical testing, or otherwise;
- then Contractor will give written notice to City Engineer no later than five days after Contractor's first observation of the condition and before condition is disturbed. Contractor's failure to provide notice constitutes a waiver of a Claim.
- 4.3.5.2 City Engineer will promptly investigate concealed or unknown conditions. If City Engineer determines that conditions at the site are not materially different and that no change in Contract Price or Contract Time is justified, City Engineer will notify Contractor in writing, stating reasons. If City Engineer determines the conditions differ materially and cause increase or decrease in Contractor's cost or time required for performance of part of the Work, City Engineer will recommend an adjustment in Contract Price or Contract Time, or both, as provided in Article 7. Opposition by a Party to the City Engineer's determination

must be made within 21 days after City Engineer has given notice of the decision. If the Parties cannot agree on adjustment to Contract Price or Contract Time, adjustment is subject to further proceedings pursuant to Section 4.4.

- 4.3.6 *Claims for Additional Cost:* If Contractor wishes to make a Claim for increase in Contract Price, Contractor shall give written notice before proceeding with work for which Contractor intends to submit a Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.
- 4.3.6.1 Contractor may file a Claim in accordance with Section 4.4 if Contractor believes it has incurred additional costs, for the following reasons:
- 4.3.6.1.1 written interpretation of City Engineer;
  - 4.3.6.1.2 order by City Engineer to stop the Work when Contractor is not at fault;
  - 4.3.6.1.3 suspension of the Work by City Engineer;
  - 4.3.6.1.4 termination of the Contract by City Engineer; or
  - 4.3.6.1.5 The City's non-compliance with another provision of the Contract.
- 4.3.6.2 No increase in Contract Price is allowed for delays or hindrances to the Work, except for direct and unavoidable extra costs to Contractor caused by failure of the City to provide information and services, or to make land and materials available, when required of the City under the Contract. Any increase claimed is subject to the provisions of Section 4.4 and Article 7.
- 4.3.6.3 The City is not liable for Claims for delay when Date of Substantial Completion occurs prior to expiration of Contract Time.
- 4.3.7 *Claims for Additional Time:* If Contractor wishes to make a Claim for an increase in Contract Time, Contractor shall give written notice as provided in Section 8.2. In case of continuing delay, only one Claim is necessary.
- 4.4 **RESOLUTION OF CLAIMS AND DISPUTES.**
- 4.4.1 City Engineer will review Claims and take one or more of the following preliminary actions within 30 days of receipt of Claim:
- 4.4.1.1 submit a suggested time to meet and discuss the Claim with City Engineer;
  - 4.4.1.2 reject Claim, in whole or in part, stating reasons for rejection;
  - 4.4.1.3 recommend approval of the Claim by the other Party;
  - 4.4.1.4 suggest a compromise; or
  - 4.4.1.5 take other actions as City Engineer deems appropriate to resolve the Claim.
- 4.4.2 City Engineer may request additional supporting data from claimant. Party making Claim shall, within 10 days after receipt of City Engineer's request, submit additional supporting data requested by City Engineer.
- 4.4.3 At any time prior to rendering a written decision regarding a Claim, City Engineer may refer Claim to non-binding mediation. If Claim is resolved, City Engineer will prepare and obtain all appropriate documentation. If Claim is not resolved, City Engineer will take receipt of Claim and begin a new review under Section 4.4.
- 4.4.4 If Claim is not referred to or settled in non-binding mediation, City Engineer may conduct a hearing and will render a written decision, including findings of fact, within 75 days of receipt of Claim, or a time mutually agreed upon by the Parties in writing. City Engineer may notify Surety and request Surety's assistance in resolving Claim. City Engineer's decision is final and binding on the Parties.

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- 4.5 *CONDITION PRECEDENT TO SUIT; WAIVER OF ATTORNEY FEES AND INTEREST.*
- 4.5.1 A final decision by the City Engineer is a condition precedent to file suit in any jurisdiction for a claim made in connection with this Contract.
- 4.5.2 Neither the City nor Contractor may recover attorney fees for any claim brought in connection with this Contract.
- 4.5.3 Neither the City nor the Contractor may recover interest for any damages claim brought in connection with this Contract except as allowed by TEXAS LOCAL GOVERNMENT CODE Chapter 2251.
- 4.6 *INTERIM PAYMENT WAIVER & RELEASE.*
- 4.6.1 In accordance with section 4.3, the Contractor shall use due diligence in the discovery and submission of any Claim against the City related to the Contractor's work.
- 4.6.2 The Contractor shall submit any Claim to the City not later than the 90th day after the occurrence of the event giving rise to the Claim.
- 4.6.3 Any failure to timely comply with the requirements of section 4.6.2 waives and releases any Claim when the Contractor submits an application for payment after the 90th day.
- 4.6.4 This waiver does not cover any retainage. In case of any conflict of law, this language shall be revised to the minimum extent necessary to avoid legal conflict. This waiver is made specifically for the benefit of the City.

## **ARTICLE 5**

### **SUBCONTRACTORS AND SUPPLIERS**

- 5.1 *AWARD OF SUBCONTRACTS OTHER CONTRACTS FOR PORTIONS OF THE WORK.*
- 5.1.1 Contractor may not contract with a Subcontractor, Supplier, person, or entity that City Engineer has made a reasonable and timely objection to.
- 5.1.2 If City Engineer has a reasonable objection to person or entity proposed by Contractor, Contractor shall propose another with whom City Engineer has no reasonable objection.
- 5.1.3 Contractor shall execute contracts with approved Subcontractors, Suppliers, persons, or entities before the Subcontractors or Suppliers begin work under the Contract. All such contracts must be executed and sent to the OBO Director and Contracting Department within 30 days after the date of the Notice to Proceed and must include provisions set forth in Articles 3 and 5 of this Document.
- 5.1.4 Contractor shall notify City Engineer in writing of any proposed change of Subcontractor, Supplier, person, or entity previously accepted by the City.
- 5.1.5 Contractor shall make timely payments to Subcontractors and Suppliers for performance of the Contract. Contractor shall protect, defend, and indemnify the City from any claim or liability arising out of Contractor's failure to make the payments. Disputes relating to payment of Business Enterprise Subcontractors or Suppliers will be submitted to arbitration in same manner as other disputes under Business Enterprise subcontracts. Failure of Contractor to comply with decisions of arbitrator may be determined by City Engineer a material breach leading to termination of the Contract.
- 5.2 *CONTRACTOR RESPONSIBILITY FOR SUBCONTRACTORS.*

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- 5.2.1 Contractor is responsible to the City, as may be required by laws and regulations, for all acts and omissions of Subcontractors, Suppliers, and other persons and organizations performing or furnishing any of the Work under direct or indirect contract with Contractor.
  - 5.2.2 Contractor shall make available to each proposed Subcontractor, prior to execution of subcontract, copies of the Contract to which Subcontractor is bound by this Section 5.2. Contractor shall notify Subcontractor of any terms of proposed subcontract which may be at variance with the Contract.
  - 5.2.3 The City's approval of Subcontractor or Suppliers does not relieve Contractor of its obligation to perform, or to have performed to the full satisfaction of the City, the Work required by the Contract.
  - 5.2.4 Unless there is a contractual relationship between Contractor and a Subcontractor or Supplier to the contrary, Contractor shall withhold no more retainage from Subcontractors or Suppliers than City withholds from Contractor under this Agreement. However, once a Subcontractor or Supplier completes performance, Contractor shall release all retainage to that Subcontractor or Supplier regardless if City continues to retain under this Agreement.
  - 5.2.5 Prior to a Subcontractor or Supplier commencing performance for Contractor, Contractor shall meet with that Subcontractor or Supplier to provide instructions on invoicing procedures, dispute resolution procedures, and statutory rights, such as claim filing procedures under the McGregor Act. Subcontractors and Suppliers must certify to the City Engineer that Contractor has fulfilled the requirements of this Section.

## **ARTICLE 6**

### **CONSTRUCTION BY THE CITY OR BY SEPARATE CONTRACTORS**

- 6.1 *THE CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS.* The City may perform on-site construction operations related to the Work and as part of the Project with the City's workforce or with separate contractors.
- 6.2 *COORDINATION.*
  - 6.2.1 The City will coordinate activities of the City's workforce and of each separate contractor with work of Contractor, and Contractor shall cooperate with the City and separate contractors.
    - 6.2.1.1 Contractor shall participate with other separate contractors and the City in reviewing their construction schedules when directed to do so by the Project Manager. Contractor shall make revisions to construction schedule and Contract Price deemed necessary after joint review and mutual agreement. Construction schedules shall then constitute schedules to be used by Contractor, separate contractors, and the City, until subsequently revised.
  - 6.2.2 Contractor shall afford to the City and to separate contractors reasonable opportunity for introduction and storage of their materials and equipment, and for performance of their activities.
  - 6.2.3 If part of Contractor's work depends on proper execution of construction or operations by the City or a separate contractor, Contractor shall, prior to proceeding with that portion of the Work, inspect the other work and promptly report to City Engineer apparent discrepancies or defects in the other construction that would render it unsuitable for the proper execution of the Work. Failure of Contractor to report apparent discrepancies or defects in the other construction shall constitute acknowledgment that the City's or

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separate contractor's completed or partially completed construction is fit and proper to receive Contractor's work, except as to discrepancies or defects not then reasonably discoverable.

6.3 *MUTUAL RESPONSIBILITY.*

6.3.1 The responsible party bears the costs caused by delays, by improperly timed activities, or by nonconforming construction.

6.3.2 Contractor shall promptly remedy damage caused by Contractor to completed or partially completed construction or to property of the City or separate contractor.

6.3.3 Claims or disputes between Contractor and other City contractors, or subcontractors of other City contractors, working on the Project must be submitted to binding arbitration in accordance with Construction Industry Arbitration Rules of the American Arbitration Association upon demand by any party to the dispute or by the City.

6.4 *THE CITY'S RIGHT TO CLEAN UP.* If dispute arises among Contractor, separate contractors, and the City as to responsibility under their respective contracts for maintaining premises and surrounding area free from waste materials and rubbish as described in Section 3.21, the City may clean up and allocate cost among those responsible, as determined by City Engineer.

## **ARTICLE 7**

### **CHANGES IN THE WORK**

7.1 *CHANGES.*

7.1.1 Changes in scope of the Work, subject to limitations in Article 7 and elsewhere in the Contract, may be accomplished without invalidating the Contract, or without notifying Surety by:

7.1.1.1 Change Order;

7.1.1.2 Work Change Directive; or

7.1.1.3 Minor Change in the Work.

7.1.2 The following types of Change Orders require City Council approval:

7.1.2.1 a single Change Order that exceeds five percent of Original Contract Price,

7.1.2.2 a Change Order which, when added to previous Change Orders, exceeds five percent of Original Contract Price,

7.1.2.3 a Change Order, in which the total value of increases outside of the general scope of work approved by City Council, when added to increases outside the general scope of work approved by City Council in previous Change Orders, exceeds 40 percent of the Original Contract Price, even if the net increase to the Original Contract Price is five percent or less.

In this context, "increase" means an increase in quantity resulting from the addition of locations not within the scope of work approved by City Council, or the addition of types of goods or services not bid as unit price items.

Nothing in this Section is intended to permit an increase of the Contract Price in excess of the limit set out in TEX. LOC. GOV'T CODE ANN. §252.048 or its successor statute.

7.1.3 Contractor shall proceed promptly to execute changes in the Work provided in Modifications, unless otherwise stated in the Modification.

7.2 *WORK CHANGE DIRECTIVES.*



- 7.2.1 A Work Change Directive cannot change Contract Price or Contract Time, but is evidence that the Parties agree that a change, ordered by directive, will be incorporated in a subsequently issued Change Order as to its effect, if any, on Contract Price or Contract Time.
- 7.2.2 Failure by Contractor to commence work identified in a Work Change Directive within the time specified by City Engineer, or to complete the work in a reasonable period of time, may be determined by City Engineer to be a material breach of Contract.
- 7.2.3 A Work Change Directive is used in the absence of total agreement of the terms of a Change Order. Interim payments are made in accordance with Paragraph 9.6.1.
- 7.2.4 If Contractor signs a Work Change Directive, then Contractor agrees to its terms including adjustment in Contract Price and Contract Time or method for determining them. Agreement by the Parties to adjustments in Contract Price and Contract Time are immediately recorded as a Change Order.
- 7.2.5 City Engineer, by Work Change Directive, may direct Contractor to take measures as necessary to expedite construction to achieve Date of Substantial Completion on or before expiration of Contract Time. When the Work is expedited solely for convenience of the City and not due to Contractor's failure to prosecute timely completion of the Work, then Contractor is entitled to an adjustment in Contract Price equal to actual costs determined in accordance with Article 7.

7.3 *ADJUSTMENTS IN CONTRACT PRICE.*

- 7.3.1 Adjustments in Contract Price are accomplished by Change Order and are based on one of the following methods:
  - 7.3.1.1 mutual acceptance of fixed price, properly itemized and supported by sufficient data to permit evaluation;
  - 7.3.1.2 unit prices stated in the Contract or subsequently agreed upon;
  - 7.3.1.3 cost to be determined in a manner agreed upon by the Parties and mutually acceptable fixed or percentage fee; or
  - 7.3.1.4 as provided in Paragraph 7.3.2.
- 7.3.2 If Contractor does not agree with a change in Contract Price or Contract Time or the method for adjusting them specified in the Work Change Directive within 21 days from date of the Work Change Directive's issuance, method and adjustment are determined by City Engineer. If Project Manager or Contractor disagree with City Engineer's determination they then may file a Claim in accordance with Section 4.4.

	<u>Overhead</u>	<u>Profit</u>
to Contractor for change in the Work performed by Subcontractors:	10 percent	0 percent
to first tier Subcontractors for change in the Work performed by its Subcontractors:	10 percent	0 percent
to Contractor and Subcontractor for change in the Work performed by their respective firms:	10 percent	5 percent

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- 7.3.2.1 If City Engineer determines a method and adjustment in Contract Price under Paragraph 7.3.2, Contractor shall provide, in a form as City Engineer may prescribe, appropriate supporting data for items submitted under Paragraph 7.3.2. Failure to submit the data within 21 days of request for the data by City Engineer shall constitute waiver of a Claim.
- 7.3.2.2 Unless otherwise provided in the Contract, costs for the purposes of this Paragraph 7.3.2 are limited to the following:
- 7.3.2.2.1 costs of labor, including labor burden as stated below for social security, unemployment insurance, customary and usual fringe benefits required by agreement or custom, and Workers' Compensation insurance;
    - 7.3.2.2.1.1 the maximum labor burden applied to costs of labor for changes in the Work is 55 percent;
  - 7.3.2.2.2 costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
  - 7.3.2.2.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from Contractor or others, with prior approval of City Engineer;
  - 7.3.2.2.4 costs of premiums for Bonds and insurance and permit fees related to the change in the Work;
  - 7.3.2.2.5 additional costs of direct supervision of work and field office personnel directly attributable to the change; and
  - 7.3.2.2.6 allowances for overhead and profit as stated below.
    - 7.3.2.2.6.1 the maximum allowances for overhead and profit on increases due to Change Orders:
      - 7.3.2.2.6.2 for changes in the Work performed by Contractor and Subcontractors, allowance for overhead and profit are applied to an amount equal to cost of all additions less cost of all deletions to the Work. Allowance for overhead to Contractor and first tier Subcontractors on changes performed by Subcontractors are applied to an amount equal to the sum of all increases to the Work by applicable Subcontractors.
- 7.3.3 If the City deletes or makes a change, which results in a net decrease in Contract Price, the City is entitled to a credit calculated in accordance with Paragraphs 7.3.1 and 7.3.2 and Subparagraphs 7.3.2.1, and 7.3.2.2.1 through 7.3.2.2.5. When both additions and credits covering related work or substitutions are involved in a change, allowance for overhead and profit is figured on the basis of a net increase, if any, with respect to that change in accordance with Subparagraph 7.3.2.2.6.
- 7.3.4 When Contractor agrees with the determination made by City Engineer concerning adjustments in Contract Price and Contract Time, or the Parties otherwise reach agreement upon the adjustments, the agreement will be immediately recorded by Change Order.
- 7.4 **MINOR CHANGES IN THE WORK.** A Minor Change in Work is binding on the Parties. Contractor shall acknowledge, in a written form acceptable to City Engineer, that there is no change in Contract Time or Contract Price and shall carry out the written orders promptly.

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**ARTICLE 8**

**TIME**

8.1 *PROGRESS AND COMPLETION.*

8.1.1 Time is of the essence in the Contract. By executing the Contract, Contractor agrees that Contract Time is a reasonable period for performing the Work.

8.1.2 *Computation of Time:* In computing any period of time prescribed or allowed by the General Conditions, the day of the act, event, or default after which designated period of time begins to run is not to be included. Last day of the period so computed is to be included, unless it is a Sunday or Legal Holiday, in which event the period runs until end of next day which is not a Sunday or Legal Holiday. Sundays and Legal Holidays are considered to be days and are to be included in all other time computations relative to Contract Time.

8.1.3 Contractor may not commence the Work prior to the effective date of insurance and Bonds required by Article 11.

8.1.4 Contractor shall proceed expeditiously and without interruption, with adequate forces, and shall achieve Date of Substantial Completion within Contract Time.

8.1.5 Should progress of the Work fall behind construction schedule, except for reasons stated in Paragraph 8.2.1, Contractor shall promptly submit at the request of Project Manager, updated construction schedule to City Engineer for approval. Contractor's failure to submit updated schedule may, at City Engineer's discretion, constitute a material breach of the Contract. Contractor shall take action necessary to restore progress by working the hours, including night shifts and lawful overtime operations as necessary, to achieve Date of Substantial Completion within Contract Time.

8.1.6 Except in connection with safety or protection of persons or the Work or property at the site or adjacent to the site, and except as otherwise indicated in the Contract, all the Work at the site will be performed Monday through Saturday between the hours of 7:00 a.m. and 7:00 p.m. Contractor may not perform work between 7:00 p.m. and 7:00 a.m., on a Sunday, or on a Legal Holiday, without giving City Engineer 24-hour prior written notice and receiving written consent of City Engineer.

8.2 *DELAYS AND EXTENSIONS OF TIME.*

8.2.1 Contractor may request extension of Contract Time for a delay in performance of work that arises from causes beyond control and without fault or negligence of Contractor. Examples of these causes are:

- 8.2.1.1 acts of God or of the public enemy;
- 8.2.1.2 acts of government in its sovereign capacity;
- 8.2.1.3 fires;
- 8.2.1.4 floods;
- 8.2.1.5 epidemics;
- 8.2.1.6 quarantine restrictions;
- 8.2.1.7 strikes;
- 8.2.1.8 freight embargoes;
- 8.2.1.9 unusually severe weather; and
- 8.2.1.10 discovery of Pollutants or Pollutant Facilities at the site.

8.2.2 For any reason other than those listed in Section 4.3.6.2, if the Contractor's work is delayed in any manner or respect, the Contractor shall have no claim for damages and shall have no right of additional compensation from the City by reason of any delay or

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increased expense to the Contractor's work, except for an extension of time as provided in this provision.

- 8.2.3 Contractor may request an extension of Contract Time for delay only if:
  - 8.2.3.1 delay is caused by failure of Subcontractor or Supplier to perform or make progress; and
  - 8.2.3.2 cause of failure is beyond control of both Contractor and Subcontractor or Supplier.
- 8.2.4 Claims relating to Contract Time must be made in accordance with Paragraph 4.3.7.
- 8.2.5 Claims for extending or shortening Contract Time are based on written notice promptly delivered by the Party making Claim to other Party. Claim must accurately describe occurrence generating Claim, and a statement of probable effect on progress of the Work.
- 8.2.6 Claims for extension of Contract Time are considered only when a Claim is filed within the time limits stated in Paragraph 4.3.3.
  - 8.2.6.1 Notwithstanding paragraph 4.3.3, an extension of time for delays under this paragraph may be granted only upon written application by the Contractor within 48 hours from the claimed delay.
- 8.2.7 Written notice of Claim must be accompanied by claimant's written statement that adjustment claimed is entire adjustment to which claimant is entitled as a result of the occurrence of the event. When the Parties cannot agree, Claims for adjustment in Contract Time are determined by City Engineer in accordance with Section 4.4.
- 8.2.8 Adjustments to Contract Time are accomplished by Change Order.

## **ARTICLE 9**

### **PAYMENTS AND COMPLETION**

#### **9.1 *UNIT PRICE WORK.***

- 9.1.1 Where the Contract provides that all or part of the Work is based on Unit Prices, the Original Contract Price includes, for all Unit Price work, an amount equal to the sum of Unit Prices times Unit Price Quantities for each separately identified item of Unit Price work.
- 9.1.2 Each Unit Price includes an amount to cover Contractor's overhead and profit for each separately identified item.
- 9.1.3 The Contractor may not make a Claim against the City for excess or deficiency in Unit Price Quantities provided in the Contract, except as provided in Subparagraph 9.1.4. Payment at the prices stated in the Contract is in full for the completed work. Contractor is not entitled to additional payment for materials, supplies, labor, tools, machinery and all other expenditures incidental to satisfactory completion of the Work.
- 9.1.4 City Engineer may increase or decrease quantities of the Work within limitations stated in Paragraph 7.1.2. Contractor is entitled to payment for actual quantities of items provided at Unit Prices set forth in the Contract.
- 9.1.5 Where the final quantity of work performed by Contractor on Major Unit Price Work item differs by more than 25 percent from quantity of the item stated in the Contract, a Party may request an adjustment in Unit Price, for the portion that differs by more than 25 percent, by a Change Order under Section 7.3.

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- 9.2 *ESTIMATES FOR PAYMENT, UNIT PRICE WORK.*
- 9.2.1 Following the day of each month indicated in the Contract, Project Manager will prepare a Certificate for Payment for the preceding monthly period based on estimated units of work completed. Prior to preparing Certificate of Payment, Contractor shall have submitted to City Engineer, on a form approved by the Director of the Office of Business Opportunity, evidence satisfactory to the City Engineer of payments made to Subcontractors and Suppliers for the month preceding the month for which the Certificate for Payment is prepared, including evidence of electronic submission of certified payrolls.
- 9.2.2 Before final completion, City Engineer will review and confirm with Contractor the actual final installed Unit Price quantities. City Engineer's determination of actual final installed Unit Price quantities will be included in the final Certificate for Payment and any previous underpayments and overpayments will be reconciled with the actual final Unit Price quantities. Contractor shall file written notice of intent to appeal, if any, City Engineer's determination within 10 days of receipt of final Certificate for Payment. Upon expiration of the 10-day period, City Engineer's decision is final and binding on the Parties. If Contractor submits notice within the 10-day period, Contractor shall submit a Claim in accordance with Section 4.4.
- 9.3 *STIPULATED PRICE WORK.* For work contracted on a Stipulated Price basis, 10 days before submittal of first Application for Payment, Contractor shall submit to City Engineer a Schedule of Values allocated to various portions of the Work, prepared in the form and supported by the data as City Engineer may require to substantiate its accuracy. This schedule, as approved by City Engineer, is used as a basis for approval of Contractor's Applications for Payment.
- 9.4 *APPLICATIONS FOR PAYMENT, STIPULATED PRICE WORK.*
- 9.4.1 For work contracted on a Stipulated Price basis, Contractor shall submit Applications for Payment to City Engineer each month on a form acceptable to City Engineer in accordance with Schedule of Values. Application must indicate percentages of completion of each portion of the Work listed in Schedule of Values as of the end of the period covered by the Application for Payment.
- 9.4.2 Applications for Payment must be supported by substantiating data as City Engineer may require and must reflect retainages as provided below. Evidence satisfactory to the City Engineer of payments made to Subcontractors and Suppliers for the month preceding the month for which the Application for Payment is submitted must accompany each Application for Payment on a form approved by the Director of the Office of Business Opportunity. Evidence of electronic submission of certified payrolls must be included. Application must be sworn and notarized.
- 9.5 *CERTIFICATES FOR PAYMENT.*
- 9.5.1 City Engineer will, within 10 days after the date specified in the Contract for Unit Price work, or upon receipt of Contractor's Application for Payment for Stipulated Price work, issue a Certificate for Payment for work based on amount which City Engineer determines is properly due, with copy to Contractor.
- 9.5.2 Unless otherwise provided in the Contract, payment for completed work and for properly stored Products is conditioned upon compliance with procedures satisfactory to City Engineer to protect the City's interests. Procedures will include applicable insurance, storage, and transportation to site for materials and equipment stored off-site. Contractor is responsible for maintaining materials and equipment until Date of Substantial Completion.
- 9.5.3 Contractor shall document its use of Ultra Low Sulfur Diesel Fuel by providing invoices and receipts evidencing Contractor's use.

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9.6 *COMPUTATIONS OF CERTIFICATES FOR PAYMENT.*

- 9.6.1 Subject to the provisions of the Contract, the amount of each Certificate for Payment is calculated as follows:
- 9.6.1.1 that portion of Contract Price allocated to completed work as determined by:
    - 9.6.1.1.1 multiplying the percentage of completion of each portion of the Work listed in the Schedule of Values by the value of that portion of the Work, or
    - 9.6.1.1.2 multiplying Unit Price quantities Installed times the Unit Prices listed in the Contract;
  - 9.6.1.2 plus progress payments for completed work that has been properly authorized by Modifications;
  - 9.6.1.3 less retainage of five percent;
  - 9.6.1.4 plus actual costs, properly substantiated by certified copies of invoices and freight bills, of non-perishable materials and equipment delivered and properly stored, if approved in advance by Project Manager, less 15 percent;
  - 9.6.1.5 less any previous payments by the City.

9.7 *DECISIONS TO WITHHOLD CERTIFICATION.*

- 9.7.1 City Engineer may decline to certify payment and may withhold payment in whole or in part to the extent reasonably necessary to protect the City if, in City Engineer's opinion, there is reason to believe that:
- 9.7.1.1 nonconforming work has not been remedied;
  - 9.7.1.2 the Work cannot be completed for unpaid balance of Contract Price;
  - 9.7.1.3 there is damage to the City or another contractor;
  - 9.7.1.4 the Work will not be completed within Contract Time and that unpaid balance will not be adequate to cover actual and liquidated damages;
  - 9.7.1.5 probable evidence that third party claims will be filed in court, in arbitration, or otherwise;
  - 9.7.1.6 Contractor has failed to make payments to Subcontractors or Suppliers for labor, material, or equipment; or
  - 9.7.1.7 Contractor has persistently failed to carry out work in accordance with the Contract.
  - 9.7.1.8 Contractor has not paid Subcontractors or Suppliers because of a payment dispute; or
  - 9.7.1.9 Contractor has failed to provide satisfactory evidence described in Paragraphs 9.2.1, 9.4.2, and 9.8.2.
- 9.7.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.
- 9.7.3 City Engineer may decline to certify payment and may withhold request for payment in whole or in part upon failure of Contractor to submit initial construction schedule or monthly schedule updates, as required in Paragraphs 3.15.1 and 3.15.3.

9.8 *PROGRESS PAYMENTS.*

- 9.8.1 The City will make payment, in an amount certified by City Engineer, within 20 days after City Engineer has issued a Certificate for Payment.
- 9.8.2 The City has no obligation to pay or to facilitate the payment to a Subcontractor or Supplier, except as may otherwise be required by law. Contractor shall comply with the prompt payment requirements of Chapter 2251 of the Government Code. State law requires payment of Subcontractors and Suppliers by Contractor within 7 calendar days of Contractor's receipt of payment from the City, unless there is a payment dispute between Contractor and a Subcontractor or Supplier evidenced on a form approved by

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the Director of Mayor's Office of Business Opportunity and submitted to the City Engineer each month with Application for Payment or Estimate for Payment. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.**

9.8.2.1 The City may, upon request and at the discretion of City Engineer, furnish to Subcontractor information regarding percentages of completion or the amounts applied for by Contractor, and action taken thereon by the City because of work done by the Subcontractor.

9.8.2.2 Contractor shall prepare and submit to City Engineer a Certification of Payment to Subcontractors and Suppliers form to be attached to each monthly Estimate for Payment or Application for Payment.

9.8.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Work by the City, does not constitute acceptance of work which is not in accordance with the Contract.

9.9 **DATE OF SUBSTANTIAL COMPLETION.**

9.9.1 When Contractor considers the Work, or a portion thereof designated by City Engineer, to be substantially complete, Contractor shall prepare and submit to Project Manager a comprehensive punch list of items to be completed or corrected. Failure to include an item on the punch list does not alter the responsibility of Contractor to comply with the Contract.

9.9.1.1 By submitting the punch list to Project Manager, Contractor represents that work on the punch list will be completed within the time provided for in Subparagraph 9.9.4.3.

9.9.2 Upon receipt of Contractor's punch list, Project Manager will inspect the Work, or designated portion thereof, to verify that the punch list contains all items needing completion or correction. If Project Manager's inspection discloses items not on Contractor's punch list, the items must be added to the punch list of items to be completed or corrected. If Project Manager's inspection reveals that Contractor is not yet substantially complete, Contractor shall complete or correct the deficiencies and request another inspection by Project Manager. The City may recover the costs of re-inspection from Contractor.

9.9.3 Prior to City Engineer's issuing a Certificate of Substantial Completion, Contractor shall also provide:

9.9.3.1 Certificate of Occupancy for new construction, or Certificate of Compliance for remodeled work, as applicable, and

9.9.3.2 compliance with Texas Accessibility Standards through state inspection of the Work, if required. If Contractor calls for inspection in a timely manner and the inspection is delayed through no fault of Contractor, and City Engineer so confirms, City Engineer may, upon request by Contractor, add the inspection to the punch list in Paragraph 9.9.2 and issue a Certificate of Substantial Completion.

9.9.4 When the Work, or designated portion thereof, is determined by City Engineer to be sufficiently complete in accordance with the Contract so the City can occupy or utilize the Work, or designated portion thereof, for the purpose for which it is intended, City Engineer will prepare a Certificate of Substantial Completion that incorporates the punch list in Paragraph 9.9.2 and establishes:

9.9.4.1 Date of Substantial Completion;

9.9.4.2 responsibilities of the Parties for security, maintenance, heating, ventilating and air conditioning, utilities, damage to the Work, and insurance; and

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- 9.9.4.3 fixed time within which Contractor shall complete all items on punch list of items to be corrected accompanying the certificate.
- 9.9.5 Warranties required by the Contract shall commence on the Date of Substantial Completion unless otherwise provided by City Engineer in Certificate of Substantial Completion. Warranties may not commence on items not substantially completed.
- 9.9.6 After Date of Substantial Completion and upon application by Contractor and approval by City Engineer, the City may make payment, reflecting adjustment in retainage, if any, as follows:
- 9.9.6.1 with the consent of Surety, the City may increase payment to Contractor to 96 percent of Contract Price, less value of items to be completed and accrued liquidated damages.
- 9.9.7 Contractor shall complete or correct the items in Paragraph 9.9.2 within the time period set out in the Certificate of Substantial Completion. If Contractor fails to do so, the City may issue a Notice of Noncompliance and proceed according to Section 2.5.
- 9.10 *PARTIAL OCCUPANCY OR USE.*
- 9.10.1 The City may occupy or use any completed or partially completed portion of the Work at any stage, provided the occupancy or use is consented to by Contractor and Contractor's insurer and authorized by public authorities having jurisdiction over the Work. Consent of Contractor to partial occupancy or use may not be unreasonably withheld.
- 9.10.2 Immediately prior to the partial occupancy or use, Project Manager and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record condition of the Work.
- 9.10.3 Partial occupancy or use of a portion of the Work does not constitute acceptance of work not in compliance with requirements of the Contract.
- 9.11 *FINAL COMPLETION AND FINAL PAYMENT.*
- 9.11.1 Contractor shall review the Contract and inspect the Work prior to Contractor notification to City Engineer that the Work is complete and ready for final inspection. Contractor shall submit affidavit that the Work has been inspected and that the Work is complete in accordance with requirements of the Contract.
- 9.11.2 Project Manager will make final inspection within 15 days after receipt of Contractor's written notice that the Work is ready for final inspection and acceptance. If Project Manager finds the Work has been completed in accordance with the Contract, Contractor shall submit items set out in Paragraph 9.11.4 and, for stipulated price contracts, a final Application for Payment. City Engineer will, within 10 days, issue Certificate of Final Completion stating that to the best of City Engineer's knowledge, information, and belief, the Work has been completed in accordance with the Contract, and will recommend acceptance of the Work by City Council.
- 9.11.3 Should work be found not in compliance with requirements of the Contract, City Engineer will notify Contractor in writing of items of noncompliance. Upon inspection and acceptance of the corrections by Project Manager, compliance with all procedures of Paragraph 9.11.2, and Contractor's submission of the items set out in Paragraph 9.11.4, the City Engineer will issue Certificate of Final Completion to Contractor as provided in Paragraph 9.11.2.
- 9.11.4 Contractor shall submit the following items to City Engineer before City Engineer will issue a Certificate of Final Completion:



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- 9.11.4.1 affidavit that payrolls, invoices for materials and equipment, and other indebtedness of Contractor connected with the Work, less amounts withheld by the City, have been paid or otherwise satisfied. If required by City Engineer, Contractor shall submit further proof including waiver or release of lien or claims from laborers or Suppliers of Products;
  - 9.11.4.2 certificate evidencing that insurance required by the Contract to remain in force after final payment is currently in effect, will not be canceled or materially changed until at least 30 days written notice has been given to the City;
  - 9.11.4.3 written statement that Contractor knows of no substantial reason that insurance will not be renewable to cover correction and warranty period required by the Contract;
  - 9.11.4.4 consent of Surety to final payment; and
  - 9.11.4.5 copies of record documents, maintenance manuals, tests, inspections, and approvals.

Upon City Engineer's issuance of a Certificate of Final Completion, Contractor may request increase in payment to 99 percent of Contract Price, less accrued liquidated damages.

- 9.11.5 If Contractor fails to submit required items in Paragraph 9.11.4 within 10 days of Project Manager's inspection of the Work under Paragraph 9.11.2 or Paragraph 9.11.3, City Engineer may, but is not obligated to:
    - 9.11.5.1 deduct liquidated damages accrued from monies held;
    - 9.11.5.2 proceed to City Council for acceptance of the Work, minus some or all of the items Contractor fails to submit under Paragraph 9.11.4; and,
    - 9.11.5.3 upon acceptance by City Council of the portion of the Work completed, make final payment as set out in Paragraph 9.11.8.
  - 9.11.6 If final completion is materially delayed through no fault of Contractor, or by issuance of Change Orders affecting date of final completion, and City Engineer so confirms, the City may, upon application by Contractor and certification by City Engineer, and without terminating the Contract, make payment of balance due for that portion of the Work fully completed and accepted.
  - 9.11.7 If remaining balance due for work not corrected is less than retainage stipulated in the Contract, Contractor shall submit to City Engineer written consent of Surety to payment of balance due for that portion of the Work fully completed and accepted, prior to certification of the payment. The payment is made under terms governing final payment, except that it does not constitute waiver of Claims.
  - 9.11.8 The City will make final payment to Contractor within 30 days after acceptance of the Work by City Council, subject to limitations, if any, as stated in the Contract.
  - 9.11.9 Acceptance of final payment by Contractor shall constitute a waiver of all Claims, whether known or unknown, by Contractor, except those previously made in writing and identified by Contractor as unsettled at the time of final payment.
- 9.12 **LIQUIDATED DAMAGES.**
- 9.12.1 Contractor, Surety, and the City agree that failure to complete the Work within Contract Time will cause damages to the City and that actual damages from harm are difficult to estimate accurately. Therefore, Contractor, Surety, and the City agree that Contractor and Surety are liable for and shall pay to the City the amount stipulated in Supplementary Conditions as liquidated damages, and that the amount of damages fixed therein is a reasonable forecast of just compensation for harm to the City resulting from Contractor's

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failure to complete the Work within Contract Time. The amount stipulated will be paid for each day of delay beyond Contract Time until Date of Substantial Completion.

- 9.12.2 Contractor shall pay the City an amount equal to \$1,200.00 per diesel operating vehicle or piece of motorized equipment per incident of high sulfur diesel fuel usage.

## **ARTICLE 10**

### **SAFETY PRECAUTIONS**

- 10.1 **SAFETY PROGRAMS.** Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performance of the Contract. Contractor shall submit a safety program to City Engineer prior to mobilizing for the Work, and is solely responsible for safety, efficiency, and adequacy of ways, means, and methods, and for damage which might result from failure or improper construction, maintenance, or operation performed by Contractor.
- 10.2 **POLLUTANTS AND POLLUTANT FACILITIES.**
- 10.2.1 If Contractor encounters material on-site which it reasonably believes to be a Pollutant or facilities which it reasonably believes to be a Pollutant Facility, Contractor shall immediately stop work in affected area and immediately notify City Engineer, confirming the notice thereafter in writing.
- 10.2.2 If City Engineer determines that the material is a Pollutant or facility is a Pollutant Facility, work in affected area may not be resumed except by Modification, and only if the work would not violate applicable laws or regulations.
- 10.2.3 If City Engineer determines that the material is not a Pollutant or a facility is not a Pollutant Facility, work in affected area will be resumed upon issuance of a Modification.
- 10.2.4 Contractor is not required to perform, unless authorized by Change Order, work relating to Pollutants or Pollutant Facilities except for that work relating to Pollutants or Pollutant Facilities specified in the Contract.
- 10.3 **SAFETY OF THE ENVIRONMENT, PERSONS, AND PROPERTY.**
- 10.3.1 Contractor shall take reasonable precautions for safety and shall provide reasonable protection to prevent damage, injury, or loss from all causes, to:
- 10.3.1.1 employees performing work on-site, and other persons who may be affected thereby;
- 10.3.1.2 work, including Products to be incorporated into the Work, whether in proper storage, under control of Contractor or Subcontractor; and
- 10.3.1.3 other property at or adjacent to the site, such as trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal or replacement in course of construction.
- 10.3.2 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons, property, or environment.
- 10.3.2.1 Contractor shall comply with requirements of Underground Facility Damage Prevention and Safety Act TEX. UTIL. CODE ANN. Ch. 251 (Vernon Supp. 2002).
- 10.3.2.2 Contractor shall comply with all safety rules and regulations of the Federal Occupational Health and Safety Act of 1970 and subsequent amendments (OSHA).

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- 10.3.3 Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection of persons and property, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.
- 10.3.4 Contractor shall designate responsible member of Contractor's organization at site whose duty is prevention of accidents. This person will be Contractor's Superintendent unless otherwise designated by Contractor in writing to City Engineer.
- 10.3.5 Contractor shall prevent windblown dust and may not burn or bury trash debris or waste products on-site. Contractor shall prevent environmental pollution, including but not limited to particulates, gases and noise, as a result of the Work.
- 10.3.6 When use or storage of hazardous materials or equipment, or unusual methods are necessary for execution of the Work, Contractor shall exercise utmost care and carry on the activities under supervision of properly qualified personnel.
- 10.3.7 Contractor shall promptly remedy damage and loss to property referred to in Subparagraphs 10.3.1.2 and 10.3.1.3, caused in whole or in part by Contractor, or Subcontractors, which is not covered by insurance required by the Contract. Contractor is not required to remedy damage or loss attributable to the City, Design Consultant, or other contractors.
- 10.4 **EMERGENCIES.** In emergencies affecting safety of persons or property, Contractor shall act at Contractor's discretion to prevent imminent damage, injury, or loss. Additional compensation or extension of time claimed by Contractor because of emergencies are determined as provided in Article 7.

## **ARTICLE 11**

### **INSURANCE AND BONDS**

- 11.1 **GENERAL INSURANCE REQUIREMENTS.**
- 11.1.1 With no intent to limit Contractor's liability under indemnification provisions set forth in Paragraphs 3.25 and 3.26, Contractor shall provide and maintain in full force and effect during term of the Contract and all extensions and amendments thereto, at least the following insurance and available limits of liability.
- 11.1.2 If any of the following insurance is written as "claims made" coverage and the City is required to be carried as additional insured, then Contractor's insurance shall include a two-year extended discovery period after last date that Contractor provides any work under the Contract.
- 11.1.3 Aggregate amounts of coverage, for purposes of the Contract, are agreed to be amounts of coverage available during fixed 12-month policy period.
- 11.2 **INSURANCE TO BE PROVIDED BY CONTRACTOR.**
- 11.2.1 *Risks and Limits of Liability.* Contractor shall maintain the insurance coverages in the listed amounts, as set out in Table 1.
- 11.2.2 If Limit of Liability for Excess Coverage is \$2,000,000 or more, Limit of Liability for Employer's Liability may be reduced to \$500,000.
- 11.2.3 *Insurance Coverage.* At all times during the term of this Contract and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the

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Contract requirements. Prior to beginning performance under the Contract, at any time upon the Director's request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Contractor shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Contractor waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Contractor 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.

- 11.2.4 *Form of insurance.* The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Contract. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) 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. Each insurer is subject to approval by City Engineer in City Engineer's sole discretion as to conformance with these requirements.
- 11.2.5 *Required Coverage.* The City shall be an Additional Insured under this Contract, and all policies except Professional Liability and Worker's Compensation must name the City as an Additional Insured. Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor'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, Contractor 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.
- 11.2.6 *Deductibles.* Contractor assumes and bears any claims or losses to extent of deductible amounts and waives any claim it may ever have for same against the City, its officers, agents, or employees.
- 11.2.7 *Notice.* **CONTRACTOR 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, Contractor shall provide other suitable policies in order to maintain the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.
- 11.2.8 *Subrogation.* Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees. Each policy, except professional liability, must contain an endorsement waiving such claim.
- 11.2.9 *Endorsement of Primary Insurance.* Each policy, except Workers' Compensation policies, must contain an endorsement that the policy is primary insurance to any other insurance available to additional insured with respect to claims arising hereunder.

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11.2.10 *Liability for Premium.* Contractor is solely responsible for payment of all insurance premium requirements hereunder and the City is not obligated to pay any premiums.

11.2.11 *Additional Requirements for Workers' Compensation Insurance Coverage.* Contractor shall, in addition to meeting the obligations set forth in Table 1, maintain throughout the term of the Contract Workers' Compensation coverage as required by statute, and Contractor shall specifically comply with requirements set forth in Paragraph 11.2.10. The definitions set out below shall apply only for purposes of this Paragraph 11.2.10.

11.2.12 Definitions.

11.2.12.1 *Certificate of Coverage:* A copy of certificate of insurance, or coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory Workers' Compensation insurance coverage for Contractor's, Subcontractor's, or Supplier's employees providing services for the duration of the Contract.

11.2.12.2 *Duration of the Work:* Includes the time from Date of Commencement of the Work until Contractor's work under the Contract has been completed and accepted by City Council.

11.2.12.3 *Persons providing services for the Work (Subcontractor in Texas Labor Code § 406.096):* includes all persons or entities performing all or part of services Contractor has undertaken to perform on the Work, regardless of whether that person contracted directly with Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of the entity, or employees of entity which furnishes persons to provide services on the Work. Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to the Work. Services do not include activities unrelated to the Work, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

11.2.13 Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of coverage agreements, which meets the statutory requirements of TEX. LAB. CODE ANN., Section 401.011(44) for employees of Contractor providing services on the Work, for duration of the Work.

11.2.14 Contractor shall provide a Certificate of Coverage to the City prior to being awarded the Contract.

11.2.15 If coverage period shown on Contractor's original Certificate of Coverage ends during duration of the Work, Contractor shall file new Certificate of Coverage with the City showing that coverage has been extended.

11.2.16 Contractor shall obtain from each person providing services on the Work, and provide to City Engineer:

11.2.16.1 Certificate of Coverage, prior to that person beginning work on the Work, so the City will have on file Certificates of Coverage showing coverage for all persons providing services on the Work; and

11.2.16.2 no later than seven days after receipt by Contractor, new Certificate of Coverage showing extension of coverage, if coverage period shown on current Certificate of Coverage ends during the duration of the Work.

11.2.17 Contractor shall retain all required Certificates of Coverage for the duration of the Work and for one year thereafter.

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- 11.2.18 Contractor shall notify City Engineer in writing by certified mail or personal delivery, within 10 days after Contractor knew or should have known, of any change that materially affects provision of coverage of any person providing services on the Work.
- 11.2.19 Contractor shall post on-site a notice, in text, form and manner prescribed by Texas Workers' Compensation Commission, informing all persons providing services on the Work that they are required to be covered, and stating how person may verify coverage and report lack of coverage.
- 11.2.20 Contractor shall contractually require each person with whom it contracts to provide services on the Work to:
- 11.2.20.1 provide coverage, based on proper reporting of classification codes, payroll amounts and filing of any coverage agreements, which meets statutory requirements of TEX. LAB. CODE ANN., Section 401.011(44) for all its employees providing services on the Work, for the duration of the Work;
  - 11.2.20.2 provide to Contractor, prior to that person's beginning work on the Work, a Certificate of Coverage showing that coverage is being provided for all employees of the person providing services on the Work, for the duration of the Work;
  - 11.2.20.3 provide Contractor, prior to the end of the coverage period, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current Certificate of Coverage ends during the duration of the Work;
  - 11.2.20.4 obtain from each other person with whom it contracts, and provide to Contractor: (1) Certificate of Coverage, prior to other person's beginning work on the Work; and (2) new Certificate of Coverage showing extension of coverage, prior to end of coverage period, if coverage period shown on the current Certificate of Coverage ends during duration of the Work.
  - 11.2.20.5 retain all required Certificates of Coverage on file for the duration of the Work and for one year thereafter;
  - 11.2.20.6 notify City Engineer in writing by certified mail or personal delivery within 10 days after person knew, or should have known, of change that materially affects provision of coverage of any person providing services on the Work; and
  - 11.2.20.7 contractually require each person with whom it contracts to perform as required by Paragraphs 11.2.10.1 through 11.2.10.7, with Certificates of Coverage to be provided to person for whom they are providing services.
- 11.2.21 By signing the Contract or providing or causing to be provided a Certificate of Coverage, Contractor is representing to the City that all employees of Contractor who will provide services on the Work will be covered by Workers' Compensation coverage for the duration of the Work, that coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with appropriate insurance carrier. Contractor is not allowed to self-insure Workers' Compensation. Contractor may be subject to administrative penalties, criminal penalties, civil penalties, or other civil actions for providing false or misleading information.
- 11.2.22 Contractor's failure to comply with Paragraph 11.2.10 is a breach of the Contract by Contractor, which entitles the City to declare the Contract void if Contractor does not remedy breach within 10 days after receipt of notice of breach from City Engineer.
- 11.2.23 *Subcontractor Insurance Requirements:* Contractor shall require Subcontractors and Suppliers to obtain Commercial General Liability, Workers' Compensation, Employer's Liability and Automobile Liability coverage that meets all the requirements of Paragraph

11.2. The amount must be commensurate with the amount of the subcontract, but not less than \$500,000 per occurrence. Contractor shall require all Subcontractors with whom it contracts directly, whose subcontracts exceed \$100,000, to provide proof of Commercial General Liability and Automobile Liability insurance coverage meeting the above requirements. Contractor shall comply with all requirements set out under Paragraph 11.2.10 as to Workers' Compensation Insurance for all Subcontractors and Suppliers.

TABLE 1 REQUIRED COVERAGE	
Coverage	Limit of Liability
Workers' Compensation	<ul style="list-style-type: none"> <li>• Texas Statutory Limits 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 Property Damage, Contractual Liability, Explosion, Underground and Collapse, Bodily Injury, Personal Injury, Products, and Completed Operations (for a period of one year following completion of the Work).	<ul style="list-style-type: none"> <li>• \$1,000,000 Limit (each occurrence), subject to general aggregate Limit of \$2,000,000</li> <li>• Products and Completed Operations \$2,000,000 aggregate Limit</li> </ul>
Owner's and Contractor's Protective Liability	<ul style="list-style-type: none"> <li>• \$1,000,000 each Occurrence/ aggregate</li> </ul>
Installation Floater (Unless alternative coverage approved by City Attorney)	<ul style="list-style-type: none"> <li>• Value of stored material or equipment, listed on Certificates of Payments, but not yet incorporated into the Work</li> </ul>
Automobile Liability Insurance: (For automobiles furnished by Contractor in course of his performance under the Contract, including Owned, Non-owned, and Hired Auto coverage)	<ul style="list-style-type: none"> <li>• \$1,000,000 combined single limit each occurrence for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos</li> </ul>
Excess Coverage	<ul style="list-style-type: none"> <li>• \$1,000,000 each occurrence/ aggregate in excess of limits specified for Commercial General Liability, and Automobile Liability</li> </ul>
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

11.3 **PROOF OF INSURANCE.**

11.3.1 Prior to commencing services and at time during the term of the Contract, Contractor shall furnish City Engineer with Certificates of Insurance, along with Affidavit from Contractor confirming that Certificate accurately reflects insurance coverage that is available during term of the Contract. If requested in writing by City Engineer, Contractor shall furnish City Engineer with certified copies of Contractor's actual insurance policies. Failure of Contractor to provide certified copies, as requested, may be deemed, at City Engineer's or City Attorney's discretion, a material breach of the Contract.

11.3.2 Notwithstanding the proof of insurance requirements, Contractor shall continuously maintain in effect required insurance coverage set forth in Paragraph 11.2. Failure of

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Contractor to comply with this requirement does constitute a material breach by Contractor allowing the City, at its option, to immediately suspend or terminate work, or exercise any other remedy allowed under the Contract. Contractor agrees that the City has not waived or is not estopped to assert a material breach of the Contract because of any acts or omissions by the City regarding its review or non-review of insurance documents provided by Contractor, its agents, employees, or assigns.

- 11.3.3 Contractor shall provide updated certificates of insurance to the Director upon request. The Contractor shall be responsible for delivering a current certificate of insurance in the proper form to the Director as long as Contractor is required to furnish insurance coverage under Paragraph 11.2.
- 11.3.4 Every certificate of insurance Contractor delivers in connection with this Contract shall
- 11.3.4.1 be less than 12 months old;
  - 11.3.4.2 include all pertinent identification information for the Insurer, including the company name and address, policy number, NAIC number or AMB number, and authorized signature;
  - 11.3.4.3 include in the Certificate Holder Box the Project name and reference numbers, contractor's email address, and indicates the name and address of the Project Manager;
  - 11.3.4.4 include the Contractor's email address in the Certificate Holder Box;
  - 11.3.4.5 include the Project reference numbers on the City address so the Project reference number is visible in the envelope window; and
  - 11.3.4.6 be appropriately marked to accurately identify all coverages and limits of the policy, effective and expiration dates, and waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and Worker's Compensation/Employers' Liability.
- 11.4 **PERFORMANCE AND PAYMENT BONDS.** For Contracts over the value of \$25,000, Contractor shall provide Bonds on the City's standard forms covering faithful performance of the Contract and payment of obligations arising thereunder as required in the Contract pursuant to Chapter 2253 of the Government Code. The Bonds must be for 100 percent of Original Contract Price and in accordance with conditions stated on standard City Performance and Payment Bond and Statutory Payment Bond forms. Bonds may be obtained from Contractor's usual source and cost for the Bonds are included in Contract Price.
- 11.5 **MAINTENANCE BONDS – One-year Maintenance Bond.** Contractor shall provide Bond on standard City One-year Maintenance Bond form, providing for Contractor's correction, replacement, or restoration of any portion of the Work which is found to be not in compliance with requirements of the Contract during one-year correction period required in Paragraph 12.2. The Maintenance Bond must be for 100 percent of the Original Contract Price.
- 11.6 **SURETY.**
- 11.6.1 A Bond that is given or tendered to the City pursuant to the Contract must be executed by a surety company that is authorized and admitted to write surety Bonds in the State of Texas.
  - 11.6.2 If a Bond is given or tendered to the City pursuant to the Contract in an amount greater than 10 percent of Surety's capital and surplus, Surety shall provide certification that Surety has reinsured that portion of the risk that exceeds 10 percent of Surety's capital and surplus. The reinsurance must be with one or more reinsurers who are duly authorized, accredited, or trusted to do business in the State of Texas. The amount reinsured by reinsurer may not exceed 10 percent of reinsurer's capital and surplus. The amount of allowed capital and surplus must be based on information received from State Board of Insurance.



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- 11.6.3 If the amount of a Bond is greater than \$100,000, Surety shall:
- 11.6.3.1 also hold certificate of authority from the United States Secretary of Treasury to qualify as surety on obligations permitted or required under federal law; or,
  - 11.6.3.2 Surety may obtain reinsurance for any liability in excess of \$100,000 from reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States Secretary of the Treasury to qualify as surety or reinsurer on obligations permitted or required under federal law.
- 11.6.4 Determination of whether Surety on the Bond or the reinsurer holds a certificate of authority from the United States Secretary of the Treasury is based on information published in Federal Register covering the date on which Bond was executed.
- 11.6.5 Each Bond given or tendered to the City pursuant to the Contract must be on City forms with no changes made by Contractor or Surety, and must be dated, executed, and accompanied by power of attorney stating that the attorney in fact executing such the bond has requisite authority to execute such Bond. The Bonds must be dated and must be no more than 30 days old.
- 11.6.6 Surety shall designate in its Bond, power of attorney, or written notice to the City, an agent resident in Harris County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.
- 11.6.7 Contractor shall furnish information to a payment bond beneficiary as required by TEX. GOV'T CODE ANN. CH. 2253.
- 11.7 **DELIVERY OF BONDS.** Contractor shall deliver required Bonds to the City within time limits stated in Notice of Intent to Award and prior to Date of Commencement of the Work.

## **ARTICLE 12**

### **UNCOVERING AND CORRECTION OF THE WORK**

- 12.1 **UNCOVERING OF THE WORK.** If a portion of the Work has been covered which City Engineer has not specifically requested to observe prior to its being covered, City Engineer may request to see such work and it must be uncovered by Contractor. If such work is in accordance with the Contract, the costs of uncovering and covering such work are charged to the City by Change Order. If such work is not in accordance with the Contract, Contractor shall pay for uncovering and shall correct the nonconforming Work promptly after receipt of Notice of Noncompliance to do so.
- 12.2 **CORRECTION OF THE WORK.**
- 12.2.1 Contractor shall promptly correct or remove work rejected by City Engineer or work failing to conform to requirements of the Contract, whether observed before or after Date of Substantial Completion and whether fabricated, installed, or completed.
  - 12.2.2 Contractor bears costs of correcting the rejected or nonconforming work including additional testing and inspections, and compensation for Design Consultant's services and expenses made necessary thereby.
  - 12.2.3 If within one year after Date of Substantial Completion, or after date for commencement of warranties established under Paragraph 9.9.5 or by other applicable special warranty required by the Contract, whichever is later in time, any of the Work is found not to be in accordance with the requirements of the Contract, Contractor shall correct such work promptly after receipt of Notice of Noncompliance to do so.

- 12.2.4 One-year correction period for portions of the Work completed after Date of Substantial Completion will begin on the date of acceptance of that portion of the Work. This obligation under this Paragraph survives acceptance of the Work under the Contract and termination of the Contract.
- 12.2.5 The one-year correction period does not establish a duration for the Contractor's general warranty under Paragraph 3.12. The City retains the right to recover damages from the Contractor as long as may be permitted by the applicable statute of limitations.
- 12.2.6 If Contractor does not proceed with correction of the nonconforming work within time fixed by Notice of Noncompliance, the City may correct nonconforming work or remove nonconforming work and store salvageable Products at Contractor's expense. Contractor shall pay the costs of correction of nonconforming work and removal and storage of salvageable Products to the City. If Contractor does not pay costs of the correction or removal and storage within 10 days after written notice, the City may sell the Products at auction or at private sale. The City will account for proceeds thereof after deducting costs and damages that would have been borne by Contractor, including compensation for services of Design Consultant and necessary expenses. If the proceeds of sale do not cover costs which Contractor should have borne, Contractor shall pay the value of the deficiency to the City.
- 12.2.7 Contractor bears cost of correcting work originally installed by Contractor, the City, or by separate contractors and damaged by Contractor's correction or removal of Contractor's work.
- 12.3 *ACCEPTANCE OF NONCONFORMING WORK.* If City Engineer prefers to accept work which is not in accordance with requirements of the Contract, City Engineer may do so only by issuance of Change Order, instead of requiring its removal and correction. City Engineer will determine Contract Price reduction. The reduction will become effective even if final payment has been made.

## ARTICLE 13

### MISCELLANEOUS PROVISIONS

- 13.1 *GOVERNING LAW AND VENUE.* This Contract 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 Contract shall lie exclusively in Harris County, Texas.
- 13.2 *SUCCESSORS.* The Contract binds and benefits the Parties and their legal successors and permitted assigns; however, this Paragraph 13.2.1 does not alter the restrictions on assignment and disposal of assets set out in Paragraph 13.3.1. The Contract does not create any personal liability on the part of any officer or agent of the City.
- 13.3 *BUSINESS STRUCTURE AND ASSIGNMENTS.*
- 13.3.1 Contractor may not assign the Contract at law or otherwise, or dispose of all or substantially all of its assets without City Engineer's prior written consent. Nothing in this Section, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor 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.

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13.3.2 Any series, as defined by the TEX. BUS. ORG. CODE ANN., affiliate, subsidiary, or successor to which Contractor assigns or transfers assets shall join in privity and be jointly and severally liable under this Contract.

13.4 *WRITTEN NOTICE.*

13.4.1 All notices required or permitted by the Contract must be in writing and must be effected by hand delivery; registered or certified mail, return receipt requested; or facsimile with confirmation copy mailed to receiving Party. Notice is sufficient if made or addressed with proper postage to the address stated in the Agreement for each Party ("Notice Address") or faxed to the facsimile number stated in the Agreement for each Party. The notice is deemed delivered on the earlier of:

13.4.1.1 the date the Notice is actually received;

13.4.1.2 the third day following deposit in a United States Postal Service post office or receptacle; or

13.4.1.3 the date the facsimile is sent unless the facsimile is sent after 5:00 p.m. local time of the recipient and then it is deemed received on the following day.

Any Party may change its Notice Address or facsimile number at any time by giving written notice of the change to the other Party in the manner provided for in this Paragraph at least 15 days prior to the date the change is affected.

13.5 *RIGHTS AND REMEDIES.*

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

13.5.2 No act or failure to act by the City or Contractor is a waiver of rights or duties afforded them under the Contract, nor is the act or failure to act constitute approval of or acquiescence in a breach of the Contract. No waiver, approval or acquiescence is binding unless in writing and, in the case of the City, signed by City Engineer.

13.6 *TESTS AND INSPECTIONS.*

13.6.1 Contractor shall give City Engineer, Construction Manager, and Design Consultant timely notice of the time and place where tests and inspections are to be made. Contractor shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

13.6.2 The City will employ and pay for services of an independent testing laboratory to perform inspections or acceptance tests required by the Contract except:

13.6.2.1 inspections or tests covered by Paragraph 13.6.3;

13.6.2.2 those otherwise specifically provided in the Contract; or

13.6.2.3 costs incurred in connection with tests or inspections conducted pursuant to Paragraph 12.2.2.

13.6.3 Contractor is responsible for and shall pay all costs in connection with inspection or testing required in connection with City Engineer's acceptance of a Product to be incorporated into the Work, or of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation into the Work.

13.6.4 Neither observations by the City, Construction Manager, or Design Consultant, nor inspections, tests, or approvals by others, relieves Contractor from Contractor's obligations to perform the Work in accordance with the Contract.

13.7 *INTEREST.* No interest will accrue on late payments by the City except as provided under Chapter 2251 of the Government Code.

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- 13.8 *PARTIES IN INTEREST.* The Contract does not bestow any rights upon any third party, but binds and benefits the Parties only.
- 13.9 *ENTIRE CONTRACT.* The 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 the Contract.
- 13.10 *WRITTEN AMENDMENT.* Changes to the Contract that cannot be effected by Modifications, must be made by written amendment, which will not be effective until approved by City Council.
- 13.11 *COMPLIANCE WITH LAWS.*
- 13.11.1 Contractor shall comply with the Americans with Disabilities Act of 1990 as amended (ADA) and Texas Architectural Barriers Act and all regulations relating to either statute.
- 13.11.2 Contractor shall comply with all applicable federal, state, and city laws, rules and regulations.
- 13.12 *SEVERABILITY.* If any part of the Contract is for any reason found to be unenforceable, all other parts remain enforceable to the extent permitted by law.
- 13.13 *COMPLIANCE WITH CERTAIN STATE LAW REQUIREMENTS.*
- 13.13.1 *Anti-Boycott of Israel.* Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.
- 13.13.2 *Anti-Boycott of Energy Companies.* Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.
- 13.13.3 *Anti-Boycott of Firearm Entities or Firearm Trade Associations.* Contractor certifies that Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.
- 13.13.4 *Certification of No Business with Foreign Terrorist Organizations.* For purposes of Section 2252.152 of the Code, Contractor certifies that, at the time of this Agreement neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Code as a company known to have contracts with or provide supplies or to a foreign terrorist organization.
- 13.14 *ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING & 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 Agreement for all purposes. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Agreement's effective date. Contractor shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Contractor or its subcontractors providing services or goods under this Agreement.

#### **ARTICLE 14**

#### **TERMINATION OR SUSPENSION OF THE CONTRACT**

14.1 *TERMINATION BY THE CITY FOR CAUSE.*

14.1.1 Each of the following acts or omissions of Contractor or occurrences shall constitute an "Event of Default" under the Contract:

- 14.1.1.1 Contractor refuses or fails to supply enough properly skilled workers or proper Products;
- 14.1.1.2 Contractor disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;
- 14.1.1.3 Contractor is guilty of material breach of any duty or obligation of Contractor under the Contract, including, but not limited to, failure to submit certified payrolls electronically;
- 14.1.1.4 Contractor has had any other contract with the City terminated for cause at any time subsequent to the effective date of the Contract as set out in the Agreement; or
- 14.1.1.5 Contractor fails to utilize Ultra Low Sulfur Diesel Fuel, as required in Paragraph 3.9.1.1.

14.1.2 If an Event of Default occurs, City Engineer may, at his option and without prejudice to any other rights or remedies which the City may have, deliver a written notice to Contractor and Surety describing the Event of Default and giving the Contractor 10 days to cure the Event of Default. If after the cure period, Contractor has failed or refused to cure the Event of Default, then City Engineer may deliver a second written notice to Contractor giving notice of the termination of the Contract or of the termination of Contractor's performance under the Contract ("Notice of Termination"). If City Engineer issues a Notice of Termination, then City Engineer may, subject to any prior rights of Surety and any other rights of the City under the Contract or at law:

- 14.1.2.1 request that Surety complete the Work; or
- 14.1.2.2 take possession of the site and all materials, equipment, tools, and construction equipment and machinery on the site owned by Contractor; and
- 14.1.2.3 finish the Work by whatever reasonable method City Engineer may deem expedient.

14.1.3 After Contractor's receipt of a Notice of Termination, and except as otherwise directed in writing by City Engineer, Contractor shall:

- 14.1.3.1 stop the Work on the date and to the extent specified in the Notice of Termination;
- 14.1.3.2 place no further orders or subcontracts for Products or services;
- 14.1.3.3 terminate all orders and subcontracts to the extent that they relate to performance of work terminated;
- 14.1.3.4 assign to the City, in the manner, at the times, and to the extent directed by City Engineer, all rights, title, and interest of Contractor, under the terminated supply orders and subcontracts. The City may settle or pay claims arising out of termination of the orders and subcontracts;
- 14.1.3.5 settle all outstanding liabilities and all claims arising out of the termination of supply orders and subcontracts with approval of City Engineer;
- 14.1.3.6 take action as may be necessary, or as City Engineer may direct, for protection and preservation of property related to the Work that is in possession of Contractor, and in which the City has or may acquire an interest; and
- 14.1.3.7 secure the Work in a safe state before leaving the site, providing any necessary safety measures, shoring, or other devices.

14.1.4 If the City terminates the Contract or terminates Contractor's performance under the Contract for any one or more of the reasons stated in Paragraph 14.1.1, Contractor may not receive any further payment until the Work is complete, subject to Paragraph 14.1.5.

14.1.5 If the unpaid balance of Contract Price exceeds the costs of finishing the Work, including liquidated damages and other amounts due under the Contract, the balance will be paid to Contractor. If the costs of finishing the Work exceed the unpaid balance, Contractor shall, within 10 days of receipt of written notice setting out the amount of the excess costs, pay the difference to the City. The amount to be paid to Contractor or the City will be certified by City Engineer in writing, and this obligation for payment shall survive termination of the Contract or termination of Contractor's performance under the Contract. Termination of the Contractor for cause shall not relieve the Surety from its obligation to complete the project.

14.2 *TERMINATION BY THE CITY FOR CONVENIENCE.*

14.2.1 City Engineer may, without cause and without prejudice to other rights or remedies of the City, give Contractor and Surety a Notice of Termination with a seven days written notice.

14.2.2 After receipt of the Notice of Termination, and except as otherwise approved by City Engineer, Contractor shall conform to requirements of Paragraph 14.1.3.

14.2.3 After receipt of the Notice of Termination, Contractor shall submit and substantiate to the City its termination Claim, in forms required by City Engineer. The Claim will be submitted and substantiated to the City promptly, but no later than six months from the effective date of termination, unless one or more extensions are granted by City Engineer in writing. If Contractor fails to submit its termination Claim within the time allowed, in accordance with Paragraph 14.2.4, City Engineer will determine, on the basis of available information, the amount, if any, due to Contractor because of termination, and City Engineer's determination is final and binding on the Parties. The City will then pay to Contractor the amount so determined.

14.2.4 City Engineer will determine, on the basis of information available to City Engineer, the amount due, if any, to Contractor for the termination as follows:

14.2.4.1 Contract Price for all work performed in accordance with the Contract up to the date of termination determined in the manner prescribed for monthly payments in Article 9, except no retainage is withheld by the City either for payment determined by percentage of completion or for materials and equipment delivered to the site, in storage or in transit.

14.2.4.2 Reasonable termination expenses, including costs for settling and paying Subcontractor and Supplier claims arising out of termination of the Work, reasonable cost of preservation and protection of the City's property after termination, if required, and the cost of Claim preparation. Termination expenses do not include field or central office overhead, salaries of employees of Contractor, or litigation costs, including attorneys' fees.

No amount is allowed for anticipated profit or central office overhead on uncompleted work, or any cost or lost profit for other business of Contractor alleged to be damaged by the termination.

14.2.5 Contractor shall promptly remove from the site any construction equipment, tools, and temporary facilities, except the temporary facilities which City Engineer may wish to purchase and retain.

14.2.6 Contractor shall cooperate with City Engineer during the transition period.

14.2.7 The City will take possession of the Work and materials delivered to the site, in storage, or in transit, as of date or dates specified in the Notice of Termination, and is responsible for maintenance, utilities, security, and insurance, as stated in Notice of Termination.

14.3 *SUSPENSION BY THE CITY FOR CONVENIENCE.*

Document 00800

SUPPLEMENTARY CONDITIONS

Project Manager: **Susan Keil AIA** Project No.: **793**

*Edit this Document to include only Paragraphs needed to supplement Document 00700, General Conditions, for each project.*

*Use Paragraph 1.1.9.1 to name a firm which is under contract to the City to manage the Contract. Do not use this Paragraph to name in-house project managers or consultants who provide personnel to supplement City staff.*

ARTICLE 1 - GENERAL PROVISIONS:

1.1 *DEFINITIONS: Insert the following Paragraphs 1.1.9.1, 1.1.23, and 1.1.25, and reorder the remaining definitions accordingly. Please insert the amended definition of "Specifications".*

1.1.9.1 The firm of \_\_\_\_\_ has been employed by the City as Construction Manager for the Work.

1.1.23 *Good Faith Efforts:* Steps taken to achieve an MBE, WBE, SBE, or PDBE goal or other requirements which, by their scope, intensity, and usefulness, demonstrate the bidder's responsiveness to fulfill the business opportunity objective, as well as the Contractor's responsibility to put forth measures to meet or exceed the MBE, WBE, SBE, or PDBE goal (Contract Goal). These steps apply from before a contract's award, through its duration, and after its conclusion, in the event the Contractor has been unsuccessful in meeting the Contract Goal. These efforts are required whether a Goal Oriented Contract or a Regulated Contract, as defined in the Office of Business Opportunity's Policy & Procedures Manual, available at <http://www.houstontx.gov/obo>.

1.1.25 *Incidental Work:* Work described as incidental shall be work defined in Document 01110 - Summary of Work, that do not have a direct pay item listed in the Document 00410B - Bid Form Part B, or less than 1% of the Contract Price and not capable of being measured. If Work is identified as Incidental Work and also covered by Bid Form Part B quantities, then the unit price item quantities in the Bid Form Part B shall govern.

1.1.45 *Specifications:* Divisions 01 through 16 of the documents that are incorporated into the Agreement, consisting of written General Requirements and requirements for Products, standards, and workmanship for the Work, and performance of related services. All specifications are amended to include, under the Measurement and Payment Section, the

following sentence: "Work described as Incidental Work shall not be paid as a separate unit price item."

### ARTICLE 3 - THE CONTRACTOR

3.5 *LABOR; MINORITY AND WOMEN BUSINESS ENTERPRISE COMPLIANCE: Insert the following Paragraphs, 3.5.3.1, 3.5.3.2, and 3.5.3.3.*

3.5.3.1 If the Original Contract Price is greater than One Million Dollars, Contractor shall make Good Faith Efforts to comply with the City ordinances regarding Minority Business Enterprises (MBE), Women Business Enterprises (WBE), Persons with Disabilities Business Enterprises (PDBE) and Small Business Enterprise (SBE) participation goals which are as follows:

3.5.3.1.1 the MBE goal is 4 percent,

3.5.3.1.2 the WBE goal is 2 percent, and

3.5.3.1.3 the PDBE goal is \_\_\_\_\_percent.

3.5.3.1.4 The bidder may substitute SBE participation of no more than four percent of the MBE goal, the WBE goal, or portions of the MBE Goal and WBE Goal.

3.5.3.1.5 The bidder may not use Native-American-owned firms that are certified as MBEs to meet MBE contract goals. Native-Americans firms can only be used as SBEs in fulfillment of the above stated goals.

3.5.3.1.6 The bidder may not use MWSBE Suppliers to account for more than 50% of the MWSBE participation plan.

3.5.3.2 The MBE, WBE, PDBE, and SBE goals are specific to this Agreement. The Contractor shall make reasonable efforts to achieve these goals.

3.5.3.3 Failure by Contractor to comply with the goals for MBE, WBE, SBE, or PDBE is a material breach of the Agreement, which may result in termination of the Agreement, or such other remedy permitted as the City deems appropriate.

### ARTICLE 8 - TIME

8.1 *PROGRESS AND COMPLETION: Delete Paragraph 8.1.6 in its entirety and replace it with the following Paragraph 8.1.6.*



8.1.6 Contractor may perform Work at the site 24 hours per day, seven days per week. Contractor shall give 24-hour prior written notice and receive confirmation of notice from Project Manager prior to performing work between 7:00 p.m. and 7:00 a.m., on a Sunday, or on a Legal Holiday. Contractor shall comply with City Code of Ordinances, Chapter 30 relating to Noise and Sound Level Regulation.

8.1 *PROGRESS AND COMPLETION: Add the following Paragraph 8.1.6.1.*

8.1.6.1 Contractor shall credit the City by Change Order for inspection services for overtime work or work performed on Sundays or Legal Holidays. The amount Contractor credits the City will be \$50.00 per hour per inspector for inspection services.

## ARTICLE 9 - PAYMENTS AND COMPLETION

*Using table below as a guideline, insert amount of calculated daily cost to City, to be used for liquidated damages, in Paragraph 9.12.1.1. Include calculations in Project files. Department will consider guidelines based on the Project and its Scope.*

<u>Est. Amount of Construction Cost</u>	<u>Liquidated Damages per Day</u>
Project less than \$2.5 M	\$800
Project \$2.5 M to \$7.5 M	\$1200
Non-facility Projects Greater than \$7.5 M	\$1500
Facility Projects greater than \$7.5 M	\$2000

9.12 *LIQUIDATED DAMAGES: Insert the following Paragraph 9.12.1.1.*

9.12.1.1 The amount of liquidated damages payable by Contractor or Surety for each and every day of delay beyond Contract Time, are **\$2,000.00** per day.

## ARTICLE 11 - INSURANCE AND BONDS

11.2 *INSURANCE TO BE PROVIDED BY CONTRACTOR: Insert the following Paragraph 11.2.1.2., and Table 2, "Additional Required Coverage".*

11.2.1.2 Contractor shall purchase for the duration of the Contract the insurance set out in Table 2 in addition to the minimum insurance coverage set out in section 11.2.1.

**TABLE 1**  
**REQUIRED COVERAGES**

(Coverage)	(Limit of Liability)
.1 Workers' Compensation	Statutory Limits for Workers' Compensation
.2 Employer's Liability	Bodily Injury by Accident \$1,000,000 (each accident) Bodily Injury by Disease \$1,000,000 (policy limit) Bodily Injury by Disease \$1,000,000 (each employee)
.3 Commercial General Liability: Including Contractor's Protective, Broad Form Property Damage, Contractual Liability, Explosion, Underground and Collapse, Bodily Injury, Personal Injury, Products, and Completed Operations (for a period of one year following completion of the Work)	Combined single limit of \$1,000,000 (each occurrence), subject to general aggregate of \$2,000,000; Products and Completed Operations \$1,000,000 aggregate.
.4 Owner's and Contractor's Protective Liability	\$1,000,000 combined single limit each Occurrence/aggregate
.5 Installation Floater (Unless alternative coverage by City Attorney)	Value of stored equipment or material, listed on Certificates of Payments, but not yet incorporated into the Work
.6 Automobile Liability Insurance: (For automobiles furnished by Contractor in course of his performance under the Contract, including Owned, Non-owned, and Hired Auto coverage)	\$1,000,000 combined single limit each occurrence
.7 Excess Coverage	\$1,000,000 each occurrence/combined aggregate in excess of limits specified for Employer's Liability, Commercial General Liability, and Automobile Liability
<b>.8 Optional Coverages</b>	<b>(Required when checked)</b>

<p><input type="checkbox"/> (a) Contractor's Pollution Liability including pollution coverage for Contractual Liability, Clean-up costs, Abatement, Transport and Non-owned disposal sites. Including Bodily Injury Liability, Property Damage Liability and environmental damage arising from pollution conditions caused in performance of operations. Include Asbestos and Lead if part of operations.</p> <p>(MCS-90 endorsement: To Auto Policy and removal of Pollution Exclusion)</p>	<p>\$1,000,000 each occurrence <b>(Note to PDC-PM: Add this coverage if there is pollution work on this project)</b></p> <p>\$1,000,000 CSL</p>
<p><input checked="" type="checkbox"/> (b) Property &amp; Casualty Coverage: "All Causes of Loss" Builders Risk Form for directing physical change to building or plant construction on Work site and/or all land improvements including all work. [Including but not limited to earthquake, flood, boiler and machinery--including testing, damage to existing or adjoining property, time element coverage, collapse, soft costs (management, architecture, financial costs, pre-opening costs, etc.), transit coverage, off-site storage].</p>	<p>100% Contract price, including all change orders <b>(Note to PDC-PM: Add this coverage if construction involves a building)</b></p>
<p><input type="checkbox"/> (c) Increased Excess Coverage</p>	<p>\$ _____ each occurrence aggregate in excess of limits specified for Employer's Liability, Commercial General Liability, and Automotive Liability</p>
<p>*Defense costs are excluded from face amount of policy. Aggregate Limits are per 12-month policy period unless otherwise indicated.</p> <p>*Use Builder's Risk insurance for projects that include lift stations, plant or facility work. Include Building Wage rates in the project manual</p> <p>*Flood Hazard Insurance: Contractor shall apply for flood insurance on all insurable structures built under the Contract. A copy of the completed application must be provided to City Engineer before commencing construction of the Work. Contractor shall obtain flood hazard insurance as soon as possible and submit a copy of the policy to City Engineer. Use Flood Hazard Insurance only for projects that include structures. Do not include Flood Insurance for line projects, projects outside of the 100-year floodplain, or projects with structures less than \$10,000 in value.</p>	

TABLE 2  
ADDITIONAL REQUIRED COVERAGE  
DEFENSE COSTS EXCLUDED FROM FACE AMOUNT OF POLICY.

<u>(Coverage)</u>	<u>(Limit of Liability)</u>
Property and Casualty Coverage: "All Causes of Loss" Builder's Risk Form for directing physical change to building or plant construction on the Work site and/or all land improvements including all work. (Including but not limited to earthquake, flood, boiler, and machinery including testing, damage to existing or adjoining property, time element coverage, collapse, soft costs (management, architecture, financial costs, pre-opening costs, etc.), transit coverage, off-site storage).	100% of Contract Price, including change orders

11.5.2 One-year Surface Correction Bond: Contractor shall provide, on the City standard form, an additional One-Year Bond in an amount equal to four percent of the Original Contract Price or cost of repair. Bond shall provide for Contractor's correction, replacement, or restoration of backfill or subsurface and surface work not in accordance with the Contract, within one year from the date the One-Year Maintenance Bond has expired.

END OF DOCUMENT

Document 00805

**EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS**  
(City of Houston Information Requirements  
for the Successful Bidder on All Construction Contracts)

**DOCUMENTS THAT MUST BE SIGNED AND RETURNED TO THE CITY OF  
HOUSTON PRIOR TO FINAL EXECUTION OF CONTRACT**

- Certification by Bidder Regarding Equal Employment Opportunity ..... EEO-3
- Total Work Force Composition of the Company..... EEO-6  
*or in lieu thereof, a copy of the latest Equal Employment Opportunity  
Commission's EEO-1 form (This information is required only if the Contractor  
has a work force of 50 or more people and the Contract is \$50,000 or more.)*
- Company's Equal Employment Opportunity Compliance Program ..... EEO-7

**INFORMATION THAT MUST BE SUPPLIED DURING THE COURSE OF THE WORK**

- Certification By Proposed Subcontractor Regarding  
Equal Employment Opportunity ..... EEO-26
- Subcontractor's Equal Employment Opportunity  
Compliance Program ..... EEO-29
- Certification by Proposed Material Suppliers, Lessors, and Professional  
Service Providers Regarding Equal Employment Opportunity ..... EEO-30

**PLEASE COMPLETE PAGES EEO-3 THROUGH EEO-7 AND MAIL TO:**

Houston Airport System  
Office of Business Opportunity  
Contract Compliance Section  
18600 Lee Road, Suite 131  
Humble, Texas 77338

The remainder of the reports can be mailed at the appropriate time.

## **EQUAL EMPLOYMENT OPPORTUNITY PROGRAM REQUIREMENTS**

The following are Equal Employment Opportunity requirements to be met and documents to be submitted to:

Houston Airport System  
Office of Business Opportunity  
Contract Compliance Section  
18600 Lee Road, Suite 131  
Humble, Texas 77338

Under the conditions and terms of all City construction contract, the prime contractor is responsible for all Equal Employment Opportunity compliance, including subcontractor compliance.

### **EQUAL EMPLOYMENT OPPORTUNITY FORMS (EEO Forms)**

These forms are submitted by the prime contractors at the beginning of the Project and as requested:

- EEO Forms 3, 6, and 7 by prime contractors.

These forms are submitted by all subcontractors before they begin work on the project.

- EEO Forms 26 - 29 by subcontractors.

This form is submitted by all suppliers, lessors, or professional services providers before they begin work on the project:

- EEO Form 30

### **POSTING**

The following poster should be clearly displayed on each job site, or in case of annual service agreements, in the Contractor's office:

Equal Employment Opportunity is the Law Poster

### **JOB SITE VISITS**

Site visits will be made by a Contract Compliance Officer who will make their presence known to the Project Manager, Supervisor, or Foreman, and will conduct interviews with employees on site.

### **PAYMENT AND EVALUATION**

Upon completion of the Project, as part of the contract-awarding department's total clearance process, the Office of Business Opportunity's Contract Compliance Section must certify to the department that all EEO compliance requirements have been met.

CERTIFICATION BY BIDDER REGARDING  
EQUAL EMPLOYMENT OPPORTUNITY

GENERAL

In accordance with Executive Order 11246 (30 F.R. 12319-25), the implementing rules and regulations thereof, and orders of the Secretary of Labor, a certification regarding Equal Opportunity is required of bidders or prospective contractors and their proposed subcontractors prior to the award of contracts or subcontracts.

CERTIFICATION OF BIDDER

Bidder's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax : \_\_\_\_\_

Name of the company's EEO Officer: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Web Page/URL Address: \_\_\_\_\_

IRS Employer Identification Number: \_\_\_\_\_

Work to be performed: \_\_\_\_\_

Project No: \_\_\_\_\_

1. Participation in a previous contract or subcontract.
  - a. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.  YES  NO
  - b. Compliance reports were required to be filed in connection with such contract or subcontract.  YES  NO
  - c. Bidder has filed all compliance reports required by Executive Orders 10925, 11114, 11246, or by regulations of the Equal Employment Opportunity Commission issued pursuant to Title VII of the Civil Rights Act of 1964.  YES  NO
  - d. If answer of Item c. is "No", please explain in detail on reverse side of this certification.

2. Dollar amount of bid:\$ \_\_\_\_\_
3. Anticipated performance period in days: \_\_\_\_\_
4. Expected total number of employees to perform the proposed construction: \_\_\_\_\_
5. Nonsegregated facilities.

a. Notice to prospective federally-assisted construction contractors

- (1) A Certification of Nonsegregated Facilities, as required by the May 9, 1967, Order (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted to the recipient prior to the award of a federally-assisted construction contract exceeding \$50,000 which is not exempt from the provisions of the Equal Opportunity Clause.
- (2) Contractors receiving federally-assisted construction contract awards exceeding \$50,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide the forwarding of the following notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$50,000 and are not exempt from the provisions of the Equal Opportunity Clause.

The federally-assisted construction Contractor certifies that he/she does not maintain or provide any segregated facilities at any of his/her establishments, and does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The federally-assisted construction Contractor certifies further that he/she will not maintain or provide segregated facilities at any of his/her establishments, and will not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The federally-assisted construction Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin because of habit, local custom, or otherwise. The federally-assisted construction Contractor agrees that (except where he/she has obtained identical certifications from proposed Subcontractors for specific time periods) he/she will obtain identical certifications in duplicate from proposed Subcontractors prior to the award of subcontracts exceeding \$50,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that he/she will retain the duplicate of such certifications in his/her files. The Subcontractor will include the original in his/her bid package.



6. Race or ethnic group designation of bidder. Enter race or ethnic group in appropriate box:

White       Black       Hispanic

Pacific Islander, Asian       American Indian, Aleut.

7. Gender of Owner       Male       Female

REMARKS: \_\_\_\_\_

Certification - The information above is true and complete to the best of my knowledge and belief.

\_\_\_\_\_  
Company Officer (Please Type)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

CITY OF HOUSTON  
**Company Wide EEO Report**

OBO-01-13-001  
Office of Business Opportunity  
04/13

1. Check One <input type="checkbox"/> Prime <input type="checkbox"/> Subcontractor		2. Name and Address		3. FEID No.																		
4. County				5. TX CSJ DOT Project No. (if Applicable)																		
6. Contractor's Beginning Work Date on Project		7. City Of Houston Contract No.		8. This Report is based on Pay Period ending MM/DD/YYYY																		
<b>9. TEXAS CONSTRUCTION EMPLOYMENT</b>																						
TABLE A																TABLE B						
JOB CATEGORIES	TOTAL EMPLOYEES		TOTAL MINORITIES		WHITE (Not of Hispanic Origin)		BLACK (Not of Hispanic Origin)		HISPANIC		AMERICAN INDIAN or ALASKAN NATIVE		ASIAN		NATIVE HAWAIIAN OR OTHER PACIF ISL		TWO OR MORE RACES		On-The-Job Trainees (OJT)			
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F		
OFFICIALS (MANAGERS)	0	0	0	0																		
SUPERVISORS	0	0	0	0																		
FOREMEN/WOMEN	0	0	0	0																		
ADMIN SUPPORT	0	0	0	0																		
EQUIPMENT OPERATORS	0	0	0	0																		
MECHANICS	0	0	0	0																		
TRUCK DRIVERS	0	0	0	0																		
IRONWORKERS	0	0	0	0																		
CARPENTERS	0	0	0	0																		
CEMENT MASONS	0	0	0	0																		
ELECTRICIANS	0	0	0	0																		
PIPEFITTERS, PLUMBERS	0	0	0	0																		
PAINTERS	0	0	0	0																		
LABORERS, SEMI-SKILLED	0	0	0	0																		
LABORERS, UNSKILLED	0	0	0	0																		
TOTALS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
TABLE C																OJT TOTALS						
On-The-Job Trainee																						
																		M	F			
																		0	0			
10. IF ANY EMPLOYEES REPORTED IN 'TABLE A' ARE APPRENTICES, NAME OF THE PROGRAM, JOB CATEGORY, COUNT, RACE & SEX.																						
11. SUMMARIZE ALL HIRES FOR THE ENTIRE ACTIVE MONTH BY JOB CATEGORY, RACE, SEX (USE ADDITIONAL SHEET IF NEEDED).																						
12. PREPARER																						
13. REVIEWER																						

**EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE PROGRAM  
FOR**

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**Name of Company**

The Company's Office of Business Opportunity Program shall consist of documented good faith efforts to comply with the goals, timetables, and objectives set forth in the following Affirmative Action steps:

- A. City of Houston's Specific Equal Employment Opportunity Policy and Clause as contained in City Council Ordinance No. 78-1538, passed August 9, 1978.
- B. Notice of Requirement for Office of Business Opportunity to ensure Equal Employment Opportunity (Executive Order 11246).
- C. Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246).

Project: \_\_\_\_\_

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Company Officer (Please Type)

---

Signature

---

Date

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

SPECIAL PROVISIONS  
SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY POLICY

1. GENERAL

- a. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity are required by Executive Order 11246, as amended. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for Project activities under this Contract and shall supplement the notice of requirement for affirmative action to ensure equal employment opportunity and standard federal equal employment opportunity construction contract specifications.
- b. The Contractor shall work with the City and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the Contract.
- c. The prime Contractor and all Subcontractors holding subcontracts of \$50,000 or more shall comply with the following minimum specific requirement activities of equal employment opportunity. The Contractor shall include these requirements in every subcontract of \$50,000 or more with such modification of language as is necessary to make them binding on the Subcontractor.

2. EQUAL EMPLOYMENT OPPORTUNITY POLICY

The Contractor shall accept as his/her operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, age, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, or national origin. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

3. EQUAL EMPLOYMENT OPPORTUNITY OFFICER

The Contractor shall designate and make known to the City contracting officers an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who must be capable of effectively administering and promoting an active Contractor program of equal employment opportunity and who must be assigned adequate authority and responsibilities to do so.

4. DISSEMINATION OF POLICY

- a. All members of the Contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement the Contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions shall be taken as a minimum:
- (1) Periodic meetings of supervisory and personnel office employees shall be conducted before the start of work and then not less often than once every six months, at which time the Contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings shall be conducted by the EEO Officer or other knowledgeable company official.
  - (2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, or other knowledgeable company official, covering all major aspects of the Contractor's equal employment opportunity obligations, within 30 days following their reporting for duty with the Contractor.
  - (3) The EEO Officer or appropriate company official shall instruct all employees engaged in the direct recruitment of employees for the Project relative to the methods followed by the Contractor in locating and hiring minorities and females.
- b. In order to make the Contractor's equal employment opportunity policy known to all employees, prospective employees, and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the Contractor shall take the following actions:
- (1) Notices and posters setting forth the Contractor's equal employment opportunity policy shall be placed in areas readily accessible to employees, applicants for employment, and potential employees.
  - (2) The Contractor's equal employment opportunity policy and the procedures to implement such policy shall be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

## 5. RECRUITMENT

- a. When advertising for employees, the Contractor shall include in all advertisements for employees the notation "An Equal Opportunity Employer". All such advertisements will be published in newspapers, or other publications, having a large circulation among minority groups in the area from which the Project work force would normally be derived.

- b. The Contractor shall, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee-referral sources likely to yield qualified minority-group applicants, including, but not limited to, State employment agencies, schools, colleges, minority-group organizations, and female recruitment agencies. To meet this requirement, the Contractor shall, through his/her EEO Officer, identify sources of potential minority and female employees, and establish with such identified sources procedures whereby such group applicants may be referred to the Contractor for employment consideration.

In the event the Contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he/she is expected to observe the provisions of that agreement to the extent that the system permits the Contractor's compliance with equal employment opportunity Contract provisions. (The U. S. Department of Labor has held that where implementation of such agreements has the effect of discriminating against minorities or women, or obligates the Contractor to do the same, such implementation violates Executive Order 11246 as amended).

- c. The Contractor shall encourage his/her present employees to refer female or minority-group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring such applicants will be discussed with employees.

## 6. PERSONNEL ACTIONS

- a. Wage, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff and termination, shall be taken without regard to race, color, religion, sex, national origin, or age. The following procedures shall be followed:

- (1) The Contractor shall conduct periodic inspections of Project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of Project-site personnel.
- (2) The Contractor shall periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- (3) The Contractor shall periodically review selected personnel actions in depth to determine whether there is evidence of discrimination.

Where evidence is found, the Contractor shall promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

- (4) The Contractor shall promptly investigate all complaints of alleged discrimination made in connection with his/her obligations under this Contract, shall attempt to resolve such complaints, and shall take appropriate corrective action. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Contractor shall inform every complainant of all avenues of appeal.

**7. TRAINING AND PROMOTION**

- a. The Contractor shall assist in locating, qualifying, and increasing the skills of minority-group and women employees and applicants for employment.
- b. Consistent with the Contractor's work force requirements and as permissible under Federal and State regulations, the Contractor shall make full use of training programs, i.e., apprenticeship and on-the-job training programs, for the geographical area of Contract performance.
- c. The Contractor shall advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The Contractor shall periodically review the training and promotion potential of minority-group and women employees and shall encourage eligible employees to apply for such training and promotion.

**8. UNIONS**

If the Contractor relies in whole or in part upon unions as a source of employees, he/she shall use his/her best efforts to obtain the cooperation of such unions to increase minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the Contractor, either directly or through a contractor's association acting as his/her agent, will include the procedures set forth below:

- a. The Contractor shall use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority-group members and women for membership in the unions and increasing the skills of minority-group employees and women so that they may qualify for higher-paying employment.
- b. The Contractor shall use best efforts to incorporate an equal employment opportunity clause into all union agreements to the end that such unions will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, or age.
- c. The Contractor is to obtain information as to the referral practices and policies of the labor union, except that to the extent such information is within the exclusive possession of the labor union, and such labor union refuses to furnish such information to the Contractor, the Contractor shall

so certify to the City and shall set forth what efforts have been made to obtain such information.

- d. In the event the union is unable to provide the Contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the Contractor shall, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, age, sex, or national origin, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U. S. Department of Labor has held that it shall be no excuse that the union with which the Contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the Contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such Contractor shall immediately notify the City.

9. SUBCONTRACTING

- a. The Contractor shall use his/her best efforts to solicit bids from and to utilize minority-group and female subcontractors or subcontractors with meaningful minority-group and/or female representation among their employees.
- b. The Contractor shall use his/her best efforts to assure Subcontractors' compliance with their equal employment opportunity obligations.

10. RECORDS AND REPORTS

- a. The Contractor shall keep such records as are necessary to determine compliance with the Contractor's equal employment opportunity obligations. The records kept by the Contractor will be designed to indicate:
  - (1) The number of minority and non-minority group members and women employed in each work classification on the Project.
  - (2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force).
  - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.
  - (4) The progress and efforts being made in securing the services of female and minority subcontractors.
- b. All records, including payrolls, must be retained for a period of three years following completion of the Contract work and shall be available at



reasonable times and places for inspection by authorized representatives of the City and/or the appropriate federal agency.

CITY OF HOUSTON, TEXAS

EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

Pursuant to City Council Ordinance No. 78-1538, passed August 9, 1978, all contracts entered into by the City of Houston involving the expenditure of \$50,000 or more, shall incorporate the following Equal Employment Opportunity Clause:

1. The Contractor, Subcontractor, vendor, Supplier, or lessee shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The Contractor, Subcontractor, vendor, Supplier, or lessee shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor, Subcontractor, vendor, Supplier, or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The Contractor, Subcontractor, vendor, Supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, or age.
3. The Contractor, Subcontractor, vendor, Supplier, or lessee shall send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or workers' representative of the Contractor's and Subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor, Subcontractor, vendor, Supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal opportunity and affirmative action provisions applicable, and shall likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officers for purposes of investigation to ascertain and effect compliance with this program.
5. The Contractor, Subcontractor, vendor, Supplier, or lessee shall furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant

thereto, and shall permit access to all books, records, and accounts by the appropriate City and Federal officials for purposes of investigation to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the Contractor, Subcontractor, vendor, Supplier, or lessee.

6. In the event of a Contractor's, Subcontractor's, vendor's, Supplier's, or lessee's non-compliance with the non-discrimination clause of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part, and the Contractor, Subcontractor, vendor, Supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The Contractor shall include the provisions of paragraphs 1 through 8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965 so that such provisions will be binding upon each Subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation with a Subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The Contractor shall file and shall cause each of his Subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Office of Business Opportunity. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, employment policies, and employment statistics of the Contractor and each Subcontractor.

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION  
TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY  
(EXECUTIVE ORDER 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Timetables	Goals for Minority Participation for Each Trade	Goals for Female Participation for Each Trade
	(Refer to Document 00800)	(Refer to Document 00800)

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or Federally-assisted) performed in the covered area.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the geographical area where the Contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract, the Executive Order, and regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$50,000 at any tier for construction work under the Contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the Subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the Contract is to be performed.
4. As used in this Notice, and in the Contract resulting from this solicitation, the "covered area" is The Houston, Texas Standard Metropolitan Statistical Area.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY  
CONSTRUCTION CONTRACT SPECIFICATIONS  
(EXECUTIVE ORDER 11246)

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this Contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941.
  - d. "Minority" includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$50,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of

any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in Paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women, shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which Contractor's employees are assigned to work. The Contractor, where possible, shall assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions

have employment opportunities available, and maintain a record of the organizations' responses.

- c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy: by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions, including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the

Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
  - j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
  - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare, through appropriate training, etc., for such opportunities.
  - m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of



these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is under-utilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in Paragraph 7 of these Specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.B.
14. The Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee the name, address, telephone number, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer),

dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily-understandable and retrievable form; however to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

## DESCRIPTION OF JOB CATEGORIES

### Officials, Managers, and Administrators

Occupations requiring administrative personnel who set board policies, exercise overall responsibility for the execution of these policies, or provide specialized consultation on a regional, district, area basis, or direct individual departments or special phases of a firm's operations.

Includes: Officials, executives, middle management, plant managers, department managers, superintendents, salaried foremen who are members of management, purchasing agents, buyers, bureau chiefs, directors, deputy directors, wardens, examiners, sheriffs, police and fire chiefs, and kindred workers.

### Professionals

Occupations which require specialized and theoretical knowledge which is usually acquired through college or experience of such kind and amount as to provide a comparable background.

Includes: Accountants, auditors, airplane pilots and navigators, architects, artists, chemists, designers, dieticians, editors, engineers, lawyers, librarians, mathematicians, natural scientists, registered professional nurses, personnel and labor relations workers, physical scientists, teachers, social workers, doctors, psychologists, economists, systems analysts, employment and vocational rehabilitation counselors, instructors, police and fire captains and lieutenants, and kindred workers.

### Paraprofessionals

Occupations in which workers perform some of the duties of a professional or technician in a supportive role, which usually requires less formal training and/or experience normally required for professional or technical status. Such positions may fall within an identified pattern of a "New Careers" concept.

Includes: Library assistants, medical aides, child support workers, police auxiliary, welfare service aides, recreation assistants, homemakers aides, home health aides, and kindred workers.

### Technicians

Occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through about two (2) years of post high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training.

Includes: Computer programmers and operators, draftsmen, engineering aides, junior engineers, mathematical aides, licensed practical or vocational nurses,

photographers, radio operators, scientific assistants, surveyors, technical illustrators, technicians (medical, dental, electronics, physical sciences), police and fire sergeants, and kindred workers.

#### Protective Service Workers

Occupations in which workers are entrusted with public safety, security, and protection from destructive forces.

Includes: Police patrol officers, fire fighters, guards, deputy sheriffs, bailiffs, correctional officers, detectives, marshals, harbor patrol officers, and kindred workers.

#### Sales Workers

Occupations engaging wholly or primarily in direct selling.

Includes: Advertising agents and salespersons, insurance agents and brokers, real estate agents and brokers, stock and bond salespersons, demonstrators, salespersons and sales clerks, grocery clerks, cashiers, and kindred workers.

#### Office and Clerical

Occupations in which workers are responsible for internal and external communications, recording and retrieval of data and/or information and other paper work required in an office predominantly non-manual, though some manual work not directly involved with altering or transporting the products is included.

Includes: Bookkeepers, cashiers, collectors (bills and accounts), messengers and office helpers, office machine operators, shipping and receiving clerks, stenographers, typists and secretaries, telegraph and telephone operators, court transcribers, hearing reporters, statistical clerks, dispatchers, license distributors, payroll clerks, and kindred workers.

#### Skilled Craft Workers

Occupations in which workers perform jobs which require special manual skill through on-the-job training and experience, or through apprenticeship or other formal training programs. These workers exercise considerable independent judgment and usually receive an extensive period of training.

Includes: The building trades, hourly paid foremen and leadmen who are not members of management, mechanics and repairmen, skilled machining occupations, compositors and typesetters, electricians, engravers, job setters (metal), motion picture projectionists, pattern and model makers, stationary engineers, tailors, heavy equipment operators, carpenters, and kindred workers.

#### Operatives (semi-skilled)

Workers who operate machine or processing equipment or perform other factory-type duties of intermediate skill level which can be mastered in a few weeks and require only limited training.

Includes: Apprentices (auto mechanics), plumbers, bricklayers, carpenters, electricians, mechanics, building trades, metal workers, machinists, printing trades, operatives, attendants (auto service and parking), blasters, chauffeurs, deliverymen, dressmakers and seamstresses (except factory), dryers, furnacemen, heaters (metal), laundry and dry cleaning operatives, milliners, miners, motormen, oilers, greasers, etc. (except auto), painters (except construction and maintenance), photographic process workers, stationary firemen, truck and tractor drivers, weavers (textile), welders and flame cutters, and kindred workers.

#### Laborers (unskilled)

Workers in manual occupations which generally require no special training. These workers perform elementary duties that may be learned in a few days and require the application of little or no independent judgment.

Includes: Garage workers, car washers and greasers, gardeners (except farm) and groundskeepers, longshoremen and stevedores, lumbermen, craftsmen, and wood choppers, laborers performing lifting, digging, mixing, loading, and pulling operations, and kindred workers.

#### Service/Maintenance Workers

Occupations in which workers perform duties which result in or contribute to the comfort, convenience, hygiene, or safety for the general public, or which contribute to the upkeep and care of buildings, facilities or grounds, or public property. Workers in this group may operate machinery.

Includes: Chauffeurs, laundry and dry cleaning operatives, truck drivers, trash collectors, custodial personnel, gardeners and groundskeepers, construction laborers, attendants (hospital and other institutions), professional and personal service, counter and fountain workers, elevator operators, firemen and fire protection, guards, watchmen and doorkeepers, stewards, porters, waiters, and kindred workers.

CERTIFICATION BY PROPOSED SUBCONTRACTOR REGARDING  
EQUAL EMPLOYMENT OPPORTUNITY

---

Name of Prime Contractor

Project WBS & OA Number

---

Address

GENERAL

In accordance with Executive Order 11246 (30 F.R. 12319-25), the implementing rules and regulations thereof, and orders of the Secretary of Labor, a certification regarding Equal Opportunity is required of bidders or prospective contractors and their proposed subcontractors prior to the award of contracts or subcontracts.

SUBCONTRACTOR'S CERTIFICATION

Subcontractor's Name: \_\_\_\_\_

Address: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

IRS Employer Identification Number: \_\_\_\_\_

Job Description: \_\_\_\_\_  
(Work performed by your company for this project)

1. Participation in a previous contract or subcontract.
  - a. Subcontractor has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.  YES  NO
  - b. Compliance reports were required to be filed in connection with such contract or subcontract.  YES  NO
  - c. Subcontractor has filed all compliance reports required by Executive Orders 10925, 11114, 11246, or by regulations of the Equal Employment Opportunity Commission issued pursuant to Title VII of the Civil Rights Act of 1964.  YES  NO
  - d. If answer of Item c. is "No", please explain in detail on reverse side of this certification.

2. Dollar amount of proposed subcontract: \$ \_\_\_\_\_

3. Anticipated performance period in days: \_\_\_\_\_

4. Expected total number of employees to perform the proposed subcontract: \_\_\_\_\_
5. Nonsegregated facilities.
  - a. Notice to prospective federally-assisted construction contractors
    - (1) A Certification of Nonsegregated Facilities, as required by the May 9, 1967, order (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted to the Contractor prior to the award of a subcontract exceeding \$50,000 which is not exempt from the provisions of the Equal Opportunity Clause.
    - (2) Contractors receiving subcontract awards exceeding \$50,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of this notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$50,000 and are not exempt from the provisions of the Equal Opportunity clause.

b. Certification of non-segregated facilities

The federally-assisted construction contractor certified that he/she does not maintain or provide any segregated facilities at any of his/her establishments, and does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The federally-assisted construction Contractor certifies further that he/she will not maintain or provide any segregated facilities at any of his/her establishments, and will not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The federally-assisted construction Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants, and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin because of habit, local custom, or otherwise. The federally-assisted construction Contractor agrees that (except where he/she has obtained identical certifications from proposed Subcontractors for specific time periods) he/she will obtain identical certifications in duplicate from proposed Subcontractors prior to the award of subcontracts exceeding \$50,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that he/she will retain the duplicate of such certifications in his/her files. The Contractor will include the original in his/her Bid Package.

6. Race or ethnic group designation of bidder. Enter race or ethnic group in

appropriate box:

- White                       Black                       Hispanic  
 Pacific Islander, Asian       American Indian, Aleut.

7. Gender

- Male                       Female

REMARKS:

Certification - The information above is true and complete to the best of my knowledge and belief.

---

Company Officer (Please Type)

---

Signature

---

Date

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.



CITY OF HOUSTON  
**Company Wide EEO Report**

OBO-01-13-001  
Office of Business Opportunity  
04/13

1. Check One __ Prime __ Subcontractor	2. Name and Address	3. FEID No.
4. County	5. TX CSJ DOT Project No. (if Applicable)	
6. Contractor's Beginning Work Date on Project	7. City Of Houston Contract No.	8. This Report is based on Pay Period ending MM/DD/YYYY

9. TEXAS CONSTRUCTION EMPLOYMENT

JOB CATEGORIES	TOTAL EMPLOYEES		TOTAL MINORITIES		WHITE (Not of Hispanic Origin)		BLACK (Not of Hispanic Origin)		HISPANIC		AMERICAN INDIAN or ALASKAN NATIVE		ASIAN		NATIVE HAWAIIAN OR OTHER PACIF ISL		TWO OR MORE RACES		On-The-Job Trainees (OJT)		
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	
OFFICIALS (MANAGERS)	0	0	0	0																	
SUPERVISORS	0	0	0	0																	
FOREMEN/WOMEN	0	0	0	0																	
ADMIN SUPPORT	0	0	0	0																	
EQUIPMENT OPERATORS	0	0	0	0																	
MECHANICS	0	0	0	0																	
TRUCK DRIVERS	0	0	0	0																	
IRONWORKERS	0	0	0	0																	
CARPENTERS	0	0	0	0																	
CEMENT MASONS	0	0	0	0																	
ELECTRICIANS	0	0	0	0																	
PIPEFITTERS, PLUMBERS	0	0	0	0																	
PAINTERS	0	0	0	0																	
LABORERS, SEMI-SKILLED	0	0	0	0																	
LABORERS, UNSKILLED	0	0	0	0																	
<b>TOTALS</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

TABLE C																				OJT TOTALS	
On-The-Job Trainee																				M	F
																				0	0

10. IF ANY EMPLOYEES REPORTED IN 'TABLE A' ARE APPRENTICES, NAME OF THE PROGRAM, JOB CATEGORY, COUNT, RACE & SEX.

11. SUMMARIZE ALL HIRES FOR THE ENTIRE ACTIVE MONTH BY JOB CATEGORY, RACE, SEX (USE ADDITIONAL SHEET IF NEEDED).

	PRINTED NAME-FIRST/LAST	EMAIL ADDRESS	PHONE	SIGNATURE	DATE
12. PREPARER					
13. REVIEWER					

CERTIFICATION BY PROPOSED MATERIAL SUPPLIERS,  
LESSORS, AND PROFESSIONAL SERVICE PROVIDERS  
REGARDING EQUAL EMPLOYMENT OPPORTUNITY

Company Name: \_\_\_\_\_ \$ \_\_\_\_\_  
(Supplier, Lessor, Professional Service Provider) (Amount of Contract)

Company Address: \_\_\_\_\_

Company Telephone Number: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Web Page/URL Address: \_\_\_\_\_

Company Tax Identification Number: \_\_\_\_\_

Project Name & No.: \_\_\_\_\_

Materials/Services Provided: \_\_\_\_\_

In accordance with Chapter 15 of the City of Houston's Code of Ordinances, Supplier/Lessor/Professional Service Provider represents to be an equal opportunity employer and agrees to abide by the terms of the Ordinance. This certification is required of all Suppliers/Lessors/Professional Service Providers providing goods or service to this project with agreements \$50,000 or more.

Yes  No Supplier agrees not to discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age.

Yes  No Supplier agrees that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, or age.

Yes  No Supplier will comply with all provisions of **Executive Order No. 11246** and rules, regulations and applicable orders of the Department of Labor or other Federal Agency responsible for enforcement of applicable equal opportunity and affirmative action provisions and will likewise furnish all information and reports required by the Mayor or Contract Compliance Officers for the purpose of investigation to ascertain and effect compliance with the City of Houston's Office of Business of Opportunity.

Yes  No The Supplier shall file and cause their sub-tier contractors to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor or Contract Compliance Officers. Compliance reports filed at such times as directed shall contain information including, but not limited to, the practices, policies, programs, and employment policies.

I hereby certify that the above information is true and correct.

\_\_\_\_\_  
COMPANY OFFICER (Signature)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
NAME AND TITLE (Print or type)

END OF DOCUMENT

- 
- 14.3.1 City Engineer may, without cause, after giving Contractor and Surety 24-hour prior written notice, order Contractor to suspend, delay, or interrupt the Work in whole or in part for a period of time as City Engineer may determine.
- 14.3.2 An adjustment will be made in Contract Time equivalent to the time of suspension.
- 14.3.3 Adjustment will be made to Contract Price for increases in the cost of performance of the Work, including profit on increased cost of performance caused by suspension, delay, or interruption of the Work in accordance with Paragraph 7.3. No adjustment will be made to the extent that:
- 14.3.3.1 performance was, or would have been, suspended, delayed, or interrupted by another cause for which Contractor is responsible; or
  - 14.3.3.2 adjustment is made or denied under another provision of the Contract.
- 14.4 **TERMINATION BY CONTRACTOR.**
- 14.4.1 Contractor may terminate the Contract if the Work is stopped for a period of 30 days through no act or fault of Contractor, directly related to one of these events:
- 14.4.1.1 issuance of an order of a court or other public authority having jurisdiction;
  - 14.4.1.2 act of government, such as a declaration of national emergency which makes material unavailable; or
  - 14.4.1.3 if repeated suspensions, delays, or interruptions by the City as described in Paragraph 14.3 constitute, in the aggregate, more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less;
- No termination will be effective for the above reasons if Contractor delivers written notice to City Engineer describing the reason for termination, giving the proposed termination date, and granting the City a reasonable opportunity to respond and cure any City default before termination is effective.
- 14.4.2 If the Contract is terminated pursuant to this Paragraph 14.4, Contractor shall comply with the requirements of Paragraphs 14.2.2 through 14.2.7.

[END OF DOCUMENT]



# Pay or Play Program Operating Procedures

## **Background**

The Pay or Play Program was established with Ordinance 2007-534 on July 1, 2007 and is governed by Executive Order 1-7. The Pay or Play Program (POP) creates a more level playing field and enhances fairness in the bid process between competing contractors that choose to offer health benefits to their workforce and those who do not. The program also recognizes and accounts for the fact that there are costs associated with providing health care for the uninsured citizens of Houston and Harris County area.

## **Administration:**

- Vendors are required to begin complying with POP within 30 days of contract award by utilizing the designated system, *B2G Workforce Module*, at <https://houston.mwdbe.com> to complete/review POP activities.
- Vendors are required to utilize *JP Morgan Chase Pay Connexion (Pay Connexion)* portal that will accept POP payments electronically. B2G Workforce Module will provide a direct link to *Pay Connexion* where contractors may submit payment via Debit Card, Credit Card, Automated Clearing House (ACH) and/or Electronic Checks (e-checks). Contractors will be charged a convenience fee per transaction.
- Vendors who onboard new employees are allowed a 60-day waiting period upon each new employee's start date to begin participating in POP. After the 60-day period has lapsed, Vendor must include the employee in POP reporting.
- The Office of Business Opportunity (OBO) has citywide administrative oversight of the program, including audit responsibilities. Vendor's compliance with POP requirements will be directly managed by the City Department with whom Vendor has contracted (Contracting Department). Questions about POP should be referred to the Contracting Department's POP Liaison. A contact list for POP Liaisons is available at <http://www.houstontx.gov/obo/popforms.html> or by contacting the OBO POP Administrator at 832-393-0633 or [Brianne.Maxwell@houstontx.gov](mailto:Brianne.Maxwell@houstontx.gov).



### **Pre-bid/Pre-Proposal Forms:**

- Vendors must complete and return the following forms before contract award by the Contracting Department:
  - *Acknowledgment Form* (POP-1)
  - *Certification of Compliance* (POP-2)
  - *Participating Subcontractors Form* (POP-3)

### **Prime/Subcontractor Waiver Request (Form POP-4):**

- Completed by Contracting Department prior to City Council approval contract award, for contract(s) that may meet exemption criteria as stated in EO 1-7. Form POP-4 must be signed by Contracting Department and forwarded, along with supporting documentation, to OBO POP Administrator for final decision.
- A new Form POP-4 is not needed for contract amendments and/or extensions, as the POP requirements in the original contract continues to apply.
- Contractors that utilize self-employed, owner/operator individuals to complete services (e.g., Truck Drivers, Day Laborers, 10-99, etc.) are POP exempt.
- Vendors should not submit a Form POP-4 for contracts enumerated in section 4.2 of EO 1-7, as those contracts are not covered under POP.

### **Pay Option Reporting (Workforce Audit):**

- Vendors will create a *Workforce Employee List* showcasing all active employees working on the City of Houston project. Vendors will complete a weekly workforce audit by the end of each month. Vendors must provide the Total Hours Worked and individual Hours Worked by each covered employee as part of the weekly workforce audit.
  - Total Hours Worked = Total Number of Hours Employee worked for Employer.
  - Hours Worked = Total Number of Hours Employee worked on COH project.

### **Invoice Submission:**

- Invoices are created from monthly *Workforce Audits* reports. Payments are due to the contracting department 30 business days after receipt of invoice. Payments



may be made through the *Pay Connexion*. Prime Vendor is responsible to the City for compliance of covered employees of covered subcontractors.

- Vendors will “Pay” by contributing \$1.00 per covered employee per regular hour for work performed under the contract with the City, not to exceed \$40.00 per employee.
  - POP will not accept partial payments; invoices must be paid in full.

#### **Play Option Reporting (Workforce Audit):**

- Vendors will create a *Workforce Employee List* showcasing all active employees working on the City of Houston project.
- Vendors will complete a quarterly workforce audits by month end of October, January, April, and July by providing proof of insurance for all active and covered employees for previous three (3) months.
- Vendors will “Play” by providing health benefits to covered employees. Health benefits must meet or exceed the following standards:
  - The employer will contribute no less than 75% of the monthly premium toward the total premium cost covered employee per month.
  - The employee contribution, if any amount, will be no greater than 25% of the monthly premium cost.

**Note: Proof of coverage (in the form of the most current Company Insurance invoice or individual employee insurance card) for POP covered employees that work on the City Project.**

#### **Employee Waiver Request (Form POP-8):**

- Vendor may request employee POP program waiver by submitting a request on the City of Houston Pay or Play (POP) *Employee Waiver Request* (Form POP-8); if a covered employee has refused health coverage through their employer or if a covered employee has acquired health coverage on their own.
  - Vendor will attach approved Form POP-8 to respective employees’ workforce profile in the designated system.



### **Self-Insured Contractor Request (Form POP-9):**

- Vendor may request for Self-Insured Status if the employer is using their own money to cover their employees' claims.
- Vendors awarded Self-Insured Status will be PLAY participants and required to report once a year.