

TSU FLIGHT ACADEMY - DESIGN-BUILD AGREEMENT

ELLINGTON AIRPORT

DRAFT

August __, 2023

**DESIGN-BUILD
TSU FLIGHT ACADEMY PROJECT AT EFD
SOLICITATION NO**

SAMPLE

**DESIGN-BUILD AGREEMENT
BETWEEN**

**THE CITY OF HOUSTON
AND**

COMPANY.

FOR TSU FLIGHT ACADEMY PROJECT AT EFD

PROJECT NO. _____

CIP NO. []

TABLE OF CONTENTS

1.	ARTICLE 1. THE PROJECT	7
2.	ARTICLE 2. CONTRACT DOCUMENTS AND INTERPRETATION	7
3.	ARTICLE 3. GENERAL PERFORMANCE REQUIREMENTS	8
4.	ARTICLE 4. PRECONSTRUCTION SERVICES	9
5.	ARTICLE 5. GUARANTEED MAXIMUM PRICE PROPOSAL	11
6.	ARTICLE 6. CONSTRUCTION SERVICES	12
7.	ARTICLE 7. TIME	18
8.	ARTICLE 8. LIQUIDATED DAMAGES.....	18
9.	ARTICLE 9. MWBE COMPLIANCE	19
10.	ARTICLE 10. CONTRACT COMPENSATION.....	19
11.	ARTICLE 11. BONDS AND INSURANCE	38
12.	ARTICLE 12. MISCELLANEOUS PROVISIONS.....	38

EXHIBITS

A	Defined Terms
B	Scope of Services
C	General Conditions
D	Key Personnel
E	Preconstruction Services Schedule
F	Component and Guaranteed Maximum Price Proposal
G	Forms of Bonds
H	City's Wage Rates
I	Project Schedule
J	Federally Required Provisions
K	Intellectual Property and Confidentiality Agreement
L	Project Manual
M	Title VI Non-Discrimination
N	Drug Policy Compliance Agreement
O	Certification of No Safety Impact Positions
P	Drug Policy Compliance Declaration

References to specific documents are made as follows:

ITP Section x:	Section No. x of the Instructions to Proposers
DBA Article x:	Article No. x of the Design-Build Agreement (Exhibit XXX)
GC Article x:	Section No. x of the General Conditions (Exhibit XXX)
RFP Drawings:	Drawings provided by the City as part of the Contract Documents
RFP Data x:	Data provided by the City as part of the Contract Documents
PF Section x:	Section No. x of the Pricing Forms

GUARANTY [IF A JOINT VENTURE]

[] and [] in order to induce the City of Houston to enter into this Agreement with [NAME OF JV], hereby irrevocably, unconditionally, jointly and severally guarantee the performance of all obligations and undertakings of [NAME OF JV] under this Agreement. [

] and [] each acknowledges that it will benefit, directly or indirectly, from the Agreement and waives all legal and equitable defenses to the enforcement of this guaranty.

[]

By: _____

By: _____

Name:

Title: _____

Tax ID NO. _____

Date:

[]

By: _____

Name:

Title: _____

Tax ID NO. _____

Date:

[]

By: _____

Name:

Title: _____

Tax ID NO. Date: _____

AT ELLINGTON AIRPORT (EFD)

This **DESIGN-BUILD CONTRACT** ("Agreement") is entered into and effective as of the Effective Date, by and between the **CITY OF HOUSTON, TEXAS**, a city (the "City") and Company _____ ("Design-Builder"), a [_____] and authorized to do business in the State of Texas (each also referred to as "Party" individually or "Parties" collectively).

The City is: The City of Houston, Texas

Address for Written Notice:

P.O. Box 60106, Houston TX 77205-0106

Design-Builder is: _____

Address for Written Notice: [_____]

E-mail address: [_____]

The Project is: TSU FLIGHT ACADEMY PROJECT

Project Location: Ellington Airport

Project No: _____

Design-Builder's Lead Design Firm Designer is: [_____]

RECITALS

WHEREAS, the City desires to build a new state of the art Aircraft Hanger and educational facility in support of the City's commitment to Texas Southern University (TSU) to be located at Ellington Airport (EFD), Houston, TX.

WHEREAS, pursuant to the Enabling Law, the City issued a Request for Qualifications ("RFQ") on [_____] [_____] in order to obtain Statements of Qualifications from design-build firms ("Firms") interested in being included on a shortlist of qualified Firms who would be invited to submit proposals to manage and execute the project design, preconstruction services and construction work necessary for the Project;

WHEREAS, in accordance with the requirements and criteria for selection set forth in the RFQ, the City on [_____] 2023, selected [_____] Firms (including the Design-Builder) for inclusion on its shortlist of qualified Firms;

WHEREAS, pursuant to the Enabling Law, the City issued a Notification to short-listed Proponents on [_____] 2023 requesting each design-build firm to submit Technical and Price Proposals.

**CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement**

WHEREAS, each of the qualified Firms, including the Design-Builder, submitted a proposal (comprising a sealed technical proposal and a separate sealed Price Proposal) on [____], 2023;

WHEREAS, following the review and selection process established in the RFQ/P and based on the evaluation criteria and scoring formula set forth in the RFP, the City selected the Design-Builder with the highest score among the qualified Firms that submitted proposals in response to the RFQ/P;

WHEREAS, on [____], 2023, the City initiated negotiations with the Design-Builder, which negotiations have concluded with this Agreement;

WHEREAS, the City desires to receive, and the Design-Builder desires to provide, design-build services for the Project in accordance with the terms and conditions of this Agreement;

NOW THEREFORE, for and in consideration of the mutual covenants, agreements, and benefits to the Parties herein named, it is agreed as follows:

SAMPLE

ARTICLE 1. THE PROJECT

Project Description. As of the Effective Date, City intends to construct the Project, at EFD, as set forth in the Contract Documents and as detailed in **Exhibit B** Scope of Services.

Preconstruction and Design Services: This phase will commence shortly after award of the Contract upon issuance of a Phase 1 – Preconstruction and Design Notice to Proceed (NTP) by the City in accordance with the accepted COST PROPOSAL for Phase 1 Services. The culmination of Phase 1 will be completion and approval of the Construction drawings and specifications and construction execution plans and the obtaining of all necessary permits.

Construction Services: Construction of the project may be individually authorized depending on the funding and project phasing. Each of these phases will commence only upon the City's issuance of a construction NTP for that portion of the work and will be completed in accordance with the Scope of Work and durations identified in the NTP.

ARTICLE 2. CONTRACT DOCUMENTS AND INTERPRETATION

Contract Documents. The “Contract Documents” or “Agreement” are all of the documents describing the complete relationship between the City and the Design-Builder for the Project, including, at a minimum: this Base Agreement and all Exhibits, the General Conditions, the Design-Builder's Proposal and Proposal Forms, the Reference Drawings and Specifications, Reference Data, Addenda, Modifications, CGMP Amendments, GMP Amendments, any Notice to Proceed, and any other documents specifically included in these documents by reference.

Interpretation. The Contract Documents are intended to be complementary, and what is set forth in any one document is as binding as if set forth in each document. The Parties recognize that Amendments and Modifications may provide for specific modification to the terms and conditions of other Contract Documents, in which case, the modified terms and conditions shall govern, as expressly set forth in the Amendment or Modification. However, all terms and conditions of such other Contract Documents that are not expressly modified or deleted by an Amendment or Modification shall remain in effect. Unless stated otherwise in this Agreement, if a conflict between the sections of this Base Agreement and the exhibits arises, the sections control over the exhibits. In the event of any conflict, ambiguity, or discrepancy among the Contract Documents, the precedence in resolving such conflicts, ambiguities, or discrepancies shall be as follows:

1. Amendments
2. Modifications
3. This Design-Build Base Agreement
4. General Conditions
5. Exhibits to the Base Agreement
6. Construction Drawings and Specifications

7. RFP Drawings
8. Instructions to Proposers
9. Design-Builder's Final Proposal Accepted by the City.

ARTICLE 3. GENERAL PERFORMANCE REQUIREMENTS

Scope of the Work. The Work, which includes the Design-Build component of the Project, is described in **Exhibit B**.

Key Personnel. The Design-Builder acknowledges that the identity and commitment of certain key management and supervisory personnel proposed by the Design-Builder in its Proposal were material factors in the selection of the Design-Builder to perform this Agreement. Such personnel, their affiliations, and their anticipated services and roles in the performance of the Work are set forth in **Exhibit D**, the Design-Builder Proposal and the Project Management Plan. The Design-Builder shall utilize such personnel to perform such services and roles unless such personnel are unavailable for good cause shown. "Good cause shown" shall not include performing services on other projects for the Design-Builder or any of its Affiliates, but shall include termination for cause, employee death, disability, retirement, or resignation. In the event of any such permissible unavailability, the Design-Builder shall utilize replacement key management and supervisory personnel of equivalent skill, experience, and reputation. Any managerial or supervisory personnel change shall be proposed to the Director with reasonable advance notice (no less than 30 days) for the Director's review and approval, which shall not be unreasonably withheld or delayed. The Director may exclude from the Project any personnel performing Work if the Director, acting reasonably, determines that an unworkable relationship has developed between the City and the individual. The Director may require the inclusion of additional personnel to perform the applicable services; if the Director, in his reasonable determination, deems this necessary to mitigate schedule, quality or safety issues in the Work, at no additional cost to the City.

Designated Representative. The individual identified in **Exhibit D** and the Project Management Plan as the "Designated Representative" shall, until further designation under this Section, act as the designated representative of the Design-Builder with respect to this Agreement and shall coordinate with the Director as to administrative matters under this Agreement. The Design-Builder may replace the individual designated as its representative under this Agreement from time to time by written notice to the Director, subject to the reasonable approval of the Director. The Design-Builder shall replace the individual designated as its representative under this Agreement at any time upon written notice by the Director in the Director's reasonable discretion.

Any individual designated as the representative of the Design-Builder under this Agreement shall have sufficient qualifications and experience to serve as the Design-Builder's representative hereunder and shall be vested with the authority to act on behalf of the Design-Builder, to receive notices on behalf of the Design-Builder, to make binding decisions with respect to the performance of the Work, and to bind the Design-Builder with respect to any certification to be made by the Design-Builder hereunder. The designated representative shall be the Director's primary contact for the performance of the Work and shall be available, as required, for the benefit of the City and the Project.

Meetings. Meetings are to be conducted in the manner described in the Contract Documents unless otherwise agreed in writing by the City.

ARTICLE 4. PRECONSTRUCTION SERVICES

4.1 Generally. The Design-Builder shall render and perform the Preconstruction Services for the City in accordance with **Exhibit B** and all other applicable Contract Standards. The Design-Builder's responsibility for the Preconstruction Services includes the responsibility to employ or subcontract with (subject to the limitations established herein) the necessary professionals (including architects, if applicable), technicians and engineers, properly qualified, licensed and skilled in the various aspects of the Preconstruction Services, and to perform all services reasonably inferable from the description of the Preconstruction Services.

Preconstruction and Design Services: This phase will commence shortly after award of the Contract upon issuance of a Phase 1 – Preconstruction and Design Notice to Proceed (NTP) by the City in accordance with the accepted COST PROPOSAL for Phase 1 Services.

Phase 1 includes design services to ensure that the Project, as designed, can be constructed for an amount that is within the Design to-Budget requirements established in Exhibit B and Pre-Construction activities, design, some site work, the building shell, as well as the build out of the Flight Academy area, construction execution plans and specifications and obtaining of all necessary permits.

4.2 Notices to Proceed. The Design-Builder shall commence performing Preconstruction Services upon the date specified in a Notice to Proceed with Preconstruction Services issued by the Director. The Design-Builder is not entitled to reimbursement for any costs incurred for performance of Preconstruction Services incurred before issuance of a Notice to Proceed. The Design-Builder acknowledges that the Preconstruction Services are segregated into discrete tasks associated with the advancement of the Preconstruction Services, as identified in **Exhibit B**, and that a Notice to Proceed with Preconstruction Services may be limited to certain specifically identified tasks. The City will therefore have the right to issue multiple Notices to Proceed with respect to Preconstruction Services, identifying the Preconstruction Services tasks to be performed by the Design-Builder.

4.3 Existing Conditions. Design-Builder acknowledges that it was afforded unrestricted access to the existing Project improvements and site and it has thoroughly investigated those conditions. The results of Design-Builder's investigations shall be deemed to have been considered in establishing the Contract Price, any Amendment, GMP and CGMP Submittal or Amendment. Therefore, Design-Builder may not make and is not entitled to any Modification for any adjustment to the Contract Price, Contract Time, Preconstruction Phase Services Fee, or any GMP, CGMP Submittal or Amendment arising from Project or the Work conditions that Design-Builder discovered or, in the exercise of reasonable care, should have discovered in Design-Builder's investigation of the Project site and its improvements.

4.4 Design Errors and Omissions. Before proceeding with the Construction Services, Design-Builder shall review the Drawings, Specifications, and other Construction Documents and notify the Director of any errors, omissions, or discrepancies in the Construction Documents of which it is aware. Design-Builder is solely responsible for the completeness and accuracy of the Construction Documents and Work Products it produces and for discovering and correcting any defect, error, omission, conflict, inconsistency in the Construction Documents and its Work Products, and for any failure to comply with the Construction Documents or otherwise in the Contract Documents. Design-Builder shall be responsible for all costs, including the cost of redoing

or remedying the Work and time delays resulting from any defect, error, omission, conflict, inconsistency, lack of clarity in the Construction Documents, or failure to comply with the Construction Documents or otherwise in the Contract Documents.

4.5 Additional Preconstruction Phase Services. Provision of Additional Preconstruction Services shall apply only when necessary, as determined by the Director and as authorized in writing related to the purpose of the Agreement, and when sufficient funding is allocated for such services. If authorized by the Director in writing and pursuant to the provisions in **Article 12** of the General Conditions, the City will pay for the following Additional Preconstruction Services in addition to the compensation for Preconstruction Services, but only if such services are not included in Exhibit B Scope of Services, Exhibit E Preconstruction Services Schedule or otherwise in the Contract Documents as Design-Builder's responsibility: surveys, special studies, design efforts, data and reproduction, abatements, investigations, estimating and/or any other Additional Preconstruction Phase Services mutually agreed to by Director and Design-Builder.

4.6 Ownership and Use of Work Products.

- 4.6.1 Design-Builder conveys and assigns to the City upon creation, its entire interest and full ownership worldwide in and to any work, invention, notes, plans, designs, drawings, specifications, computations, data bases, tabulations, exhibits, reports, underlying data, photographs and other work products, and any modifications or improvements to them developed for or in connection with the Project in any medium of expression (collectively "Documents"), and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively "Proprietary Rights") that Design-Builder, its agents, employees, Subcontractors, and subconsultants providing designs for Design-Builder or its Subcontractors (collectively "Authors") develop, write, or produce under this Contract (collectively "Work Products").
- 4.6.2 The Authors shall not claim or exercise any Proprietary Rights related to the Work Products. If requested by the Director, Design-Builder shall place a conspicuous notation on any Work Products, which indicates that the City owns the Proprietary Rights.
- 4.6.3 Design-Builder shall execute all documents required by the Director to further evidence this assignment and ownership of the Work Products. Design-Builder shall cooperate with the City in registering, creating, and enforcing Proprietary Rights arising under the Contract in the Work Products. On termination or completion of this Contract, or if requested by the Director, Design-Builder shall deliver all Work Products to the City. Design-Builder shall obtain written agreements from the Authors, which bind them to the terms in this Section 4.6, and shall require its Authors to execute, and shall deliver to the City, Exhibit K - Intellectual Property and Confidentially Agreement.
- 4.6.4 All Work Products developed, written, or produced under this Contract for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, are "works made for hire" for the City.

- 4.6.5 Subject to all confidentiality provisions in the Contract Documents, including without limitation Exhibit K - Intellectual Property and Confidentiality Agreement, Design-Builder may retain copies of the Work Products for its archives. Design-Builder shall not otherwise use, sell, license, or market the Work Products.
- 4.6.6 Confidentiality: Design-Builder, its agents, employees, Subcontractors, consultants and design subconsultants shall hold all City information, data, and Work Products (collectively, the "Information") that they receive, or to which they have access, in strictest confidence. Design-Builder shall not, and shall cause its Subcontractors, agents, employees, contractors, and design subconsultants not to, disclose, disseminate, or use the Information unless the Director authorizes it in writing. Design-Builder shall obtain written agreements from its Subcontractors agents, employees, contractors, consultants and design subconsultants, which bind them to the terms in this Section.

ARTICLE 5. GUARANTEED MAXIMUM PRICE PROPOSAL

5.1 GMP Submittal. The Design-Builder shall take all appropriate measures in accordance with 49 C.F.R. 1520 and other applicable laws to protect all proprietary, privileged, confidential, or otherwise Sensitive Security Information ("SSI") that may come into the Design-Builder's possession as a result of this Contract.

5.2 Complete Pricing. It is the intention of the Parties that each CGMP Submittal, and any associated CGMP Amendment, includes complete pricing for the Work to be performed thereunder. Accordingly, all such amounts in CGMP Amendments shall be excluded in determining the Cost of the Work for the GMP Amendment. The Construction Services Fee, however, is intended to and shall be applicable to all construction whether performed as part of the CGMP Amendment or otherwise with the Construction Services. The Parties acknowledge and agree that the Preconstruction Services Fee and the Construction Services Fee were negotiated by the Parties prior to the Effective Date and included in the Contract as executed on the Effective Date and shall not be the subject of the CGMP and/or GMP Submittal or the CGMP and/or GMP Amendment.

5.3 CGMP Compensation. The City shall pay the CGMP for the Advanced Package Work to the Design-Builder for Work properly performed and completed pursuant to the terms of the CGMP Amendment in accordance with, and subject to the limitations contained in this Contract, notwithstanding the fact that no GMP Amendment will be in effect at the time the Parties execute a CGMP Amendment. City agrees to release all retainage related to Advanced Package Work when Design-Builder completes the CGMP Work pursuant to the CGMP Amendment terms. All related Warranties, as applicable, for Work performed under the CGMP will commence upon substantial completion of the CGMP Work, notwithstanding any other provision in this Contract.

5.4 GMP Submittal. The Design-Builder shall prepare and submit the GMP Submittal in accordance with **Exhibit F** and all other applicable Contract Standards. In the event the Director believes the GMP Submittal does not comply with the requirements of the Contract including **Exhibit F**, the Director shall provide written notice to the Design-Builder of any additions, corrections, or revisions required to achieve such compliance. The Design-Builder, without any increase in the Preconstruction Services Fee, shall promptly take all necessary rectification action, making multiple re-submittals, if required.

5.5 GMP Amendment. If at the end of negotiations, the Director determines to accept the GMP Submittal, the Director in his sole discretion and subject to approval by the City Council

and the Design-Builder will enter the GMP Amendment and the GMP Amendment Date will be established hereunder and thereupon the Construction Services shall commence. Upon City Council approval, the GMP Amendment shall become a part of this Contract for all purposes.

5.6 Failure to Reach a GMP. In the event the City rejects the GMP Amendment, the City, in its sole discretion, may direct the Design-Builder at no additional cost to the City, to adjust the design and/or scope to attempt to bring the Guaranteed Maximum Price to an amount acceptable to the City or the City may elect to end its attempt to reach an agreement with the Design-Builder. In the event Design-Builder's scope of work is reduced by the Director, then the Director and Design-Builder shall attempt to negotiate a new GMP. In the event the City elects to end its attempts to reach an agreement with the Design-Builder, the Design-Builder does hereby assign all rights to any agreement with Design-Builder to the City effective upon written notice of acceptance by the City to the Design-Builder. The City shall be entitled to use any intellectual property developed by or on behalf of Design-Builder for this Project for the completion, maintenance, and further development of the TSU Flight Academy Project, or for any other purpose, without additional compensation to Design-Builder.

ARTICLE 6. CONSTRUCTION SERVICES

6.1 Generally. The Design-Builder shall render and perform Construction Services for the City in accordance with **Exhibit B**, **Exhibit C**, and all other applicable Contract Standards and Codes. The Design-Builder's responsibility for the Construction Services includes the responsibility to employ or subcontract with (subject to the limitations established herein) the necessary professionals (including architects, if applicable) technicians and engineers, properly qualified, licensed and skilled in the various aspects of the Construction Services, and to perform all services reasonably inferable from the description of the Construction Services.

6.2 Notices to Proceed. The Design-Builder shall commence performing Construction Services upon the date specified in a Notice to Proceed with Construction Services issued by the Director. The Design-Builder acknowledges that the Construction Services are segregated into discrete tasks associated with the advancement of the Preconstruction Services, as identified in **Exhibit B**, and that a Notice to Proceed with Construction Services may be limited to certain specifically identified tasks. The City will therefore have the right to issue multiple Notices to Proceed with Construction Services, identifying the Construction Services tasks to be performed by the Design-Builder.

6.3 The Design-Builder warrants, represents, covenants, and agrees that all of the services to be performed by it under or pursuant to this Contract shall be of at least the standard and quality which prevail among similar businesses and organizations with knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances and involving a project such as this Project, including the performance of work in a high volume and an international airport with ongoing operations and, that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Design-Builder shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.

6.4 With respect to any parts and goods it furnishes, Design-Builder warrants:

6.4.1 that all items are free of defects in title, design, material, and workmanship and new unless otherwise provided by this Agreement;

**CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement**

- 6.4.2 that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed;
- 6.4.3 that each replacement item is new, in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces; and
- 6.4.4 no item or its use infringes any patent, copyright, or proprietary right.
- 6.4.5 Design-Builder further warrants that the Work will be free of concentrations of 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.
- 6.4.6 Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered non-conforming work. Contractor's warranty excludes remedy for damage or defect cause by abuse by person or persons other than those for whom Design-Builder is responsible, improper or insufficient maintenance by the City, improper operation, or normal wear and tear under normal usage, and excludes claims that hazardous material was incorporated into the Work, if that material was specified in this Agreement. If required by the Director, Design-Builder shall furnish satisfactory evidence as to kind, quality, title of Products and that Products conform to the requirements of the Agreement.
- 6.4.7 In the event of a defect in a specified Product, either during construction or warranty period, Design-Builder shall take appropriate measures with the manufacturer of the Product to assure correction or replacement of the defective Product with minimum delay
- 6.4.8 Design-Builder warrants that title to all work covered by Contractor's invoice will pass to the City upon incorporation in the Work or upon Contractor's receipt of payment, whichever occurs first. Such title shall be free of all liens, claims, security interests or other interests ("Encumbrances") and if not, upon written demand from the Director, Design-Builder shall immediately take legal action necessary to remove Encumbrances.
- 6.4.9 Warranty periods shall be for not less than one year, or such longer period as required by the Contract Documents and shall run from Substantial Completion of the Work.
- 6.4.10 The Design-Builder's duties as set forth herein shall at no time be in any way diminished by reason of any approval by the City or the Director nor shall the Design-Builder be released from any liability by reason of such approval by the Director, it being understood that the City at all times is ultimately relying upon the Design-Builder's skill and knowledge in performing the services required hereunder.

6.5 The Design-Builder warrants, represents, covenants, and agrees that the Design-Builder and all persons connected with the Design-Builder directly in charge of its services are duly

**CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement**

registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.

6.6 The Design-Builder warrants, represents, covenants, and agrees to notify Director in writing within five days of encountering, of anything within its knowledge which it discovers of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Design-Builder (by the City or any other party) which the Design-Builder considers in its opinion to be unsuitable, improper, inaccurate, or defective in any way in connection with the purposes for which such document or data is furnished. Nothing shall excuse or detract from the Design-Builder's responsibilities or obligations hereunder in any case where such document or data is furnished unless the Design-Builder advises City in writing that in Design-Builder's opinion such document or data and any requests made therein for action are unsuitable, improper, inaccurate or defective, and City confirms in writing that it wishes the Design-Builder to proceed in accordance with the documents or data as originally given. Design-Builder shall suspend that portion of the Work affected by the reported discrepancy until clarification is received. If Design-Builder does not suspend work, any increase in cost as a result, including the necessity to perform any re-work, shall be borne by Design-Builder and not be reimbursable under this Contract. Notwithstanding the foregoing, Design-Builder shall be responsible for all errors and omissions and lack of coordination in its own documents and the documents created by those working for Design-Builder including, without limitations, all Work Products.

6.7 The Design-Builder warrants, represents, covenants, and agrees to furnish efficient business administration and superintendence and perform its services hereunder in the and in the most expeditious and economical manner consistent with the requirements of the Contract Documents.

6.8 In accordance with and not as an expansion of the time limitations set forth in the General Conditions, the Design-Builder warrants, represents, covenants, and agrees that it shall, at its own cost, make good any errors or omissions in the Preconstruction Services and Construction Services it performs as soon as the Design-Builder becomes aware of such errors or omissions or is notified of such errors or omissions. Should the Design-Builder refuse or neglect to make good such errors or omissions within a reasonable time after receiving written notice requesting such remedial work, then the City shall be entitled to make good such errors or omissions at the expense of the Design-Builder. This commitment by Design-Builder is in addition to, and not in substitution for, any other remedy for errors or omissions in the Preconstruction Services and Construction Services which the City may have at law or in equity.

6.9 Design-Builder shall attend training on HAS Project Management System and utilize that system for the numbering and tracking for all Work records, including, Modifications, requests for information, submittals and supplementary instructions, and shall provide updated records, including meeting minutes, at each meeting with City as requested. The numbering system shall be consistent with the HAS Project Management System.

6.10 Subcontracts or other agreements shall conform to the applicable payment provisions of the Contract Documents and shall not be awarded based on cost plus a fee without the prior written consent of Director.

6.11 Design-Builder shall require its Subcontractors who have not competitively bid to disclose to Director their markups (both overhead and profit), estimates, and costs calculated in their bids or incurred or expected in their Subcontracts and the Work performed, including any Change Order Work, for the assessment of reasonableness by the Director.

**CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement**

6.12 Design-Builder shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Design-Builder by the terms of the Contract Documents, and to assume toward Design-Builder all the obligations and responsibilities that Design-Builder, by these Documents, assumes toward City. Each subcontract agreement shall preserve and protect the rights of City under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, Design-Builder shall require each Subcontractor to enter into similar agreements with sub-subcontractors. Design-Builder shall make available to the Director and to each proposed subcontractor prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors. Design-Builder shall provide City with a copy of each subcontract agreement upon request.

6.13 Each subcontract agreement is assignable by Design-Builder to City on acceptance by the Director of the assignment. Design-Builder agrees to execute such additional documents as City may request to confirm such assignments. Design-Builder shall include a provision in each subcontract agreement recognizing the rights of City pursuant to the foregoing contingent assignment. Despite such acceptance by City of any such assignment, City shall not be liable for anything under such subcontract prior to the acceptance by City of the assignment or for any liability of Design-Builder to the Subcontractor. Acceptance of any such assignment shall not relieve Design-Builder or the Subcontractor of their responsibilities and liabilities for any Work performed prior to City's acceptance of such assignment.

6.14 Nothing contained in the Contract Documents shall create any obligations or liabilities owed by City to any Subcontractor or Supplier. Except as may be required by law, City shall have no liability or responsibility for the performance or nonperformance of any Subcontractor, Supplier, or consultant, even if City designated, required, identified or approved such Subcontractor, Supplier, consultant, or sub-consultant of any tier.

6.15 Design-Builder is an independent contractor and not an agent of City. Design-Builder shall be liable to City for acts and omissions that result in a breach of the obligations herein of Design-Builder and Design-Builder's Subcontractors and Suppliers of any tier, and their agents, employees and parties in privity of contract with any of them and anyone acting on behalf of any of them, and any other persons performing any of the Work directly or indirectly under contract with Design-Builder, including any design professionals and their consultants and sub-consultants of any tier.

6.16 Design-Builder and any of its design professionals, consultants, the Subcontractors and Suppliers and their agents and employees warrant that the information provided to City about the qualifications, including financial information and past performance, is accurate, has not materially changed, and does not omit information that would materially affect those qualifications and that Design-Builder is financially sound, fully solvent, and experienced in and fully qualified to perform the type of Work to be performed under this Contract.

6.17 Design-Builder represents that it has: (a) visited the Project site, (b) taken such other steps as may be necessary to ascertain the nature and location of the Work and the general and local conditions that affect the Work or the cost thereof, and (c) investigated the labor situation, including the availability of all necessary labor and material.

**CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement**

6.18 Design-Builder shall coordinate with other Contractors and projects on or around the Project site, as well as the Project Team or other HAS staff, and to minimize disruptions to normal airport operations.

6.19 Without diminishing the other obligations of Design-Builder, Design-Builder represents and agrees that it will perform its services under no circumstances with less than the usual and customary standards of Design-Builder's profession or business and in compliance with all Applicable Laws and in strict accordance with the Contract Documents. Design-Builder agrees to correct in a timely manner and as may be directed by the Director and to bear the full cost of correcting Design-Builder's Work and services that are not in strict conformance with the Contract Documents or Applicable Laws or that are otherwise defective or negligently performed, those of its Subcontractors, Suppliers, and consultants, and any related damages or other harm. The term defective work or similar terms when used in the Contract Documents include Work that is not in strict conformance with the Contract Documents. Design-Builder agrees to perform Work required by the Contract Documents in a good and workman-like manner.

6.20 Design-Builder represents and agrees to perform its services under the Contract Documents in an expeditious and economical manner consistent with good business practices and the interests of City in accordance with the Project Schedule reflected in **Exhibit I**.

6.21 Design-Builder represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Contract.

6.22 Except for the obligations of City set forth in this Contract, City has no liability to Design-Builder or to anyone claiming through or under Design-Builder by reason of the execution or performance of this Contract.

6.23 Design-Builder shall give all required notices and comply with all Applicable Laws. The Work, including documents that are the responsibility of Design-Builder, shall be in accordance with all Applicable Laws. If Design-Builder otherwise performs any Work that is contrary to Applicable Laws, Design-Builder shall correct such Work at its expense and shall be liable for all costs, delays, and damages attributable thereto, including any damage to other Work or other property arising from or relating to the corrective Work.

6.24 Design-Builder shall establish, implement, and follow a quality control program for the Work during all Construction Services. Design-Builder shall provide Director with a copy of the written quality control program.

6.25 Design-Builder shall provide Value Engineering suggestions to Director. Whenever the term "Value Engineering" is used in conjunction with this Contract or the Project, it has its commonly accepted meaning within the construction industry and does not imply the practice of professional engineering without a license. If any Value Engineering activities constitute the professional practice of engineering, then such activities shall be performed by an engineer licensed in Texas.

6.26 Design-Builder shall give constant attention to the Work to facilitate the progress thereof, and shall cooperate with the Director, inspectors, and with other Contractors in every way possible. The Director shall determine the areas in which the Design-Builder and Contractors shall work in the event of a disagreement, and the Design-Builder shall cooperate in such processes and decisions. The Design-Builder shall have a competent Superintendent and safety professional on the Work at all times when construction is being performed, who is fully authorized as his/her agent on the Work. The Superintendent shall be capable of reading and fully understanding the plans

**CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement**

and specifications and schedules, shall receive and fulfill instructions from the Director, and shall be present at the Work site at all times while Work is in progress.

6.27 The City will be performing additional work with other Contractors as well as continuing with its normal airport operations on or near the Work covered by this Contract. When separate contracts are let within the limits of any one project, Design-Builder shall conduct its Work so as not to interfere with or hinder the progress or completion of the work being performed by other Contractors. Design-Builder shall cooperate with other Contractors, City consultants, design professionals, City employees, and others as directed by the Director. In the event an interference cannot be reasonably avoided, Design-Builder shall notify the City before the Work is impacted to resolve the interference.

6.28 Design-Builder shall arrange its work and shall place and dispose of the materials being used so as to not interfere with the operations of other Contractors within the limits of the same project. Design-Builder shall join its work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

6.29 Subject to the obligations to cooperate with the City and Contractors with respect to contemporaneous operations and proximity at the Project site including, without limitation, relocating work areas, the Design-Builder remains solely responsible for its means, methods, techniques, sequences and procedures and safety programs in connection with its Work.

6.30 Design-Builder acknowledges that the Project site is, and at all times during the Work will be, within or around critically important areas of the operational airfield and other buildings, improvements and facilities at EFD. Design-Builder agrees that at all times when any forces are mobilized to strictly adhere to rules and instructions regarding permitted activities and physical locations on the airfield or other areas at EFD given by the Director. Such instructions will include, without limitation, demobilizing from Work areas on minutes' notice to allow aircraft movement; coordination of phased work areas to keep aircraft and EFD vehicle and user paths open and operational; vigilant cleaning and removal of all foreign object debris caused by its Work from any areas on which aircraft may travel. Design-Builder agrees and warrants that all delays and disruptions within the reasonable contemplation of those knowledgeable of airfield and EFD operations (including absolute deference to aircraft and EFD vehicle and user operations) caused by such adherence to rules and instructions or coordination for activities as specified herein have been taken into account in preparing the Contract Price and Guaranteed Maximum Price and that Design-Builder will not seek any increase in the Contract Price or a Guaranteed Maximum Price or the Contract Time on account of such adherence and coordination. Design-Builder agrees that the City's needs arising from its ongoing airport operations as described herein has been expressly contemplated by Design-Builder and shall not constitute active interference by the City.

6.31 All Subcontracts shall be awarded in accordance with the applicable provisions of *Texas Government Code* Chapter 2269, Subchapter G through a process overseen by the Director. Design-Builder shall not subcontract with any Subcontractor to which Director has a reasonable objection in accordance with *Texas Government Code* Chapter 2269, Subchapter G. A notice of intent to employ a particular Subcontractor shall be given by the Design-Builder to the City as to permit Director adequate time for review of the prospective Subcontractor without delay to the Project and to allow time for Design-Builder to make substitute selections, but in no event shall such notice be given less than 10 days before the intended subcontract date. If Director has a reasonable objection to a proposed Subcontractor, Design-Builder shall propose another against whom Director has no reasonable objection. Design-Builder shall not be required to subcontract with any Subcontractor to which it has reasonable objection. When Design-Builder's Subcontractors for constructing the Work have been identified, they shall not be changed without Director's prior written approval, which shall not be unreasonably withheld. Design-Builder shall not

incur any Subcontract costs prior to issuance by City of a Notice to Proceed for such Work. If the bidding process does not result in the selection of a subcontractor who is acceptable to the Director, the Director may ask the Design-Builder to submit a proposal for the specific portion of work for approval.

6.32 The Design-Builder shall (1) submit pricing for any proposed self-performed Work in the same manner as all other Subcontractors (2) perform self-performed Work in accordance with the same terms and conditions as its other Subcontractors, and (3) account for self-performed Work in the same manner as if the Work had been performed by other Subcontractors. In order to afford the City with maximum flexibility and the opportunity to achieve the best value, the Design-Builder shall not self-perform any work to which the Director has a reasonable objection.

ARTICLE 7. TIME

Time of the Essence.

7.1 Time limits stated in the Contract Documents are of the essence. Design-Builder is responsible for schedule development and updating and reporting throughout the Project, including Preconstruction Services and Construction Services. Design-Builder shall comply in all regards with the Contract Time and other time limitation requirements set forth in the Contract Documents. The anticipated date for submitting a GMP shall be the date specified in the Preconstruction Services Notice to Proceed. The total Contract Time is 365 Calendar Days from Notice to Proceed for Preconstruction Services to Final Completion of the Work inclusive of Construction, excluding the GMP approval period (which is the time from Design-Builder submission of the GMP Submittal to Notice to Proceed for Construction Services unless extended by Change Order). Design-Builder shall proceed expeditiously without interruption and with adequate forces, shall achieve the Date of Final Completion within the Contract Time.

- 7.1.1 A phase of Construction shall be deemed to commence on the Date of Commencement of the Work specified in a Notice to Proceed for a phase of Construction after approval of the CGMP or GMP proposal.
- 7.1.2 Design-Builder shall achieve Final Completion of the Work on or before the date agreed to in the GMP Submittal, subject to time extensions granted by Change Order.
- 7.1.3 The times set forth for completion of the work in the Notice to Proceed with Construction and the GMP Submittal are an essential element of this Contract.

7.2 The Design-Builder shall complete all services in accordance with the completion dates set forth in the Preconstruction Services Schedule (**Exhibit E**) and the Contract Time, as such dates may be adjusted in accordance with the General Conditions. The Design-Builder recognizes that the Preconstruction Services Schedule and the Contract Time are of the essence and that the City shall be entitled to the recovery of damages from the Design-Builder as set forth in the Contract Documents for the Design-Builder's failure to comply with the Preconstruction Services Schedule and Contract Time, subject to the terms and conditions of the Contract Documents.

ARTICLE 8. LIQUIDATED DAMAGES

8.1 **Liquidated Damages Generally.** Additional liquidated damages provisions are set forth in Article 11 of the General Conditions.

8.2 Liquidated Damages. Liquidated damages shall be City's sole remedy for damages from delay by Design-Builder except that City shall be entitled to recover all of its actual, direct, and consequential damages in the event and to the extent liquidated damages are determined to be unenforceable, and City shall also be entitled to City's remedies under the General Conditions. Liquidated damages for each of the Project milestones are as follows:

- 8.2.1 **Final Completion of Preconstruction Services:** Preconstruction Phase, Design Phase, Permitting, Demolition, and Construction Services necessary to complete Preconstruction: Preconstruction Milestone: \$xxxxxx per Day. The milestone duration is XX Calendar Days from the date of the Preconstruction - Notice to Proceed.
- 8.2.2 **Final Completion of Construction Services** - Construction Services necessary to complete construction of the TSU Flight Academy Project Phase 1 Milestone: \$0000.00 Day. The milestone duration is XXXX Calendar Days from the date of the Phase 1A and 1B Notice to Proceed.
- 8.2.3 The maximum aggregate liquidated damages assessed to the Design-Builder for Construction Services shall not exceed 100% of the Design-Builder's Fee established by the estimated Cost of the Work until a GMP is established and thereafter it shall be 100% of the Design-Builder's fee calculated against the GMP.
- 8.2.4 The maximum aggregate consequential damages (excluding damages for delay, whether liquidated or otherwise) which shall be recoverable against the Design-Builder shall not exceed 100% of the Design-Builder's Fee established by the estimated Cost of the Work until a GMP is established and thereafter it shall be 100% of the Design-Builder's fee calculated against the GMP.
- 8.2.5 **Liquidated Damages for Phases and GMP if authorized.** The Director may issue a separate Notice to Proceed or Change Order for each phase of Design and Construction and each phase of Design and Construction may have a separate substantial completion date and a separate liquidated damages amount, as appropriate and detailed herein.

ARTICLE 9. MWBE COMPLIANCE

9.1 Design-Builder shall comply with the City's Minority, Women and Small Business Enterprise ("MWSBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Design-Builder shall make good faith efforts to award Subcontracts or supply agreements to MWSBEs as follows: % M/WBE for design and construction services. Design-Builder acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunity and will comply with them.

ARTICLE 10. CONTRACT COMPENSATION

General Payment Requirements.

- 10.1** General Payment Requirements.
 - 10.1.1 In addition to the payment terms set forth in this Article, the general requirements for payment, including the procedures and timing for the

Applications for Payment, for Design-Builder's Work are set forth in the General Conditions.

10.1.2 As of the Effective Date, the maximum amount payable to the Design-Builder under this Contract is as follows:

Preconstruction and Design Services Price:

Preconstruction Services

Design-Builder's Pre-Construction Services Fee: \$ _____

Lump Sum – Design Services from 30% Design Development to 100% Construction Documents \$ _____

Construction Services Price:

Lump Sum – Construction Administration Services Fee \$ _____

Construction Services \$ _____

Design-Builder's Fee percentage: _____ %

Agreed Cost of the Work (including Owner Controlled Contingency and Insurances) \$ _____

10.1.2.1 The Design-Builder shall plan and design the Project in such a manner that the Agreed Cost of the Work does not exceed the sum of \$ _____ without the express written approval of the Director. The Agreed Cost of Work may be increased or decreased by the Director, in his sole discretion.

10.1.2.2 The Design-Builder shall monitor and participate in updating the Probable Cost of the Work throughout the design process. If at any time the Probable Cost of the Work, for all work designed and specified, exceeds or becomes likely to exceed the updated Agreed Cost of the Work, the Design-Builder shall immediately notify the Director. Upon becoming aware that the Probable Cost of the Work will exceed the current Agreed Cost of the Work, the Director, in his sole discretion, may by written notice: (i) increase the Agreed Cost of the Work (ii) reduce the scope, or (iii) require a re-design of the Project by Design-Builder until such time as the Probable Cost of the Work is less than or equal to the Agreed Cost of the Work.

10.1.2.3 There shall be no increase in the Design-Builder's compensation for any such re-design to maintain the Agreed Cost of the Work.

10.1.2.4 For purposes of **Section 10.1.2**, inclusive of all sections therein, no person other than the Director may provide written authorization to change the Agreed Cost of the Work specified herein.

10.1.3 As of the Effective Date, the maximum amount payable to the Design-Builder under this Contract is **\$X,XXX,XXX.00**, which is the total amount for compensation for the performance of Preconstruction Services as set forth in Section 10.2. Without limiting any term or condition hereunder with respect to payments to the Design-Builder, the Design-Builder's entitlement to, and the City's obligation to pay, any additional compensation to the Design-Builder for the performance of the Work will be dependent upon the execution of a CGMP Amendment and/or the GMP Amendment. The Design-Builder recognizes that the City has no obligation hereunder to enter into any such amendment. In the event the Director and Design-Builder agree on a GMP and the Director authorizes Design-Builder to proceed with Construction Services, Design-Builder's compensation shall be calculated under Section 10.3.

10.2 Preconstruction Services Price.

10.2.1 Subject to the City's limit of appropriation for properly performed and completed Preconstruction Services, the City shall pay the Design-Builder a lump sum amount of **\$X,XXX,XXX.00** for Design Services to 60% Design Development (for GMP) and a lump sum amount for Design Services from 60% Design Development to 100% Construction Documents of **\$XXX,XXX.00** for a Total Preconstruction and Design Services amount of **\$X,XXX,XXX.00**.

Design Milestone Value	
Develop 60% Design	\$ T B D
Develop 90% Design	\$ TBD
Develop 100% Design	\$ TBD
GMP Proposal Preparation	\$ TBD
Bidding and Permitting	\$ TBD
Construction Administration	\$ TBD
TOTAL PRECONSTRUCTION AND DESIGN SERVICES PRICE	\$ TBD

10.2.2 City will pay Design-Builder based on the funding authorized for each Stage of design and based on invoices showing the percentage of services performed during the preceding month for Preconstruction Services based upon the allocation of the Preconstruction Services Price set forth above and per the Stage of design (Concept Design, SD, DD, CD, etc.). After the completion of the Concept Design Stage, the City and Design-Builder will negotiate and agree upon the final design solution and the time allotted for the performance of the design to 100% Design Development stage, preparation of the GMP, and design to % Construction Documents. The Preconstruction Services Price shall be full compensation to Design-Builder for all Preconstruction Services for design, including all costs, overhead, and profit. The Preconstruction Services Price shall also include full compensation for the Design-Builder for all Design-Builder Preconstruction Services, including all costs, overhead, and profit.

- 10.2.3 All payment requests for Preconstruction Services shall be submitted on an Application for Payment and Schedule of Values approved by the Director and include all required attachments identifying payments to Design-Builder, as well as to all Subcontractors.
- 10.2.4 Design-Builder shall not be entitled to an increase in the Preconstruction Services amount set forth in this Section because of Project Schedule extensions or delays, or changes in the scope of the proposed Project, unless such extensions, delays, or changes are material and significant as determined by the Director in his reasonable, sole discretion.
- 10.2.5 During the Preconstruction Services, the Director shall have the right but not the obligation, to negotiate performance incentives, and the City and Design-Builder may amend this Contract to incorporate such incentives, if any, provided that the Design-Builder has then met all its obligations under this Contract as determined by the Director in his sole discretion.

10.3 Construction Services Payments

- 10.3.1 Pursuant to the terms of this Contract, City shall pay Design-Builder for Design-Builder's proper and complete performance of the Construction Services, the Cost of the Work and the Design-Builder's Fee, up to the limit of the applicable CGMP or the Guaranteed Maximum Price in accordance with the payment provisions of the General Conditions. Payment by City shall be deemed full compensation to Design-Builder for the performance of the Construction Services. In the General Conditions, references to adjustments in "cost" or "costs" refer to Costs of the Work as defined below, and references to Design-Builder's "home/branch office overhead" and "profit" refer to Design-Builder's Fee.
- 10.3.2 Design-Builder shall not receive any fee for Work deleted by Modifications. The Design-Builder's Fee shall be compensation in full to Design-Builder for all overhead and profit and all costs not otherwise recoverable.
- 10.3.3 The sum of the Cost of the Work and Design-Builder's Fee is guaranteed by Design-Builder not to exceed whatever Guaranteed Maximum Price Director and Design-Builder may agree upon in writing, subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by Design-Builder without reimbursement by City. No Change Order shall affect the Guaranteed Maximum Price unless the Change Order specifies the exact total change to the Guaranteed Maximum Price.
- 10.3.4 In the event that the Design-Builder is required to pay or bear the burden of any new federal, state, or local tax, or of any rate increase of an existing tax (except a tax on income) with respect to its forces and/or its performance of the Work as a result of any statute, court decision, written ruling, or regulation taking effect after the Effective Date of this Contract, the Guaranteed Maximum Price shall be increased by the amount of the new tax or tax increase upon proof satisfactory to the Director that such increase has been applied to Design-Builder.

CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement

- 10.3.5 If the sum of the Cost of the Work and the Design-Builder's Fee for the Construction Services is less than the Guaranteed Maximum Price for such Services, then all such savings shall all be retained by City.
- 10.3.6 Subject to the City's appropriation of funds, in full consideration of Design-Builder's Construction Services the City shall pay the Design-Builder's Fee of % of the Cost of the Work, in addition to a lump sum price of \$X,XXX,XXX.00 for the Design-Builder's Preconstruction and Design Services. Design-Builder agrees that if the Guaranteed Maximum Price, inclusive of CGMPs, increases or decreases from the amount originally agreed upon, the Design-Builder's Fee will increase or decrease based upon the actual Cost of the Work. Notwithstanding anything in the Contract Documents to the contrary, Design-Builder shall not earn a fee on the lump sum price of the Design-Builder. Design-Builder's Fee is inclusive of Design-Builder's profit, general overhead and all expenses in connection with maintaining and operating Design-Builder's main office and any branch office, including:
- 10.3.6.1 Salaries of persons employed in the main or branch offices of the Design-Builder whose time is devoted to the general conduct of the Design-Builder's business for the Project, such as project executives, operations managers, contract administrators, office managers, stenographers, plan clerks, file clerks, and draftsmen except to the extent that their time is actually spent on the Project and are identified on **Exhibit D**.
- 10.3.6.2 Outside services and their expenses for estimating, personnel, accounting, budget control, audit and management information systems (other than Preconstruction Services) relating to accounting in Design-Builder's office and even if at the Project site, except as specifically identified herein.
- 10.3.6.3 Interest on the Design-Builder's capital or on money borrowed by the Design-Builder, including the capital employed by the Design-Builder in the performance of the Work.
- 10.3.6.4 Amounts required to be paid by Design-Builder for Federal and/or State income and franchise taxes.
- 10.3.7 In addition to the payment procedures described in the General Conditions, the following payment procedures shall apply:
- 10.3.7.1 The Schedule of Values may be revised from time to time to adjust allocations of costs to various line items as the costs become better known, but such adjustment shall be subject to the approval of the Director, which shall not be unreasonably withheld. Under no circumstances shall the Schedule of Values exceed a CGMP and/or the GMP for the Project. The Design-Builder's Fee, labor and expenses for General Conditions Work, labor and expenses for any self-performed Work, and the contingency shall be shown as separate line items on the Schedule of Values.

**CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement**

- 10.3.7.2 The Schedule of Values submitted shall maintain the originally established value for each work classification line item and shall contain any revisions to costs or cost estimates for each such classification. The format and tracking method of the original Schedule of Values and of all updates thereto shall be subject to the approval of the Director.
- 10.3.7.3 Payment for Design-Builder's Fee shall be in the same proportion to the total fee as the amount requested for the Cost of the Work relative to the total Cost of the Work used in deriving the Guaranteed Maximum Price, inclusive of any CGMPs.
- 10.3.7.4 Design-Builder shall submit a monthly cost breakdown, including cost elements for staff labor and expenses over the duration of the construction period for approval on time and material phases of the work. Payment for Design-Builder's General Conditions shall be made on a monthly basis per the approved breakdown.
- 10.3.7.5 Payment for the Cost of the Work shall be made based on 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, in accordance with the General Conditions.
- 10.3.7.6 Retainage as specified in the General Conditions will be applied to the entire amount requested in the CGMP and/or GMP, as applicable. Retainage will not be held on the cost of the City's standard "pass-through" items, such as building permits, payment and performance bonds, Preconstruction and Design Services, and insurance costs. Retainage will be reduced for the Project and the Project will be closed out consistent with the relevant provisions of the General Conditions.
- 10.3.7.7 At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work shall not exceed the unpaid balance of the Guaranteed Maximum Price (less retainage on Work previously completed).
- 10.3.7.8 Payments to Subcontractors shall be made based on the same percentage of Work completed that is allocable to that Subcontractor including applicable retainage. Retainage may be released for early performing subcontractors or small and/or minority, disadvantaged businesses as their scope of work is completed in their respective phase.
- 10.3.7.9 With each Application for Payment, Design-Builder shall submit a certified release of all claims, known or that should reasonably be known, and liens against the City, stating "In consideration for the payment requested herein and upon receipt of such payment, Design-Builder waives and releases all claims and liens of every sort against City relating to or arising out of the Work performed, except for such claims as have been properly submitted in writing in accordance with the Contract

Documents.” The final request for payment shall not be made until Design-Builder delivers to City a complete release by Design-Builder of all claims and liens of any sort arising out of the performance of the Work, affidavits from Subcontractors indicating they have been paid in full, other than amounts remaining to be paid to the Design-Builder for Work performed by that Subcontractor (which amounts shall be stated), a complete release of all claims and liens from all Subcontractors (except that, as to amounts remaining to be paid to that Subcontractor, such release may be made contingent upon City making payment to Design-Builder) and an affidavit that so far as Design-Builder has knowledge or information, the release includes and covers all materials and services over which Design-Builder has control for which a lien could be filed, but Design-Builder may, if any Subcontractor or consultant refuses to furnish a required affidavit or release, furnish a bond satisfactory to Director to indemnify City against any claim or lien of any sort and any related costs, including attorneys’ fees. If any claim or lien of any sort remains unsatisfied after all payments are made, Design-Builder shall refund to City all moneys City may be compelled to pay in discharging such lien, including all costs and reasonable attorneys’ fees, and City shall have all remedies at law and in equity.

10.3.7.10 The aggregate total of payments to Design-Builder shall not exceed the total of the actual Cost of the Work as verified by Director from Design-Builder’s final accounting plus the applicable Design-Builder’s Fee as certified for payment in accordance with the Contract, but in no event more than the Guaranteed Maximum Price and approved Change Orders to Guaranteed Maximum Price plus the Preconstruction Services Fee. If payments made to Design-Builder exceed that which is due and owing pursuant to this **Article 10**, then Design-Builder shall promptly refund such excess to City.

10.3.8 In addition to the City’s other rights and any provision hereof to the contrary notwithstanding and to the extent reasonably necessary to protect itself, City shall not be obligated to make any payment (whether a progress payment or final payment) to Design-Builder hereunder if any one or more of the following conditions exist:

10.3.8.1 The Design-Builder is in breach or default under this Contract;

10.3.8.2 Any part of such payment is attributable to services, which are not performed in accordance with this Contract; provided, however, such payment shall be made as to the part thereof attributable to services which were performed in accordance with this Contract;

10.3.8.3 The Design-Builder has failed to make payments promptly to Subcontractors or other third parties used in connection with the services for which City has made payment to Design-Builder; or

CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement

- 10.3.8.4 If Director determines that the amount remaining under the Guaranteed Maximum Price will not be sufficient to complete the services in accordance with this Contract, no additional payments will be due Design-Builder hereunder unless and until Design-Builder, at Design-Builder's sole cost, performs a sufficient portion of the remaining services so that such portion of the amount remaining under the Guaranteed Maximum Price is determined by City to be sufficient to so complete the then remaining Work.
- 10.3.9 Nothing contained herein shall require the City to pay the Design-Builder an aggregate amount exceeding the Guaranteed Maximum Price or to make payment if in the City's belief the cost to complete the Work would exceed the Guaranteed Maximum Price less previous payments to Design-Builder.
- 10.3.10 No partial payment made hereunder shall be, or shall be construed to be, final acceptance or approval of that part of the Work to which such partial payment relates, or a release of Design-Builder of any of Design-Builder's obligations hereunder or liabilities with respect to such Work.
- 10.3.11 Design-Builder shall promptly pay all bills validly due and owing for labor and material performed and furnished by Design-Builder-Related Entities in connection with the performance of the Preconstruction and Construction Services.
- 10.3.12 City shall have the right to verify and audit for a period of seven years after final payment for the Construction Services, the details set forth in Design-Builder's billings, certificates, accountings, cost data, and statements, including all underlying costs and expenses in the Cost of the Work, either before or after payment therefor, by (1) inspecting the books and records of Design-Builder with respect to the Project during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Design-Builder's business employees; (4) visiting the Project site; and (5) other reasonable action. City shall have the right to audit all costs, the basis for those costs, and all underlying expenses relating to Design-Builder's performance herein, including but not limited to, the Cost of the Work, particularly, without limitation, labor rates and hourly salary rates set forth in **Exhibit D**.
- 10.3.13 Design-Builder shall establish and maintain a reasonable accounting system that enables the City to readily identify Design-Builder's assets, expenses, costs of goods, and use of funds. The City and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Contract kept by or under the control of the Design-Builder, including, but not limited to those kept by the Design-Builder, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement

**CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement**

supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

- 10.3.14 Design-Builder shall, at all times during the term of this Contract and for a period of seven years after the termination or completion of this Contract, maintain such records, together with such supporting or underlying documents and materials. The Design-Builder shall at any time requested by the City, whether during or after completion of this Contract, and at Design-Builder's own expense make such records available for inspection and audit (including copies and extracts of records as required) by the City. Such records shall be made available to the City during normal business hours at the Design-Builder's office or place of business and subject to a three-day written notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the City.
- 10.3.15 Design-Builder shall ensure the City has these rights with Design-Builder's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any Subcontracts formed between the Design-Builder and any Subcontractors to the extent that those Subcontracts relate to fulfillment of the Design-Builder's obligations to the City. Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the City unless the audit identifies overpricing or overcharges (of any nature) by the Design-Builder to the City in excess of one-half of one percent (.5%) of the total contract billings, the Design-Builder shall reimburse the City for the costs of the audit up to the amount of overpricing or overcharges. Design-Builder shall be given a reasonable opportunity to review and dispute in writing such findings, and the Director shall consider such information if provided to the City. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the City may recoup the costs of the audit work from the Design-Builder. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Design-Builder's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the City's findings to Design-Builder.
- 10.3.16 The acceptance by Design-Builder or Design-Builder's successors of final payment under this Contract, shall constitute a full and complete release of City from any and all claims, demands, and causes of action whatsoever which Design-Builder or Design-Builder's successors have or may have against City under the provisions of this Contract except those previously made in writing and identified by Design-Builder as unsettled at the time of the final request for payment in a document captioned "Unsettled Claims" included with Design-Builder's final request for payment.

10.4 Cost of the Work.

10.4.1 Definition. The term Cost of the Work, or Cost of Work, are all Direct and Indirect Costs of Construction Services plus any actual costs for CGMP Work which the Design-Builder necessarily incurs to properly perform the Work in strict compliance with the Contract Documents. Cost of Work does not include the Design-Builder's Fee. Cost of the Work shall not include costs not necessarily incurred or incurred at higher than permitted rates or amounts. Cost of the Work includes only the items set forth in this Section, which shall all be subject to verification by audit.

10.4.1.1 Direct Costs are the costs necessary to furnish and install the permanent elements of the project, such as structure, exterior envelope, interior finishes, vertical transportation, mechanical electrical and plumbing systems, etc. Direct costs include, but are not limited to: (i) costs for Subcontract Work self-performed by Design-Builder, (ii) subcontractor and supplier, and their sub-tier subcontractors and suppliers, costs for labor, equipment, and materials furnished to the Project; (iii) equipment designed, specified, selected, or provided by the Design Consultant and to be incorporated by the Design-Builder into the Project; (iv) Alternates; (v) Unit Priced Work; (vi) Contingency; (vii) Miscellaneous Costs; and (viii) Pass-Through Items.

10.4.1.2 Indirect Costs – or General Conditions Costs, are field office overhead and costs normally arising from performing Division 00 and 01 of the Project Manual. All such costs are the costs associated with the jobsite management of the project, including, but not limited to, items such as project management staff, jobsite trailers, telephones, administration, temporary roads, temporary utilities, permits, fees, general hoisting, safety and cleaning, not specifically associated with individual elements being erected. Cost of the Work shall not include costs not incurred, or incurred at higher than permitted rates or amounts. Cost of the Work includes only the items set forth by the Director, which actual shall all be subject to verification by audit

10.4.2 General Conditions of the Work

10.4.2.1 Labor Costs.

Actual hourly wages paid to construction workers directly employed by Design-Builder who perform construction of the Work at the Project site or, with the Director's prior written consent, at off-site workshops, when available. For hourly workers employed by the Design-Builder, Design-Builder shall provide certified payrolls and any other documentation requested by City to verify wages and hours, and compliance with the City's wage rates identified in **Exhibit H**. The City requires Design-Builder to document Actual wages and labor burden separately which may be less than Allowable wages in **Exhibit D**. Actual wages paid may include premium payments for overtime work or

CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement

night work for time actually spent in the performance of the Work when such premium payments have been demonstrated to be in accordance with the Design-Builder's normal business practice and is included in the Guaranteed Maximum Price. Premium time shall not accrue prior to the completion of 40 hours per week of work by any given individual.

- a. Actual wages or salaries (inclusive of Labor Burden) of Design-Builder's Key Personnel who are identified on **Exhibit D** together with their Allowable Hourly Rate – but only for documented time when directly involved in performance of the Work. Design-Builder shall identify actual wages and salaries of Key Personnel within fourteen (14) Calendar Days from NTP for Preconstruction Services and upon submission of Design-Builder's Construction Services Guaranteed Maximum Price proposal and upon submission of CGMP's. Allowable Hourly Rate means the rate for a particular staff classification identified in **Exhibit D**, which includes actual wages or salaries (inclusive of Labor Burden). The salaries of Design-Builder's supervisory personnel are subject to a not-to-exceed increase of 3% per year; the first year beginning on the date that Director approves Design-Builder's Construction Services Maximum Guaranteed Price proposal. The 3% increase shall be available to Design-Builder each year thereafter not to exceed seven years or at the completion or termination of this Contract, whichever occurs first. The annual not-to-exceed increase of 3% is available hereunder only to the extent it reflects a concurrent and equal increase in the supervisory personnel's salaries or wages. Any increase or portion thereof not used in a given year shall expire and does not "bank" or "accumulate." Notwithstanding, Cost of the Work for purposes of calculating payment for Design-Builder's supervisory and administrative personnel when directly involved in performance of the Work shall be based on the "actual hourly pay rate" set forth in **Exhibit D**. Projected wage increases should be reflected in the Guaranteed Maximum Price Proposal. Actual wages paid may include premium payments for overtime work or night work for time actually spent in the performance of the Work when such premium payments have been demonstrated to be in accordance with the Design-Builder's normal business practice and is included in the Guaranteed Maximum Price. Premium time shall not accrue prior to the completion of 40 hours per week of work by any given individual. Labor Burden for overtime payments shall be eliminated or reduced to equal the Design-Builder's actual substantiated cost for such burden. Should Design-Builder require employees, other than those listed on **Exhibit D**, Design-Builder shall provide written notice to the Director setting forth all the

information described above. If for any reason, Director reasonably objects to any such employee, Design-Builder shall not use that employee to perform on the Project. Failing reasonable objection by the Director, the employee, together with the employee's daily billing rate, shall automatically become a part of **Exhibit D**. The Labor Burden rate shall be based on the actual cost of direct wages or salaries of Design-Builder's employees incurred in the interest of the Project. For billing purposes only, this rate shall be established annually, subject to verification by the City's auditors based on the Design-Builder's Labor Burden for the previous year. The components which comprise the Labor Burden, as set forth in **Exhibit A – 2.1.80** shall not change throughout the term of the Project. The City shall be allowed to audit the actual cost of labor burden each year, and City shall be entitled to a refund to the extent that it has paid Design-Builder more than its actual Labor Burden costs. Initially, the labor burden will be set at **55%** subject to verification by the City's auditors. It will be reset each year based on the audited rate for the prior year. Under no circumstances shall the City pay more for labor burden than the percentage established for billing purposes for any given year. Labor Burden for overtime payments shall be eliminated or reduced to equal the Design-Builder's actual substantiated cost for such burden.

- b. Actual out of town travel expenses of Design-Builder's personnel incurred directly and solely in support of the Project with prior written approval of the Director or specifically identified in the negotiated cost proposal but only to the extent permitted by City's policies on reimbursement for travel.

10.4.2.2 Actual costs paid or incurred by Design-Builder for labor costs arising out of taxes, insurance, and benefits which are (i) required by law, (ii) required by collective bargaining agreements, (iii) or as otherwise customary so long as such costs are based on the actual wages of construction workers properly included in the Cost of the Work as defined herein and are approved in advance by the Director.

10.4.3 Subcontractor Costs

10.4.3.1 Payments actually made by Design-Builder to Subcontractors for prosecution of the Work in accordance with the requirements of their agreements with Design-Builder, but only for agreements to the extent they have been specifically consented to in writing by Director. Consent to such agreements shall not create any liability for City and shall not excuse Design-Builder from complying with the terms of this Agreement.

10.4.3.2 Costs of Materials and Equipment Incorporated in the Completed Construction

- a. Costs, including transportation, of materials and equipment incorporated or to be incorporated into the Work.
- b. Costs of materials described in the preceding subparagraph in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. City shall be entitled to take possession of excess materials not incorporated into the Work, or at Director's option, Design-Builder shall sell such materials and deduct the greater of fair market value or gross proceeds from the Cost of the Work. Costs of Other Materials and Equipment, Temporary Facilities and Related Items
- c. Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Design-Builder at the site and fully consumed in the performance of the Work; and if not fully consumed, then the cost shall be based on the cost of the item less its fair market value. Cost for items previously used by Design-Builder shall mean fair market value prior to use on the Project. The cost for hand and small tools shall not exceed 3% of the direct payroll costs for employees of Design-Builder.
- d. Rental charges for temporary facilities, machinery, equipment, excluding hand tools which are provided at the Project site, whether rented from Design-Builder or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. The aggregate rental charges for an item used on this Project (including the rental charges for items used to replace it) shall not under any circumstances exceed 75% of the value of that item or 75% of any applicable option purchase price, whichever is lower. Machinery and equipment owned by Design-Builder or any person affiliated with or owned or controlled by Design-Builder or persons affiliated with Design-Builder shall not be charged at more than the market rate for such equipment in the Houston area or 90% of current published rental rates of the Associated Equipment Dealers, for such equipment, whichever is less.
- e. Costs of removal of debris from the Project site.
- f. Costs of postage and parcel delivery charges, standard and reasonable telephone service at the Project site and

reasonable petty cash expenses of the Project site office, incurred directly and solely in support of the Work, and all incurred at the Project site.

- g. Area specific site periodic and final clean up, not previously included, and in accordance with all Applicable Laws and regulations.

10.4.4 Miscellaneous Costs

10.4.4.1 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which Design-Builder is liable. Notwithstanding, City is a home-rule municipal corporation and Design-Builder shall avail itself of all exemptions which may exist for such taxes based on City's status.

10.4.4.2 Fees and assessments for building permits and for other permits and inspections that Design-Builder is required by the Contract Documents to pay for or obtain.

10.4.4.3 Premiums for insurance and bonds to the extent directly attributable to this Agreement. Any premium allocation plan to this Project by Design-Builder must be approved by the City's Legal Department.

- a. Testing fees pursuant to the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded.
- b. Utility company charges including meter fees, tap fees and utility consumption charges.
- c. Costs of cell phones and vehicles, not otherwise included in the Labor Burden, for those employees approved by the Director.
- d. Costs of on-site computers, printers, monitors, software, maintenance and other electronic equipment approved in advance and in writing by the Director, used solely for the Project.

10.4.4.4 Payments actually made by Design-Builder to Subcontractors for prosecution of the Work, including Design-Builder, in accordance with the requirements of their agreements with Design-Builder, but only for agreements to the extent they have been specifically consented to in writing by Director. Consent to such agreements shall not create any liability for City and shall not excuse Design-Builder from complying with the terms of this Contract.

10.4.4.5 City shall be entitled to take possession of excess materials not incorporated into the Work, or at Director's option, Design-

**CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement**

Builder shall sell such materials and deduct the gross proceeds from the Cost of the Work.

- 10.4.5 Alternates as identified in the Contract Documents
- 10.4.6 Unit Priced Work as identified in the Contract Documents
- 10.4.7 Contingency allowed by the Contract Documents, and identified as a line item in the Schedule of Values
 - 10.4.7.1 Sales, use, or similar taxes imposed by a governmental authority that are related to the Work and for which Design-Builder is liable. Notwithstanding, City is a home-rule municipal corporation and Design-Builder shall avail itself of all exemptions which may exist for such taxes based on City's status.
 - 10.4.7.2 Intellectual property royalties and licenses for items specifically required by the Contract Documents which are, or will be, incorporated into the Work. If a particular design, process, or product of a particular manufacturer is required by City, then costs of payments made in accordance with legal judgments against Design-Builder resulting from suits for such infringement, payments of settlements made with City's written consent, and reasonable legal fees related to the infringement are eligible as a Cost of the Work and shall not be included in the calculation of Design-Builder's Fee or the Guaranteed Maximum Price (but shall still be subject to the limit covered by the Appropriated Funds). Notwithstanding the foregoing, if Design-Builder had reason to believe the required design, process, or product is an infringement, such payments and fees shall not be a Cost of the Work and Design-Builder shall be responsible for such payments, fees and losses unless Design-Builder notifies Director of the potential infringement promptly before proceeding and in writing.
 - 10.4.7.3 That portion of the cost of subcontractor default insurance or similar product for enrolled subcontractors or suppliers, which comprises only the risk transfer premium, and not prefunded deductibles or any other deposits, prepayments or charges of any type, and only as agreed to in advance by the Director following full transparency into the policy and the charges.
 - 10.4.7.4 That portion of the reasonable travel and subsistence expenses of Design-Builder's personnel that are consistent with the City's travel policies and incurred while traveling solely in the discharge of duties directly connected with the Work, but not including travel expenses or commuting expenses incurred within Houston and its extra-territorial jurisdiction.
 - 10.4.7.5 Any hazardous materials handling, abatement and disposal cost(s).

**CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement**

10.4.7.6 Other costs approved in advance in writing by Director at Director's sole option and discretion.

10.4.8 Pass Through Items not included in the calculations for the Design-Builder's fee.

10.4.8.1 Fees and assessments for building permits and for other permits and inspections that Design-Builder is required by the Contract Documents to pay for or obtain.

10.4.8.2 Premiums for insurance and bonds to the extent directly attributable to this Contract, including without limitation professional liability insurance and pollution insurance. Any premium allocation plan to this Project by Design-Builder must be approved by the City's Legal Department.

10.4.8.3 Cash Allowances as identified in the Contract Documents.

10.5

Costs Not Included in the Cost of the Work.

10.5.1 The Cost of the Work shall not include the items listed in this Section:

10.5.1.1 Except as provided in Section 10.4.2, salaries and other compensation of Design-Builder's personnel stationed at Design-Builder's principal office or offices other than the Project site office.

10.5.1.2 Expenses of Design-Builder's principal office and offices other than the Project Site office.

10.5.1.3 Overhead and general expenses.

10.5.1.4 Markup imposed by Design-Builder on other direct costs (ODCs) such as reimbursable expenses and pass-through costs from Design-Builder and its Subcontractors and Suppliers.

10.5.1.5 Design-Builder's capital expenses, including interest on Design-Builder's capital employed for the Work.

10.5.1.6 Rental costs of machinery and equipment, except as specifically provided in this Contract.

10.5.1.7 Costs due in whole or in part to the fault or negligence of Design-Builder, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to costs of the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property.

10.5.1.8 Costs of entertainment.

CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement

- 10.5.1.9 Costs incurred or that should have been incurred for Preconstruction Phase Services.
- 10.5.1.10 Any legal, accounting, professional, or other similar costs incurred by Design-Builder, including costs incurred in connection with the prosecution or defense of any dispute, mediation, arbitration, litigation, or other proceeding related to or arising from the Project.
- 10.5.1.11 Any sales, use, income, franchise, and similar taxes paid by Design-Builder. Any fines, penalties, sanctions, or other levies assessed by any governmental body against Design-Builder.
- 10.5.1.12 The cost of any and all insurance deductibles and self-insured retentions payable by Design-Builder, and all uninsured losses and costs, whether due to the failure of Design-Builder or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents, or otherwise.
- 10.5.1.13 Costs that would cause the Guaranteed Maximum Price to be exceeded.
- 10.5.1.14 All profit, profit expectations and costs associated with profit sharing plans such as personnel bonuses, incentives, and rewards, company stock options, or any other like expenses of Design-Builder.
- 10.5.1.15 Legal and administrative costs to review and negotiate this Contract and all other Contract Documents.
- 10.5.1.16 Costs incurred by Design-Builder resulting from the failure of Design-Builder or its Subcontractors to coordinate their work with that of City and its other Contractors, if any, after agreeing to schedules therefor.
- 10.5.1.17 Liquidated damages imposed by City.
- 10.5.1.18 Any costs arising out of the intentional acts or negligence of Design-Builder, its Subcontractors, or any person or entity for whom any of them may be liable, including, without limitation, costs related to defective, rejected, or nonconforming Work within the Contract Time.
- 10.5.1.19 Costs including, but not limited to, the failure to perform of any Subcontractor or the bankruptcy or insolvency of any Subcontractor.
- 10.5.1.20 Costs for licenses, re-inspections and improperly timed permits and inspections that are the responsibility of the Design-Builder to obtain.
- 10.5.1.21 Costs related to warranty work over and above the warranty work indicated in the Contract Documents.

- 10.5.1.22 Costs associated with deferred compensation and bonuses.
- 10.5.1.23 Costs associated with Subcontractor default insurance or similar products, except for the actual risk transfer premium as specifically allowed in Section 10.4.
- 10.5.1.24 Any other cost not specifically and expressly described in this Contract as a Cost of the Work.
- 10.5.1.25 Notwithstanding anything in the Contract Documents to the contrary, the Lump Sum fee for Design-Builder's Preconstruction Phase and Design Services and/or other costs or expenses for Design-Builder's Design Services shall not be included in the Cost of the Work.

10.6 Discounts, Rebates and Refunds of the Cost of the Work. The Cost of the Work to be paid by City shall be credited with the following items:

- 10.6.1 Proceeds of the sale of all tools, surplus materials, construction equipment, and temporary structures which have been charged to the Work other than by way of rental, and remaining after completion, whether such sale is made to the City, the Design-Builder, or to some other party; and any such sale, if made to others than the City, shall be at fair market price. Upon completion of the Work or when no longer required, all tools, construction equipment and materials charged to the Cost of the Work shall be sold by Design-Builder (unless turned-over to the City as set forth above) and the Design-Builder shall use its best efforts to obtain the highest price in respect of such sales.
- 10.6.2 If City makes funds available to Design-Builder, discounts earned by the Design-Builder through advance or prompt payments. Design-Builder shall provide sufficient advance notice of available discounts and the need for funds to be available to the City for the City to obtain the benefit of the discounts. The Design-Builder shall obtain all possible trade and time discounts on bills for material furnished and shall pay said bills within the highest discount periods. The Design-Builder shall purchase materials for this Project in such quantities as to provide the most advantageous prices to the City.
- 10.6.3 Reasonable market value as approved by the Director at the time of removal of all materials, tools, and equipment actually purchased for the Work and charged as a Cost of the Work and which is retained by the Design-Builder upon completion of the Work.
- 10.6.4 Rebates, discounts, or commissions allowed to and collected by the Design-Builder from suppliers of materials or from Subcontractors, together with all other refunds, returns, or credits received for return of materials, or on bond premiums, dividends or other compensation received from the surety or insurance and sales taxes.
- 10.6.5 Design-Builder shall reimburse City for deposits made by City and not returned to City due to the negligent or intentional acts of the Design-Builder. Should Design-Builder not promptly so reimburse City upon

demand, City shall be entitled to recover said amount from Design-Builder, including, but not limited to, by deducting the amount from payments due the Design-Builder.

10.7 Limit of Appropriation.

10.7.1 The City's duty to pay money to the Design-Builder for any purpose under this Contract is limited in its entirety by the provisions of this Section.

10.7.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has allocated the sum of **\$X,XXX,XXX.XX** for Preconstruction Phase and Design Services for the GMP and **\$XX,XXX,XXX** for Advance Packages as Appropriated Funds to pay money due under this Contract for Work, as may be required (the "Original Appropriation"). The executive and legislative officers of the City, in their sole discretion, may appropriate additional funds for this Contract (the "Supplemental Appropriation"), but they are not obligated to do so. Therefore, the parties have agreed to the following procedures:

10.7.3 The City makes a supplemental allocation by issuing to Design-Builder a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the supplemental allocation shall be approved by motion or ordinance by City Council.

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

10.7.4 The aggregate of all sums duly authorized by the City to be allocated to pay money due under this Contract, including the Original Appropriation and all Supplemental Appropriations, constitute the Appropriated Funds. The City shall never be obligated to pay any money under this Contract in excess of the Appropriated Funds. The Design-Builder must assure itself that sufficient Appropriated Funds have been made to pay for services it provides. If Appropriated Funds are exhausted, the Design-Builder's only remedy is suspension or termination of its performance under this Contract and the Design-Builder has no other remedy in law or in equity against the City and no right to damages of any kind.

10.7.5 The Design-Builder shall closely monitor expenditures under this Contract and shall notify the Director when amounts payable by the City hereunder for authorized Work are equal to ___% of the Appropriated Funds, even if such amounts payable have not yet been billed to the City. At such point, if additional amounts payable by the City hereunder for the Design-Builder's continued performance of the authorized Work would exceed the amount of remaining Appropriated Funds, the Design-Builder has the right to suspend performance of the authorized Work by seven days' advance

written notice to the Director describing the cause and the Design-Builder's planned suspension. Once Appropriated Funds have been increased, the Design-Builder shall resume performance of the authorized Work and may be entitled to equitable adjustment in accordance with the applicable provisions of the Contract Documents. If after more than 180 days Appropriated Funds have not been increased, the Design-Builder shall have the right to terminate its performance in accordance with the applicable provisions of the Contract Documents. However, termination shall not relieve Design-Builder of its continuing obligations to the City already incurred. The City shall not under any circumstances be obligated to seek a Supplemental Appropriation.

ARTICLE 11. BONDS AND INSURANCE

11.1 Prior to commencing the Work, Design-Builder shall be required to purchase and maintain the bonds and insurance coverages set forth in the General Conditions. The Design-Builder shall not commence the Work unless all insurance coverages set forth in the General Conditions are in full force and effect.

11.2 City shall have the option of obtaining its own insurance coverage for part or all of Work performed under the Agreement. In the event City's insurance provides coverage for some or all of Design-Builder's obligations under this Agreement, City shall have the option of replacing all or part of Design-Builder's insurance with the City's insurance.

ARTICLE 12. MISCELLANEOUS PROVISIONS

Exhibits. All exhibits hereto are hereby incorporated herein by reference.

Compliance with Certain State Law Requirements.

Airport Security and Badging:

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

12.2 Design-Builder shall be responsible for any requirements (and costs associated therewith) of the Federal Aviation Administration, Department of Homeland Security, and the Houston Airport System (as applicable) regarding employee background checks and badging.

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

12.4 Airport Security Customs Bond: In accordance with Title 19 of the Code of Federal Regulations, Part 113, the Design-Builder shall obtain an Airport Customs Security Bond in order

**CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement**

to have access to the Federal Inspection Station (FIS), and One Stop Cargo and Fumigation Facility at George Bush Intercontinental Airport (IAH) and William P. Hobby Airport (HOU).

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SAMPLE

EXHIBIT A - DEFINED TERMS
ARTICLE 1. INTERPRETATION

- 1.1. This Agreement, including all Contract Documents, will be interpreted in accordance with the following:
- 1.1.1. **General.** The interpretation and miscellaneous provisions of the General Conditions apply to all Contract Documents and Work. References to sections, paragraphs, articles, or other provisions shall be reasonably interpreted based on the context of the Contract Document.
 - 1.1.2. **Gender and Plurality.** Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.
 - 1.1.3. **References to Hereto.** The terms “hereto,” “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Agreement.
 - 1.1.4. **References to Including.** The words “include,” “includes” and “including” are to be construed as meaning “include without limitation,” “includes without limitation” and “including without limitation,” respectively.
 - 1.1.5. **References to Statutes.** Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.
 - 1.1.6. **References to Governmental Authorities.** Each reference to the City or a Governmental Authority is deemed to include a reference to any successor to the City or such Governmental Authority or any organization or entity which has taken over the functions or responsibilities of the City or such Governmental Authority. Each reference to a private Person that is not an individual is deemed to include a reference to its successors and permitted assigns.
 - 1.1.7. **References to Documents and Standards.** Each reference to an agreement, document, standard, principle or other instrument includes a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated, or assigned.
 - 1.1.8. **Delivery of Documents in Digital Format.** In this Contract, the Design-Builder is obligated to deliver reports, records, designs, plans, drawings, specifications, proposals, and other documentary submittals in connection with the performance of its duties hereunder. The Design-Builder agrees that all such documents shall be submitted to the City both in printed form (in the number of copies indicated) and in digital form. Digital copies shall consist of computer readable data submitted in any standard interchange format which the City may reasonably request to facilitate the administration and enforcement of this Agreement. In the event that a conflict exists between the signed or the signed and stamped hard copy of

**CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement**

any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.

- 1.1.9. **Counterparts.** This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement.

SAMPLE

ARTICLE 2. DEFINITIONS

2.1 As used in the in the Contract Documents, the following terms shall have the meanings set forth below:

- 2.1.1 **Actual Cost:** A verifiable amount paid for labor, material, equipment and supplies in the performance of the Work.
- 2.1.2 **Addenda:** Any addenda to the Drawings or Specifications or other Contract Documents identified as Addenda, if any, in the Contract Documents.
- 2.1.3 **Advanced Work Package:** A portion of the Cost of Work or that the Design-Builder proposes to the Director for construction work before the GMP has been finalized. A CGMP shall be agreed upon for each Advance Work Package.
- 2.1.4 **Affiliate:** With respect to any particular company or entity, a company or entity that: (a) owns and controls, directly or indirectly, such company or entity; (b) is owned and controlled, directly or indirectly, by such company or entity; (c) is owned and controlled, directly or indirectly, by the same company or entity that owns and controls such company or entity; (d) is a member of a joint venture with such company; or (e) either entity is the joint venture and the other company is a member of the joint venture.
- 2.1.5 **Agreed Cost of the Work:** The specific amount defined in **Section 10.1.2** that may not be exceeded by the Probable Cost of the Work without the express written consent of the Director.
- 2.1.6 **Agreement:** see Article 2 of the Base Agreement.
- 2.1.7 **Air Operations Area (AOA):** Any area of the airport intended to be used for the landing, takeoff or surface maneuvering of aircraft and support equipment and all areas within the airport security fence.
- 2.1.8 **Airport Improvement Program (AIP):** A funding source that provides grants to public agencies for planning and development of public use airports. Eligible projects include improvements related to enhancing safety, capacity, security and environmental concerns.
- 2.1.9 **Allowance:** "Allowance" means "Cash Allowance" as defined herein.
- 2.1.10 **Applicable Law:** All laws, treaties, ordinances, judgments, decrees, injunctions, writs, orders, codes, rules, regulations, permits, and interpretations of any Governmental Authority having jurisdiction over the Parties, the Project, the Work, the Contract Documents, and each other document delivered hereunder or in connection herewith.
- 2.1.11 **Application for Payment:** a written request submitted by Design-Builder to City for payment of Work completed in accordance with the Contract Documents, supported by such substantiating data as City may require.

**CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement**

- 2.1.12 **As-Builts or As-Built Drawings:** A set of Project drawings and/or BIM Model, prepared by the Design-Builder, that identifies and reflects all Project design changes that were made during the Construction Services.
- 2.1.13 **Basic Services:** All disciplines identified within the Contract Documents and all related usual and customary design, consultant, and other services necessary and reasonably inferable to complete the Project, or any phase of the Project, in accordance with the City's requirements and the terms of the Contract.
- 2.1.14 **Beneficial Occupancy:** When the City takes possession of and operates the Work (or portions of the Work) for its intended purposes.
- 2.1.15 **BIM:** Building Information Modeling. The digital or electronic representation of the project model and includes the process to create the model.
- 2.1.16 **Bonds:** Performance Bond, Payment Bond, Maintenance Bond, Bid Bond, Proposal Bond and other Surety instruments executed by Surety. When in singular form, refers to individual instrument.
- 2.1.17 **Bridging Documents:** The documents included in the Design Criteria Package as defined in Texas Government Code Section 2269.358.
- 2.1.18 **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").
- 2.1.19 **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.
- 2.1.20 **Calendar Day:** Shall mean Day.
- 2.1.21 **Capital Improvement Program (CIP):** HAS's Capital Improvement Program.
- 2.1.22 **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 the General Conditions. A Cash Allowance may be referred to in the Contract Documents as an "Allowance".

**CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement**

- 2.1.23 **Certificate of Substantial Completion:** the certificate issued by the City Engineer to the Design-Builder that signifies that it has achieved all requirements of Substantial Completion.
- 2.1.24 **Certificate of Final Completion:** the certificate issued by the City Engineer to the Design-Builder that signifies that, to the best of City Engineer's knowledge, information, and belief, the Work has been completed in accordance with the Agreement, and that the City Engineer recommends acceptance of the certificate by City Council.
- 2.1.25 **CBP:** U.S. Customs and Border Protection.
- 2.1.26 **CGMP Amendment:** CGMP Submittal accepted and approved by the Director.
- 2.1.27 **CGMP Submittal:** The proposal for the CGMP Amendment submitted by Design-Builder to the Director.
- 2.1.28 **Change Order:** Written instrument prepared by the City and signed by Director or his designee with notice to the City's Chief Procurement Office, and signed by Design-Builder, specifying the following: (1) a change in the Work or Preconstruction Phase Services, if any; (2) a change in Contract Price, if any; and (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.
- 2.1.29 **Changes in Law:** Any amendment, modification, superseding act, deletion, addition or change in or to Applicable Law (excluding changes to Tax laws where Taxes are based upon Design-Builder's inventory, revenue, income, profits/losses or cost of finance or withholding Tax) that occurs and takes effect after the Effective Date, provided that Design-Builder did not know that the amendment, modification, superseding act, deletion, addition or change in or to Applicable Law would occur following the Effective Date.
- 2.1.30 **City:** The City of Houston, a home rule municipality located principally within Harris County, Texas, including its successors and its authorized representatives, which is authorized to act by or through the Director, City Engineer, or any other person or City entity expressly designated in the Agreement to act on behalf of the City.
- 2.1.31 **City Engineer:** City Engineer, or the City employee representing the City Engineer, designated in the Contract and authorized to represent City, or successors.
- 2.1.32 **City Indemnified Parties:** The City and its officials, officers, directors, representatives, agents, employees, consultants and separate contractors.
- 2.1.33 **Co-Location:** A system under which the Design-Builder's Key Personnel are located "under one roof" along with the Program Management Team in a location near the site.

CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement

- 2.1.34 **Commissioning:** A quality-focused process for enhancing delivery of a project. The process focuses upon verifying and documenting that the facility and all its systems and assemblies are planned, designed, installed, tested, operated, and maintained to meet HAS's requirements.
- 2.1.35 **Commissioning Authority (CxA):** A third party firm contracted with the City to oversee the Design-Builder's commissioning plan.
- 2.1.36 **Component Guaranteed Maximum Price (CGMP):** A guaranteed maximum price for construction of a defined incremental element of Work.
- 2.1.37 **Component Guaranteed Maximum Price (CGMP) Amendment:** CGMP Submittal accepted and approved by the Director.
- 2.1.38 **Component Guaranteed Maximum Price (CGMP) Submittal:** The proposal for the CGMP Amendment submitted by Design-Builder to the Director.
- 2.1.39 **Commissioning Plan (CxP):** Developed by the Commissioning Authority with the assistance of the Program Management Team per the requirements of the Contract Documents and Scope of Work. The CxP provides structure, checklists, testing forms, schedules for all systems and equipment being installed.
- 2.1.40 **Contingency:** The dollar amount set out in the Guaranteed Maximum Price Proposal that is available for unanticipated impacts that are not otherwise the basis of a Change Order, and which may only be used upon prior written approval by the Director. All unused contingency shall revert to the City at final completion of the Construction Services. The Contingency shall not be used for costs incurred as a result of: (1) any failure to perform or insolvency; (2) fines or penalties imposed by any governmental body for negligent acts; (3) any failure to coordinate work with that of the City or its Contractors after agreeing to a schedule; (4) any acts of negligence not attributable to the City or its separate Contractors; and (5) any costs related to defective, rejected, or nonconforming Work, materials, or equipment.
- 2.1.41 **Construction Documents (CD):** All of the graphic and written information prepared or assembled by Design-Builder for communicating the design and for the bidding and construction of the Project.
- 2.1.42 **Construction Services or Construction Phase Services:** The services more fully described as Construction Services in **Exhibit B**.
- 2.1.43 **Contract:** see definition of Contract Documents.
- 2.1.44 **Contract Documents:** see Article 2 of the Base Agreement.
- 2.1.45 **Contract Price:** The monetary amount originally stated in the Contract adjusted by the CGMPs, GMP, Modifications and/or Amendments, if any.
- 2.1.46 **Contract Standards:** The standards, terms, conditions, methods, techniques and practices imposed or required by: (1) Applicable Law; (2)

good engineering and construction practice; (3) the baseline design documents, if any; (4) the insurance requirements; (5) good operating practice, (6) applicable equipment manufacturers' and suppliers' requirements and recommendations; and (7) any other standard, term, condition or requirement specifically provided in the Contract Documents to be observed by the Design-Builder.

- 2.1.47 **Contract Termination:** For purposes of Design-Builder's indemnity obligation, the Contract terminates upon the earlier of Final Completion or termination by either Party pursuant to the terms of the Contract.
- 2.1.48 **Contract Time:** The number of days stated in the Contract or any GMP to complete the Work, plus days authorized by Modification.
- 2.1.49 **Contractor:** A construction contractor or construction manager hired by the City other than the Design-Builder that may work on the Project or in connection with the Project, except as set out in the Division 01 Specifications.
- 2.1.50 **Cost of the Work:** Cost of the Work has the meaning set forth in Article 10, **Section 10.4** of the Base Agreement.
- 2.1.51 **Date of Commencement of the Work:** Date established in a Notice to Proceed on which Contract Time will commence. This date will not be changed by failure of Design-Builder, or persons or entities for whom Design-Builder is responsible, to act.
- 2.1.52 **Date of Substantial Completion:** Date that construction, or portion thereof designated by the Director, is certified by Director to be substantially complete.
- 2.1.53 **Day:** Whether capitalized or not, unless otherwise specifically provided, means calendar day, including weekends and legal holidays. In the case of plural "days", those days will be consecutive.
- 2.1.54 **Defect Correction Period:** The period during which the Design-Builder shall be obligated to replace or correct deficiencies in Products and/or the Work, which period shall be one year following Substantial Completion and acceptance of the Project, or discrete phase thereof, unless the applicable manufacturer or subcontractor, if any, provides a longer correction period, in which event the longer correction period shall apply.
- 2.1.55 **Deficiency Notice (DN):** For the Central Utilities Plant Renovations and Upgrades Project, the lowest level of the nonconformance reporting. DNs are mostly used for in-process notification of deficiencies that, if allowed to remain uncorrected, would result in nonconforming work.
- 2.1.56 **Design-Builder-Related Entity:** The Design-Builder, its Subcontractors, Suppliers, subconsultants including professionals, technicians, engineers and anyone for whose acts any of the foregoing Design-Builder may be legally or contractually liable, including officers, directors, employees, representatives, agents, consultants and contractors.

**CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement**

- 2.1.57 **Design-Builder Fee:** The fee for the Design-Builder's profit and general overhead calculated as a percentage of Cost of the Work (except pass-through Allowances, insurance and Bonds) determined by the City at the time of acceptance of the GMP.
- 2.1.58 **Design to Budget:** The process by which the Design-Builder designs the Project to ensure the Agreed Cost of the Work is not exceeded.
- 2.1.59 **Design-Builder:** Entity responsible for design and construction of the Project, and all other ancillary and attendant services necessary to deliver the completed and fully operational Project
- 2.1.60 **Director:** The Director of the Houston Airport System, or any person designated in writing by the Director to perform one or more of the Director's duties under this Agreement.
- 2.1.61 **Drawings:** Graphic and pictorial portions of the Contract that define the character and scope of the Work.
- 2.1.62 **Effective Date:** The date the City Controller countersigns the Signature Page of this Contract.
- 2.1.63 **FAA:** The Federal Aviation Administration.
- 2.1.64 **Final Completion:** The full completion of the Work in accordance with the Contract Documents, without limitation, the satisfaction of all outstanding and Punch List items, and the issuance of a Certificate of Occupancy by all permitting and licensing entities.
- 2.1.65 **Force Majeure:** catastrophic storms or floods, tornadoes, hurricanes, earthquakes and other acts of God, wars, civil disturbances, terrorist attacks, revolts, riots, insurrections, hostilities, strikes (excluding strikes of a Party's employees), sabotage, commercial embargoes, epidemics, fires, explosions, Changes in Law and actions of a Governmental Authority that were not requested, promoted, or caused by the affected Party; provided that the act or event (i) delays or renders impossible the affected Party's performance of its obligations under this Agreement; (ii) is beyond the reasonable control of the affected Party, not due to its fault or negligence, and was not reasonably foreseeable; and (iii) could not have been prevented or avoided by the affected Party through the exercise of due diligence. For avoidance of doubt, Force Majeure will not include any of the following: (a) economic hardship, (b) changes in market conditions, (c) late delivery or failure of equipment, unless the delay or failure is caused by Force Majeure, (d) labor availability, strikes of a Party's employees, or other similar labor actions, or (e) nonperformance or delay by Design-Builder or its Subcontractors, unless the nonperformance or delay is otherwise caused by Force Majeure.
- 2.1.66 **Furnish:** To supply, pay for, deliver to the site, and unload.
- 2.1.67 **General Conditions:** The requirements, terms and conditions set forth in **Exhibit C** of the Agreement, which may include terms and conditions that are substantially the same as those found in the Base Agreement and

therefore shall be read together and interpreted by City and Design-Builder to eliminate conflict between the two. However, should a conflict exist, after Director and Design-Builder have used best efforts to reconcile the conflict, the provision most favorable to the City shall prevail.

- 2.1.68 **General Conditions Costs:** Design-Builder's on-site management, administrative personnel, equipment, utilities, and incidental work, including field labor and materials. General Conditions includes, but is not limited to: (i) Design-Builder Labor Costs for its project manager, assistant or deputy project manager, superintendents and assistant superintendents; (ii) Costs of materials and equipment not incorporated or to be incorporated into the completed construction (most notably this would include materials and equipment related to Temporary Facilities), rental charges for Temporary Facilities and all costs arising in relation thereto; and (iii) Other Costs including but not limited to testing fees and utilities, internet, cell phones, project vehicles, on-site computers, printers, monitors, and other electronic equipment. permits; mobilization; de-mobilization; field engineers and helpers, professional surveyor; field office; field office furnishings; office supplies; field office maintenance and repair; copiers and supplies; storage; communication devices (telephone, radio, etc.); project signs; construction fence – install/remove/maintain; access construction; general clean-up; finish areas clean-up; dumpsters; temporary water service; temporary electrical service; temporary lighting; temporary telephone; temporary weather protection; temporary fire protection; equipment start and testing; monthly ice and cups, monthly toilets; monthly water; and quality control. (For further detail and identification of General Conditions Costs, refer to Base Agreement Article 10, Section 10.4)
- 2.1.69 **General Requirements:** The sections of Division 01 Specifications that specify administrative and procedural requirements and temporary facilities required for the Work.
- 2.1.70 **Governmental Authority:** Any federal, foreign, state, local or municipal governmental body; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal. Notwithstanding the foregoing, Governmental Authority shall not include the Director or his designees.
- 2.1.71 **GSE:** Ground Support Equipment: Support equipment found at the airport usually at the servicing area by the Terminal. The equipment is used to service the operations of the aircraft between flights while on ground.
- 2.1.72 **Guaranteed Maximum Price (GMP):** The amount agreed upon by City and Design-Builder as the maximum cost to City for the Work for the Construction Services, including the Cost of the Work and the Design-Builder's Fee for the Construction Services. The GMP shall incorporate all prior CGMPs.
- 2.1.73 **GMP Amendment:** GMP Submittal accepted by the Director and approved by City Council.

CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement

- 2.1.74 **GMP Submittal:** The proposal for the GMP Amendment submitted by Design-Builder to the Director.
- 2.1.75 **HAS:** The Houston Airport System, a department of the City of Houston.
- 2.1.76 **IAH:** George Bush Intercontinental Airport Houston.
- 2.1.77 **Inspector:** City's employee or agent authorized to assist with inspection of the Work.
- 2.1.78 **Install:** Unpack, assemble, erect, place, anchor, apply, work to dimension, finish, cure, clean, protect, and similar operations.
- 2.1.79 **Key Personnel:** Those people having authority and responsibility for planning, directing and controlling the activities of the Design-Builder, either directly or indirectly.
- 2.1.80 **Labor Burden:** Indirect costs associated with employees' compensation. Typical costs associated with the burden include payroll taxes, worker's compensation and health insurance, paid time off, training and associated travel expenses not reimbursed under Section 10.4.2.1 and 10.4.7.4, vacation and sick leave, pension contributions and other benefits. Labor Burden includes actual costs paid or incurred by the Design-Builder for labor costs arising out of taxes, insurance, and benefits that are required either (1) by law or (2) by collective bargaining agreements. Labor Burden shall NOT include, profit, general and administrative costs, home and branch office overhead, profit sharing, bonuses, vehicle allowances, cell phones, computer charges and other costs not directly related to employee costs.
- 2.1.81 **Legal Holiday:** Day established by the City Council as a holiday.
- 2.1.82 **Major Unit Price Work:** An individual Unit Price item, (1) whose value is greater than five percent of Original Contract Price, (2) whose value becomes greater than five percent of Original Contract Price as the result of an increase in quantity, or (3) whose value is \$100,000, whichever is least.
- 2.1.83 **Milestone:** An event activity that has zero-day duration and is typically used to represent the beginning or end of a certain stage of the Project.
- 2.1.84 **Minor Change in the Work:** A written change in the Work ordered by Director that does not change Contract Price or Contract Time, and that is consistent with the general scope of the Contract.
- 2.1.85 **MLIT:** The Mickey Leland International Terminal, or Terminal D at IAH.
- 2.1.86 **Modification:** See Article 12 of the General Conditions.
- 2.1.87 **Non-Conformance Report (NCR):** The second level of non-conformance reporting. A Corrective Action Request and Root Cause Analysis (RCA) may be issued for repetitive (actual or potential) deficiencies and safety violations depending upon severity. These

typically may be documented in conjunction with the issuance of an audit finding.

- 2.1.88 **Notice of Noncompliance (NCN):** A written notice by Director to Design-Builder regarding a construction non-conformance, defective nonconforming work or indeterminate condition that does not meet the Contract requirements is identified and requires physical repair, rework, scrap or use as-is disposition. The NCN establishes a time by which Design-Builder shall correct the defective or nonconforming work. The NCN is the third and highest level of non-conformance reporting on the IAH Central Utilities Plant Renovations and Upgrades Project. In accordance with the contract documents, further escalation may include Notice of Event Default, Notice of Pending Termination and Notice of Termination.
- 2.1.89 **Notice to Proceed (NTP):** A written notice by the Director to Design-Builder establishing (a) Date of Commencement of the Work for a phase or stage of Construction or (b) the date Design-Builder is to begin performing Preconstruction Services.
- 2.1.90 **R/OCIP:** Rolling Owner Controlled Insurance Program or Owner Controlled Insurance Program.
- 2.1.91 **Office of Business Opportunity:** Any reference to, or use of, the “Office of Affirmative Action” shall mean the City’s Office of Business Opportunity, or any such future name to which it is changed.
- 2.1.92 **ORAT:** Operational Readiness, Activation and Transition.
- 2.1.93 **Original Contract Price:** The monetary amount originally stated in the Contract.
- 2.1.94 **Overhead:** Indirect or fixed expenses of operating a business, including both home office locations and offsite and jobsite locations.
- 2.1.95 **Owner:** Refer to City.
- 2.1.96 **Parties:** Design-Builder and the City. When in singular form, refers to either the City or Design-Builder (as appropriate).
- 2.1.97 **PDM:** Program Definition Manual for the Mickey Leland International Terminal – Final Version December 2014.
- 2.1.98 **Phase or Phases:** A discrete portion of the Work or sequencing of the Work.
- 2.1.99 **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).
- 2.1.100 **Pollutant:** Any materials subject to the Texas Solid Waste Disposal Act.

CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement

- 2.1.101 **Preconstruction Services or Preconstruction Phase Services:** The services more fully described as Preconstruction Services in **Exhibits B** and **E**.
- 2.1.102 **Price Proposal:** The completed RFP Cost Proposal Form submitted by Design-Builder.
- 2.1.103 **Probable Cost of the Work:** An estimate of the Cost of the Work as reconciled by the Design-Builder and the Director.
- 2.1.104 **Product:** Materials, equipment, or systems permanently incorporated into the Work (or to be incorporated into the Work) and temporarily used in performance of the Work. Products may include existing construction or components intended for reuse.
- 2.1.105 **Product Data:** Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Design-Builder to illustrate a Product.
- 2.1.106 **Project:** Total construction, of which the Work performed under the Contract Documents may be the whole or a part, and which may include construction by the City or by separate contractors as more fully described in the Contract. The Project is defined in the preamble of this Contract.
- 2.1.107 **Project Manager:** An employee of the City responsible for performing administration of the Agreement on behalf of the City, but who does not possess the authority to make determinations required of the Director under the Agreement unless such authority is delegated in writing.
- 2.1.108 **Project Manual:** The specifications for the Work. Certain provisions of the Project Manual may be revised during Preconstruction Services.
- 2.1.109 **Project Schedule:** The Design-Builder's full scope of Works and Services, time phased and logic linked, in a critical path schedule that represents how the Design-Builder intends to reach Final Completion within the Contract Time.
- 2.1.110 **Project Team:** The City (acting through the Director and other City employees and representatives working in connection with the Project), Design-Builder, any separate contractors employed by the City, and other consultants employed for the purpose of programming, design, and construction of the Project. The constitution of the Project Team may vary at different times during the Preconstruction Services and Construction Phase of the Project. The Project Team, excluding those designated by the Design-Builder, will be designated by the Director and may be modified from time to time by him, without additional time or compensation being awarded to Design-Builder.
- 2.1.111 **Proposal Documents:** Documents submitted by Design-Builder that may or may not have Price Proposal as part of the submittal.
- 2.1.112 **Provide:** Furnish and Install, complete, ready for intended use.

- 2.1.113 **Punch List:** Uncompleted work items that the Design-Builder, or Subcontractor must complete in order to achieve Final Completion.
- 2.1.114 **Quality Control (QC):** Those standards, systems, processes, procedures and activities exercised by the Design-Builder, subcontractors and suppliers to ensure that the Work is constructed in accordance with the Contract Documents.
- 2.1.115 **Qualified Employees:** an individual who is paid wages on an hourly basis (i.e., are not paid on a salary basis); is, or has been, employed by a qualified or other HAS-designated contractor who has performed, or is currently performing work at HAS in support of HAS-Designated Capital Projects; and, has individually performed, or has been employed by a qualified or HAS-designated contractor to perform work on HAS-Designated Capital Projects.
- 2.1.116 **Safety Impact Position:** Design-Builder's employment position involving duties that if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health or safety of the employee, co-workers, and/or the public.
- 2.1.117 **Samples:** Physical examples that illustrate Products, or workmanship, and establish standards by which the Work is judged.
- 2.1.118 **Schedule of Values:** The detailed, itemized list of prices and costs that establishes the value of each part or component of the Work, developed by Design-Builder in accordance with the Contract Standards and accepted by Director to serve as the basis for progress payments for the Work.
- 2.1.119 **Shop Drawings:** Drawings, diagrams, schedules, and other data specially prepared for the Work by Design-Builder, Subcontractor or Supplier, to illustrate a portion of the Work.
- 2.1.120 **SIDA:** Security Identification Display Area. The SIDA is the secure area of the Airport in which an identification badge must be visible and displayed.
- 2.1.121 **Special Conditions:** Any additional provisions identified as Special Conditions, if any, in the Contract Documents.
- 2.1.122 **Specifications:** Specifications developed by the Design-Builder during the Project design and, in limited instances modified by the City, that generally follow Divisions 01-50 of the CSI Master Format.
- 2.1.123 **Stakeholder** - Person, Party or organization that can affect, be affected by, or perceive themselves to be affected by a decision or activity related to the Project. A decision-maker can be a stakeholder.
- 2.1.124 **Statement of Qualification:** Document submitted by the Design-Builder in response to a Request for Qualifications, to demonstrate its ability to perform the requested services.

**CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement**

- 2.1.125 **Subcontract:** A direct or indirect agreement between Design-Builder and a Subcontractor or between a Subcontractor and a sub-subcontractor of any tier to perform a portion of the Work.
- 2.1.126 **Subcontractor:** Person or firm that has direct or indirect contract with Design-Builder or with a Subcontractor to perform a portion of the Work and its authorized representatives.
- 2.1.127 **Substantial Completion:** The date, as reasonably determined by the City Engineer during the progress of the Work or designated portion thereof where the Work is sufficiently complete, in accordance with the Contract Documents, so that the City can take Beneficial Occupancy, and the balance of the Work, including all Punch List work can reasonably be expected to be completed within 30 Calendar Days, unless otherwise agreed by the City Engineer, and including all other obligations required under the Agreement for achieving Substantial Completion, including all conditions and prerequisites to Substantial Completion contained in Section 11.6.1 of the General Conditions.
- 2.1.128 **Superintendent:** Employee of Design-Builder having authority and responsibility to act for and represent Design-Builder.
- 2.1.129 **Supplier:** Manufacturer, distributor, materialman, or vendor having a direct agreement with Design-Builder or Subcontractor for Products, or services and its authorized representatives.
- 2.1.130 **Surety Bond:** A three-party contract between the Surety, the Design-Builder, and the Owner (the City) guaranteeing performance and/or payment by the Design-Builder in accordance with the terms and conditions of its Contract with the City. If the Design-Builder defaults on its obligations of performance or is terminated by the City, the Surety is obligated, a) to complete the project itself using a completion contractor, or b) selecting a new contractor to contract directly with the City, or c) to pay the City for the costs of a City-selected contractor to complete the project, and d) to also make such payments to subcontractors and suppliers as are justifiable and owing. The Surety organization is typically part of an insurance company, although not always.
- 2.1.131 **TSA:** Transportation Security Administration.
- 2.1.132 **UMP:** The IAH Utilities Master Plan.
- 2.1.133 **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.
- 2.1.134 **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.
- 2.1.135 **Work:** the Work comprises the completed pre-construction, design, and construction, as required by the Contract Documents, and every part

**CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement**

thereof (inclusive of temporary works and remedying of defects), constituting among other things: all services, supervision, labor, materials, supplies, equipment, Products and plant, and other items necessary to produce such pre-construction and construction and all material and equipment to be incorporated in such pre-construction and construction in accordance with the Contract Documents (as such may be modified or amended), including all things reasonably inferable from the Contract Documents.

- 2.1.136 **Work Area Notification (WAN):** The form and process used by HAS as a means for the Design-Builder to notify the appropriate Airport Operations Center of any proposed activity that will shut down or otherwise affect the operation of any utility, system or operation on the Airport or around Property.
- 2.1.137 **Work Change Directive:** A written change in the Work, ordered by Director, 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.

EXHIBIT B - SCOPE OF WORK

**TSU Flight Academy
AT ELLINGTON AIRPORT (EFD)**

**DESIGN-BUILD SERVICES -
SCOPE OF SERVICES**

Table of Contents

SECTION 1 - GENERAL4

 1.01 Introduction4

SECTION 2 - PROJECT DESCRIPTION4

 2.01 Introduction4

 2.03 Project Summary5

SECTION 2 - RELATED PROJECTS.....6

 3.1 General.....6

 3.2 HAS Infrastructure6

 3.5 Future Projects7

 3.6 HAS Third Party Suppliers7

SECTION 4- PROJECT ADMINISTRATION.....7

 4.1 General Services7

 4.2 Project Roles and Responsibilities8

 4.3 Houston Area Construction Education Collaborative.....10

SECTION 5 - DESIGN SCOPE OF SERVICES..... 11

 5.1 General Responsibilities11

 5.2 Review of Construction Documents12

 5.3 Basis of Design.....12

 5.4 Basic Services Delivery.....14

 5.5 Final Design and construction documents.....15

 5.8 Subcontract Bid Packaging and Permitting16

 5.9 Design Services During Construction.....17

SECTION 6 - PRECONSTRUCTION SERVICES..... 17

 6.1 General Responsibilities17

 6.2 Phase 1 Notice to Proceed18

 6.3 Key Personnel19

 6.4 Preconstruction meetings.....19

 6.4.1 Kickoff Meeting19

 6.4.2 scheduling conference19

 6.4.3 Bi-Weekly Project Update Meetings20

 6.4.4 Design Progress Meetings.....21

 6.5 Preliminary Schedule21

 6.6 Design to Budget22

 6.7 Design Build Contractor Management Plan.....23

SECTION 7 - CONSTRUCTION SERVICES27

 7.1 General.....27

**CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement**

7.2 Coordination Responsibilities28
7.02.1 Coordination with The Program Management Team28
7.3 Conservation.....29
7.4 Project Reports29
7.5 Project Meetings31
SECTION 8 - DESIGN SUBMITTAL PRODUCTION STANDARDS39
8.1 Definitions39
8.2 Scope40
8.3 BIM products.....41
8.4 Organizational Roles.....41
8.5 BIM Models Authorship.....42
8.6 Interference Checks43
8.7 BIM Deliverables43
8.8 Drawing Conventions for Documentation43
8.9 Design Submittal File Formats44
SECTION 9 - ENERGY AND SUSTAINABILITY44
9.1 Introduction44
9.2 Sustainable Management Plan45
9.3 Life Cycle Analysis.....45

ARTICLE 13. ATTACHMENTS

Exhibits

DESIGN-BUILD CONTRACTOR SCOPE OF SERVICES

ARTICLE 14. SECTION 1 - GENERAL

1.01 INTRODUCTION

- A. A. The Aircraft Hanger and Educational Facility Wing with parking and landscaping, identified by this Project, will be a state of the art facility, built to fulfill the City's commitment to build an operational Educational facility and Aircraft Hanger for Texas Southern University (TSU) at Ellington Airport (EFD), Houston, TX.
- B. The facility will be located at Ellington Airport (EFD) on Hutchison Street and adjacent to taxiway.
- C. Capitalized terms used, but not otherwise defined, in this exhibit shall have the same meaning as the terms defined in the body of this Contract unless indicated otherwise.
- D. To support the HAS mission and core values, the Project will adhere to the following overarching themes, as applicable to the specific Project requirements:
 - 1. **Operational Safety**, functional, and intuitive system design for the Project and operational areas;
 - 2. **Flexible** design to safeguard for innovation and changes to technology, operations, and security;
 - 3. **Technology-enabled** for automated operations;
 - 4. **Maintainable** facilities and systems that consider whole-life cycle costing; and
 - 5. **Sustainable** and energy efficient.
- C. The Project must be designed for constructability, flexibility of operations, and efficiency.

ARTICLE 15. SECTION 2 - PROJECT DESCRIPTION

2.1 INTRODUCTION

- A. The Design Build Contractor (DB) will be designated as the "Prime Contractor" of the EFD TSU Flight Academy Project. The design services will be provided by the "Designer" who may be a part of the Design Build Contractor's firm or an independent firm who is a subcontractor of the Prime Contractor or may be the lead firm with constructor subcontractors.

- B. The Design Build Contractor will be required to coordinate and work with the Owner's Management Team (OMT) and any other HAS contracted firms performing design and construction on the Airport or other projects as required for the Work.
- C. All subcontracted work for the Project must be awarded to subcontractors via an open and fair competitive procurement process. The Design Build Contractor's competitive procurement process must be open, fair, transparent, and should result in the Design Build Contractor selecting subcontractors that provide the best value to HAS.
- D. At appropriate times, as required, DB and Designer will contact Governmental Agencies including but not limited to; HAS, City, County, State, local, and Federal agencies that may be required to approve the Contract Documents and the entities providing utility services to the Project. In designing the Project, Designer will respond to applicable design requirements imposed by such Governmental Agencies and entities providing utility services. Designer will assist HAS in connection with City's responsibility for filing documents required for the approval of Governmental Agencies, as applicable.
- E. The Design Build Contractor and Designer will be expected to present to and consult with stakeholders and HAS staff, as required to obtain acceptance of the construction documents and coordinate performance of the work.
- F. The Design Build Contractor and Designer will be required to demonstrate how construction safety and safety mitigation measures have been effectively considered and incorporated into the design.

2.2 WORK PHASES AND MILESTONES

- A. The Contract time is as follows:

The contract time for design 90 calendar days and construction 275 calendar days for a total of 365 calendar days. Interim and partial milestones may be established by mutual agreement of the Contractor and Owner, but all Design and Construction of the Aircraft Hanger and Educational Facility Wing, is required to be completed on XXX ----- and no more than 365 calendar days after Notice to Proceed.

- B. The Liquidated Damages for each of the Milestones are: Refer to Article 6 Liquidated Damages in the Contract.

2.3 PROJECT SUMMARY

- A. The scope of services is primarily the construction of a new Aircraft Hanger (22,000 SF) and Educational Facility Wing (7200 SF), concrete apron, above ground fuel tank and dispenser, parking and landscaping, exterior lighting and fencing. The existing site is currently vacant.

- B. HAS will use a Design Build delivery method to provide the new Aircraft Hanger and Educational Facility Wing. Refer to the Exhibits attached to this Scope of Services document for the Overall Project Location Map and basic conceptual and planning design documents.
- C. The proposed infrastructure items of work are provided in the Design Criteria Package, which includes the Bridging Documents.
- D. All work shall be performed while maintaining the active operational status of the existing Airport facilities and including maintaining uninterrupted public access to all terminals and continual use by the public of all public roads.

ARTICLE 16. SECTION 2 - RELATED PROJECTS

3.1 GENERAL

- A. The Design Build Contractor shall collaborate with the Owner's Management Team (OMT), project stakeholders, tenants, and other contractors executing concurrent capital improvement and tenant improvement projects with respect to all aspects of this Project. The projects detailed below are either in construction or are planned to be awarded under separate procurement packages for separate project delivery during the time period affecting this Project.
- B. The DB will be required to collaborate with the OMT and other projects being performed at *Ellington Airport/Houston (EFD)* to facilitate applicable linkages with this Project.
- C. The DB is responsible to collaborate with other projects to ensure that required operation of the Airport can be maintained across applicable project sites.

3.2 HAS INFRASTRUCTURE

Additional projects either planned or in construction at *Ellington Airport/Houston (EFD)* are identified within the HAS Capital Improvement Plan (CIP).

- XXXXX

3.5 FUTURE PROJECTS

In addition to the above referenced projects, the DB will be required to interface with projects defined in the future that may not yet be identified as part of the CIP.

3.6 HAS THIRD PARTY SUPPLIERS

Third-party suppliers and installers may be contracted separately by HAS during the course of this Project. The DB may be required to integrate those work packages into the course of its own construction during the Project.

ARTICLE 17. SECTION 4- PROJECT ADMINISTRATION

4.1 GENERAL SERVICES

- A. The services provided by the DB are intended to be provided in a collaborative Project team environment. The DB is required to manage and execute the Project Design and Construction Document development process working with OMT. The DB shall collaborate, advise, assist, provide cost estimates, schedule, and recommendations to the OMT on the design and construction aspects of the Project.
- B. The DB shall be required to provide complete Preconstruction Services and Construction Services, which includes Design Services and perform all Construction Work associated with the Project, including furnishing of all, labor, materials, and equipment, necessary and reasonable to complete the entire contemplated scope of Work in accordance with HAS requirements and the terms of the Contract. The Work includes, but is not limited to; Design Services, permitting, supervision, testing, inspection, integration, commissioning system components and interfacing with third- party commissioning services provider for integrated systems testing, information technology, systems integration and activation, regulatory requirements, project closeout, and all necessary general conditions that may be reasonably inferred.
- C. The DB is responsible for the management and implementation of general services works and security for the Project site. This includes but is not limited to: management of miscellaneous site preparation activities, escorting and work force transportation to and from the areas of work, subcontractor/trade work force logistics, clean-up and housekeeping, temporary works for construction, public safety barriers, fencing, partitions etc., traffic maintenance, and temporary signage. That also includes coordination and oversight by Airport Operations, the Transportation Security Administration (TSA), the Department of Homeland Security (DHS), and the Federal Aviation Administration (FAA).
- D. The DB is responsible for management of the Project environmental plan and sustainability initiatives related to the site. This includes the tracking, disposition and reporting of demolition work, salvage of any materials, and reuse of any materials.
- E. All work for the Project must be awarded to subcontractors via an open and fair competitive procurement process. The DB will be required to administer a bidding process to select subcontractors for the Project. The DB's competitive procurement process must be open, fair, and transparent, and should result in the DB selecting subcontractors that provide the best value to HAS.

4.2 PROJECT ROLES AND RESPONSIBILITIES

- A. This section defines general roles and responsibilities for the entities involved in the Project.
- B. The OMT is comprised of representatives from HAS or from Program Management Support Services (PMSS) staffed positions.

Entity	Responsibility
City of Houston (City)	<ul style="list-style-type: none"> ▪ The City of Houston is the owner and approver of all Contracts executed for work at Houston Airports ▪ The Houston City Council approves all Contracts and changes to Contracts, unless otherwise delegated. ▪ Delegated authority for work within the Houston Airport System is granted to the Director of the Department of Aviation.
Houston Airport System (HAS)	<ul style="list-style-type: none"> ▪ HAS, through the Director of the Department of Aviation or authorized designee, represents the City of Houston with respect to management and operation of the Airports. ▪ Use of the terms City or HAS may be used interchangeably ▪ Approves, makes decisions throughout project phases. ▪ Ensures that HAS required decisions are made in a timely manner. ▪ Facilitates communication with City of Houston, Department of Public Works and Engineering (PWE) and Building Standards Group (BSG) to keep all parties informed of project progress and construction permit submittals. ▪ Provides key input on owner requirements related to planning, art program, technology, finance, operations, maintenance, security, and safety.
HAS Management Team	<ul style="list-style-type: none"> ▪ Provides overall leadership of the airport and advises HAS Director on project status and key decisions affecting scope, schedule, budget, safety, and quality. ▪ Develops policies, procedures, and execution plans to deliver the Program and projects. ▪ Coordinates all work to be undertaken with HAS divisions, departments, and external stakeholders as necessary for the timely and quality execution of the Program. ▪ Engages and collaborates with airport stakeholders to minimize disruption of operations and services throughout the duration of the Program.

Entity	Responsibility
Owners Management Team - Project Management	<ul style="list-style-type: none"> ▪ Led by Project Manager Representatives from HAS or PMSS staff; provides overall management of the airport Projects. ▪ Acts as interface between the HAS Management Team and Design Build Contractor (DB). ▪ Ensures integration and execution of project-specific controls systems. ▪ Manages contracting and project management processes through all phases of design and construction. ▪ Ensures change management decision-making is defined, documented, and understood. ▪ Provides overall administrative management of contracts with the design consultants and construction contractors.
Owners Management Team- Construction Management	<ul style="list-style-type: none"> ▪ Led by Construction Manager Representatives from HAS or PMSS staff; provides management of contractors engaged to deliver airport projects. ▪ Provides management of cost, schedule, quality, security, and safety. ▪ Manages contracting and project management process through all phases of construction. ▪ Manages the contractor's performance in accordance with the terms and conditions of the Contract.
Owners Management Team- Design Management	<ul style="list-style-type: none"> ▪ Led by Design Manager Representatives from the HAS or PMSS staff; provides management of Design Build Contractor during design to deliver airport projects. ▪ Provides management of the design process, managing scope to budget, compliance with project requirements plus safety and security throughout design. ▪ Manages and tracks design from concept through construction permit packages and delivery of record close-out documents. ▪ Manages the design review process through all stages of design. ▪ During Design manages the Design Build Contractor performance in accordance with the terms of the Contract.

Entity	Responsibility
Design Build Contractor Project Manager	<ul style="list-style-type: none"> ▪ Provides execution for all phases of design to produce a final design that achieves Project objectives, scope, schedule, safety in design, and budget. ▪ As prime contractor, leads and coordinates sub-consultants and specialty consultants. ▪ Provides management during preconstruction, design, and construction phases for cost, schedule, work package planning and sequencing, quality, safety and constructability. ▪ Performs design reviews and provides recommendations for design alternates to identify and resolve constructability issues and to assist in maintaining budget and schedule. ▪ As prime contractor, leads and coordinates all sub-contractors.
Commissioning Authority (CxA)	<ul style="list-style-type: none"> ▪ Verifies testing and operational intent of all applicable elements of the Project scope. ▪ Performs design phase reviews focused on commissioning, functionality, maintainability, sustainability and best practices. ▪ Participates in concurrent design phase reviews with the OMT, other consultants and contractors, as applicable. ▪ Develops overall Commissioning Plan requirements as the basis for the DB to develop the Project technical commissioning plans.

4.3 HOUSTON AREA CONSTRUCTION EDUCATION COLLABORATIVE(HACEC)

- A. The Houston City Council has approved funding for Lone Star College to train construction workers and trades. It is the intention that the DB become aligned with this initiative, employ graduates of the program, and integrate these skilled workers into the Project workforce.
- B. HAS, in partnership with local community colleges, has formed the HACEC. The mission of the HACEC is to provide safety and security training, as well as construction trade skills training, to construction contractor employees. HAS funds the delivery of the training curriculum through payment of a per-labor-hour contribution for every hour worked by construction contractor employees on HAS-designated capital projects.
- C. All airport construction contractor employees are required to successfully complete the HACEC safety/security training prior to mobilizing on the job site.

ARTICLE 18. SECTION 5 - DESIGN SCOPE OF SERVICES

5.1 GENERAL RESPONSIBILITIES

- A. The DB shall designate in writing a representative who is responsible for the day-to-day management of design services. The designated representative shall be the OMT's primary contact during the design of the Project and shall be available as required for the benefit of the Project. The designated representative shall be authorized to act on behalf of and to bind the DB in all matters related to design services. The designated representative shall not be changed without advance written approval from the Director.
- B. The DB may engage the services of a Designer and other qualified professionals as required for performance of the Design services. The DB certifies that any subcontracted Designer and all other professional consultants have been or will be selected on the basis of competence and qualifications pursuant to the Texas Government Code. The Designer shall not perform any architectural or engineering services directly unless Designer is licensed in Texas to perform such services. All drawings, specifications, and other design-related documents shall bear the seal of the licensed professional who prepared them in accordance with the applicable laws and regulations of the State of Texas.
- C. The DB shall participate in design review meetings with the OMT at the end of each design stage, as defined by the HAS Design Criteria Manual, and shall document and respond to the OMT review comments.
- D. The DB shall be responsible for managing design services to ensure that the Project, as designed, can be constructed for an amount that is within the Design to-Budget requirements in Section 6.06. The obligation to design the Project to achieve objectives of scope and cost shall continue through completion and acceptance of Construction Documents.
- E. At appropriate times, the DB and/or Designer will contact Governmental Agencies including but not limited to; HAS, City, County, State and Federal agencies that are required to approve the Contract Documents and the entities providing utility services to the Project. In designing the Project, Designer will respond to applicable design requirements imposed by Governmental Agencies and by such entities providing utility services. Designer will assist HAS in connection with City's responsibility for filing documents required for the approval of Governmental Agencies.
- F. The DB and/or Designer will be expected to present to and consult with stakeholders and HAS staff as required.
- G. HAS DESIGN CRITERIA
 1. The following HAS design criteria, available on the HAS Fly2Houston website (www.fly2houston.com), shall be incorporated into the Project and be included as part of the Contract by reference:
 - a. HAS Design Criteria Manual 2015;
 - b. HAS Wayfinding System – Signage Design Guidelines, Standards and Typical Applications (01.17.2014);
 - c. CAD/ Geospatial Data Standards and Procedures.

5.2 REVIEW OF CONSTRUCTION DOCUMENTS

- A. The DB shall perform internal quality control reviews at the end of each design stage. The results of these reviews shall be submitted to the OMT.
- B. The DB shall provide the OMT with design document review sets as required at each stage of design.
- C. The DB shall incorporate into the documents such corrections and amendments as the OMT requests at each design review unless the DB objects to such changes in writing and the OMT agrees to the objections. Any additional cost incurred due to the DB's failure to incorporate the OMT's requested corrections and amendments shall be borne by the DB.

5.3 BASIS OF DESIGN

- A. The Basis of Design (BOD) is a narrative description of the Project that provides a summary of the design progression and enable development of the construction cost estimate and includes the Bridging documents thought processes and assumptions behind design decisions to meet HAS's project requirements. Designer shall submit the revised and updated BOD upon completion of Construction Document for the OMT review.
- B. The BOD shall assemble all design information prepared under each design stage and shall include the following:
 - 1. List of assumptions
 - 2. Validation of the bridging documents (Design Criteria Package)
 - 3. A discussion of the overall design concept
 - 4. Major design decisions with regards to systems, form, size, quantity, materials, appearance and quality
 - 5. Explanation of impacts on or by other projects
 - 6. Outstanding issues
 - 7. Identification of additional studies, if required
 - 8. Recommendations for long-lead purchase items
 - 9. Identification of any outstanding issues and considerations to be resolved prior to beginning the next stage of design.
- C. The BOD also includes, but is not limited to, the following as appropriate to the Project Scope:
 - 1. Project Scope Description
 - 2. Design workshops/ information data collection sessions
 - 3. Information exchange/ team meetings/ design and decision registers

4. Quality management process for Design
5. Section Drawings with Overall Dimensions
6. Building Code or Standards Requirement - Summary code outline
7. Plumbing, Fire Protection, and Mechanical Systems and Total Capacity - system type and total capacity, narrative and quantities, general sizes and number of systems
12. Electrical Systems - electrical system capacity and general system concept
13. Communication Systems
14. Life Safety Requirements
15. Security System - Confirm HAS requirements
16. Soils and Hydrology Report - Provide assumed foundation strategy.
17. Drawings
 - a. Site Diagram, indicating:
 - i. General size and location of elements
 - ii. Existing Site Plan
 - iii. Demolition Plan and/or Drawings
18. Site Plan, indicating:
 - a. Outline of all structures
 - b. Dimensions for each building component
 - c. Paved areas and utility connections and capacity
 - d. Storm Water Plan and/or Drawings
19. Civil Utility Plan:
 - a. Provide sketch plan and narrative of location of utilities to the construction boundary;
 - b. Identify utilities connection points
 - c. Confirm sufficient capacity at site boundary
20. Fire Protection Drawings and Details
21. Mechanical Drawings and Schedules
 - a. Provide mechanical systems type and total capacity
22. Electrical and Lighting Drawings;

23. Communications Drawings

24. Budget, Schedule, and Risk Analysis

- a. Designer's Estimate of Construction Cost of Final Design vs. the design criteria package
- b. Designer's Construction Schedule bases on the final design vs. the design criteria package with key project dates identified
- c. Risk Implications and Mitigation Strategies. Identify the various risks associated with the final design vs. the design criteria package and initial mitigation strategies

5.4 BASIC SERVICES DELIVERY

A. As part of Basic Services, the DB shall provide the following services as appropriate to the Project scope:

1. Architectural Design
2. Landscape Design
3. Civil Engineering and design, including streets, roads, drainage, Stormwater Management, water, wastewater, natural gas design
4. Structural Engineering and design
5. Fire Protection design
6. Mechanical Engineering and design
7. Automation and Controls Systems
8. Electrical Engineering and design for power distribution ductbanks;
9. Lighting Design
10. Technology and Communications design for communication distribution ductbanks
11. Security Systems (see item 9)
12. Traffic Control design during construction and permanent facilities
13. Visual Communications including Signage, Graphics and Wayfinding
14. GIS Design to conform to HAS standards
15. Storm Water Pollution Prevention Plan Design Services during construction and permanent facilities
16. Surveying to conform to HAS standards
17. Life Safety Code Compliance, as applicable.
18. Other Services as mutually agreed to by the DB and the OMT

B. Basic Services for this Project will be staged as follows:

1. Final Design and Construction Documents
2. Bid Packaging and Permitting
3. Design Services during Construction

5.5 FINAL DESIGN AND CONSTRUCTION DOCUMENTS

A. Data Collection during Preconstruction and Design

1. The DB shall take reasonable precautions to verify the accuracy and suitability of any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to DB (by HAS or any other party) that DB uses for the Project. DB shall identify to the OMT in writing any such documents or data which, in DB's professional opinion, are unsuitable, improper, or inaccurate in connection with the purposes for which such documents or data are furnished.
2. The City does not warrant the accuracy or suitability of such documents or data as are furnished unless DB advises OMT in writing within five (5) Calendar Days of uncovering the unforeseen condition, that in DB's professional opinion, such documents or data are unsuitable, improper, or inaccurate and OMT confirms in writing that it wishes DB to proceed in accordance with the documents or data as originally provided.
3. The DB shall make reasonable efforts to investigate any documents provided by HAS and the visible existing conditions at the Project site to identify existing systems and construction which must be modified to accommodate DB's design for the Project and construction of the Project.
4. The DB shall identify to OMT in writing within five (5) Calendar Days, any discrepancies between the documents and visible conditions, and shall consult with OMT on any special measures, services, or further investigations required for DB to perform its services free from material errors and omissions and to properly coordinate with existing systems and construction. This investigation shall be accomplished by registered, professional architects and engineers and surveyors, as appropriate.

B. Criteria Package Review and Design Alternatives

1. The DB shall provide a written evaluation of the Design Criteria Package and advise OMT on alternative designs and make value engineering suggestions.
2. The Design Criteria Package assumes a connection to City of Houston water and wastewater systems. The DB may provide a written evaluation on alternative designs and make value engineering suggestions when those opportunities present cost savings.
3. HAS is also providing an option to utilize an existing Pre-engineered Metal Building (PEMB) steel structure by Red DOT Buildings. This PEMB structure was originally purposed for the Hobby Airport Consolidated Maintenance Facility project. The Design Builder, will have to evaluate and weigh the schedule, cost, and risks

associated with either the use of the existing steel structure or the procurement of a new structure. The selected option will become part of the Design Builder's proposal.

C. Construction Documents

Based on the Design Criteria Package and any further adjustments to the Project budget as authorized by HAS, the DB shall prepare Construction Documents consisting of Drawings and Specifications and submit them to HAS for approval. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall be consistent in all material respects with prior design criteria package and shall provide for the construction of the Project within the original Contract Price, unless the original Contract Price has been modified by an approved Change Order.

- D. The DB shall advise the OMT regarding construction phasing and scheduling, the construction contract time period, and such other construction conditions considered appropriate for the Project.
- E. The DB shall assist and advise the OMT in connection with HAS's responsibility and procedures for obtaining approval of Governmental Agencies having jurisdiction over the Project.
- F. Submittal of Construction Documents for Final Review
 - 1. DB shall submit completed Construction Documents, satisfying all previous review comments and suitable for permitting and construction. Final quality control elements performed by Designer such as inter-discipline coordination, peer reviews, and document and calculation checking shall be completed and incorporated. Any work remaining at this stage shall be only minor corrections to resolve discrepancies discovered during the final review.
 - 2. DB shall provide the updated Basis of Design as described in this Section with the submittal.
 - 3. Included with this design submittal will be
 - a. Construction schedule prepared by the DB which will provide logic and durations of all construction activities
 - b. Submittal schedule prepared by the DB which will list all items by specification section, that are to be submitted by the DB for review and approval.

5.8 BID PACKAGING AND PERMITTING

- A. The Designer shall provide documents for use by the DB in procurement packages for all work to be subcontracted by the DB to support the construction schedule. The construction packages may be released at different times, which may require the DB to prioritize the work and provide separate design submittals for approval.

- B. The DB shall submit final design and construction documents for all permits required by the authorities and agencies having jurisdiction. All permits shall be paid as allowances under the contract, CGMP, and GMP.

5.9 DESIGN SERVICES DURING CONSTRUCTION

- A. The DB is fully responsible for the services performed by their Designer. It is expected that these Services shall generally include the following to support all Construction Work:
 - 1. Project site visits at intervals appropriate to the type and stage of construction progress to observe the progress and quality of the Work.
 - 2. For general observation, Designer shall visit the site for specific purposes related to start-up or mock-up reviews for significant work activities and for formal inspections of the Work.
 - 3. Interpretation of the technical requirements of the Contract Documents. Interpretations and recommendations shall be consistent with the intent of and reasonably inferable from the Contract Documents.
 - 4. Review and approve or take other appropriate action upon the DB's submittals such as shop drawings, product data, and samples, but only for conformance with the design concept of the Work set forth in the Contract Documents. These actions shall be taken prior to issuance of these submittals to the OMT for concurrence.
 - 5. Participate in concealed space inspections, systems start-up inspections, and Substantial Completion inspections.
 - 6. Review Design Build Contractor's submission of operating and maintenance instructions, and all manuals, brochures, drawings, and other close-out documentation furnished by the DB for conformance with the requirements of the Construction Documents.

ARTICLE 19. SECTION 6 - PRECONSTRUCTION SERVICES

6.1 GENERAL RESPONSIBILITIES

- A. The DB will be required to coordinate and work with the OMT and HAS.
- B. The DB is responsible for the management and implementation of general services works and security for the site. This includes but is not limited to: management of miscellaneous site preparation activities, escorting if required, safety, and work force transportation to and from the areas of work if required, subcontractor/trade work force logistics, clean-up and housekeeping, temporary works for construction, public safety barriers, fencing, partitions etc., traffic maintenance, and temporary signage.
- C. The DB is responsible for management of the Project environmental plan and sustainability initiatives related to the Project. This includes the tracking, disposition and reporting of demolition work, salvage of any materials, and reuse of any materials.

- D. The DB's Designer is responsible for designing the Project in accordance with all applicable local, state, and federal codes and standards to enable permits to be obtained from the City of Houston and other Governmental Agencies for approval and/or construction.
- E. The DB shall furnish all services in accordance with a professional standard of care and design standards currently practiced on projects similar in size, complexity, and cost.
- F. The DB shall design the Project to a level of detail sufficient for construction and permitting and shall be responsible for the quality, completeness, accuracy, and coordination of Construction Documents.
- G. The DB shall provide quality control over design before review submissions to OMT.
- H. The DB shall establish, implement, and modify Project administrative functions and reporting requirements to the OMT at periodic intervals.
- K. The DB shall identify and provide corrective actions for all Project risks.
- L. The DB shall participate in appropriate weekly Project meetings.

6.2 NOTICE TO PROCEED

- A. The period of performance for Phase 1 Pre-Construction will commence shortly after award of the Contract and upon issuance of a Phase 1 –Notice to Proceed (NTP) by the City in accordance with the PRICE PROPOSAL for Phase 1 Services. Phase 1 includes Pre-Construction activities, design, some site work, the building shell, as well as the build-out of the Flight Academy area.
 - 1. Immediately upon issuance of the NTP, the DB shall thoroughly review and become familiar with the Project scope, requirements, and constraints, including:
 - a. The goals and objectives of the Project
 - b. Development and management of the Design to Budget process
 - c. Required project construction quality standards and requirements
 - d. The development of project reports
 - e. The needs and requirements of HAS and other Project stakeholders
 - f. The Project site available records, as-builts, specifications, local conditions and all related limitations and constraints
 - g. Schedule assumptions and constraints
 - h. Establish requirements of CGMP
- B. The period of performance for the Phase 2 - Remaining Construction Services will commence shortly after the Construction NTP is issued by the City and will be completed in accordance with the Scope of Work.

6.3 Key Personnel

- A. The DB shall provide all dedicated Key Personnel and support staff at the start of Preconstruction Services and throughout the Project as necessary to complete all Preconstruction and Design Services and the Construction Phase Services.

6.4 PRECONSTRUCTION MEETINGS

6.4.1 KICKOFF MEETING

- A. Prior to commencing work and at a specific time and place to be determined by HAS, DB shall meet with the OMT for a Project Kickoff meeting. The OMT, the DB, including Designer, and all Project team key personnel will be required to attend the Kickoff Meeting and Project On-Boarding Process. The goals of the kickoff meeting are:
 - 1. To coordinate the DB and the Project team
 - 2. To achieve consensus from the overall Project team on any issues and concerns
 - 3. To confirm that Scope of Services requirements are understood
 - 4. To establish and explain policies and procedures for completion of a successful project
 - 5. To establish expectations of the Project Schedule
 - 6. To establish expectations of the cost estimate process
 - 7. To establish clear lines of communication and points of contact for each Project team

6.4.2 SCHEDULING CONFERENCE

- A. Scheduling Conference
 - 1. A separate scheduling conference is required during both Preconstruction and Design Phase and the Construction Phase(s) of the Project.
- B. Attendees
 - 1. OMT, the DB's Key Management Personnel, Designer, major Subcontractors, and other major Consultants and other concerned parties shall each be represented at the conference by persons familiar with and authorized to conclude matters relating to the Work.

C. Agenda

1. Introduction to the DB's scheduling team's qualified personnel that will develop and update the Project Schedule.
2. Content, format, and submittal requirements and reports.
3. Schedule for other concurrent work under HAS's separate contracts and coordination with other work and personnel.
4. Review time required for design and construction phase submittals and resubmittals.
5. Review time required for RFI's and Change Orders.
6. Regulatory Agency Reviews and Approvals.
7. Project logistics.
8. Requirements for tests and inspections by independent testing and inspecting agencies.
9. Time required for completion and startup procedures. List of Contract activities to be included in schedule. Procedures for updating schedule.
10. Project scheduling and document management software.

D. Minutes

1. The DB will record and distribute meeting minutes, regardless of whether someone else is also doing the same to facilitate verification of a complete and accurate understanding of the meeting. The minutes shall be issued to the OMT within two (2) days of the meeting for review and comment. Upon receipt of the comments the minutes should be reissued with any necessary revisions within two (2) days of the comments being sent.

6.4.3 BI-WEEKLY PROJECT UPDATE MEETINGS

- A. Following the Kickoff meeting, the DB shall organize and lead Bi-weekly (once every two weeks) Project Update Meetings throughout the duration of the Contract. The Bi-weekly Project Update meetings shall be attended by the DB and OMT key personnel. Any issue in the opinion of the DB and/or the OMT that has the potential to impact the planning, management, or execution of the Project will be discussed in the Bi-Weekly Update Meeting such as maintaining the budget, schedule, scope, and quality objectives. The DB shall use this meeting to review and update, but not limited to, the following project related matters to the OMT:
1. Safety (Incident) Management
 2. Designer's Issue Log
 3. DB's Issue Log and Risk Register

4. Potential Change to the Work
 5. Coordination and Logistic Planning
 6. CPM Schedule including a schedule variance report and mitigation plans
- B. The DB shall submit the project update documents to the OMT at least three (3) business days prior to the Bi-weekly Project Update Meeting.

6.4.4 DESIGN PROGRESS MEETINGS

- A. The OMT will schedule regular Design Progress Meetings to monitor progress of the Design portion of the Work. These meetings will start within 15 days from the date of Notice to Proceed and will occur as follows:
1. Preconstruction and Design Phase: Once a week minimum and as required to accomplish the Final Design submittal.
 2. Construction Phase(s): Bi-weekly until the design and construction submittals are complete, then as needed and determined by the OMT.
- B. Attendees: Design Progress Meetings will be attended by:
1. The OMT
 2. The DB, Designer, and Key Personnel
 3. Major design subcontractors, as required
 4. Others as directed by the OMT
- C. Agenda: The DB will be responsible for developing the meeting agendas in collaboration with the OMT. The purpose of the meeting is to discuss significant items that could affect completion of the Construction Documents and that have a major impact on the quality, cost, and overall schedule of Work.
- D. Minutes: The DB will record and distribute meeting minutes, regardless of whether someone else is also doing the same to facilitate verification of a complete and accurate understanding of the meeting. The minutes shall be issued to the OMT within two (2) days of the meeting for review and comment. Upon receipt of the comments the minutes should be reissued with any necessary revisions within two (2) days of the comments being sent.

6.5 PRELIMINARY SCHEDULE

- A. The DB shall coordinate the requirements of this Section with Scope of Service requirements for Project Schedule, Progress Reporting, and Submittals.
- B. Within thirty (30) days after Phase 1 NTP, the DB shall prepare and submit a preliminary schedule for execution of the Work for the OMT review and response.
- C. The Preliminary Schedule shall include the Preconstruction and Design activities.

- D. The DB shall update the Preliminary Schedule as required to reflect progress of the Work and as indicated in the Contract. Such updates shall not be construed as relieving the DB of its complete and exclusive control over the means, methods, sequences, and techniques for executing the Work.

6.6 DESIGN TO BUDGET

- A. The Design Builder shall be responsible for establishing and updating the Project Construction Cost estimate monthly throughout development of the Construction Documents. Many of these estimates may be on specific Design to Budget allocations to ensure that the design is developing and maintaining expected quality standards.
- B. The initial Design to Budget cost component will be consistent with the HAS WBS and to a level of detail so a scope to budget analysis can be performed. Each WBS will be broken down as defined in the CSI MasterFormat.
- C. During the design process, the DB shall conduct constructability reviews and provide input and suggestions for design optimization to align the design with the Agreed cost of the Work. The DB will perform more detailed analysis of selected items to include alternative methods, systems, materials, equipment, or designs feasible to complete the construction at the lowest reasonable cost while achieving HAS's Project objectives.
- D. During the performance of the final design, any change to the Probable Cost of the Work due to changes or proposed changes in the Design shall be immediately forwarded in a letter to the OMT. The DB shall not proceed with those affected elements of final Design or Construction if the Probable Cost of the Work exceeds the Contract Price.
- E. The DB will evaluate opportunities and make recommendations to improve maintainability and sustainability and reduce lifecycle costs and energy use.
- F. Cost Estimating and Reporting
 - 1. The Design Build Contractor shall provide cost estimating throughout Pre-Construction and Construction. The DB will utilize an electronic data-base program to research and store pricing of various construction items. All estimates will be built-off and reconciled to the approved Probable Cost of the Work. All Probable Cost of Work estimates shall be open book.
 - 2. The Design Build Contractor will work with the OMT's cost estimators in reconciling methods and information sources for the pricing of construction elements. As estimates are developed, the DB shall develop a system to manage and organize the various estimates utilizing the Work Breakdown Structure (WBS).
 - 3. The Design Build Contractor shall provide monthly cost estimate reports. The reports shall include the updated Probable Cost of Work, changes, and variances from previous report and/or selected milestone reports, constructability review summary, list of value engineering/lifecycle cost reduction recommendations, and market updates.
 - a. If the (OMT/DB) reconciled cost estimate exceeds the Contract Price. The OMT will arrange a meeting between the Director, DB, to present the cost estimate

and to identify areas where the progressed design can be modified to bring the Project within the Agreed Cost of the Work. The presentation shall include an assessment of the impact of potential changes to the progressed design on aesthetics, function, and impact to the maintainability or efficiency of the Project. The intent of the meeting is to obtain acceptance of any design modifications and the Contract Price from the Director.

- b. The OMT will document decisions reached and any change to the Contract Price resulting from the cost estimate presentation meeting and initiate a Change Order to the Contract.
4. Once construction is authorized, the DB shall provide a monthly budget report/buy-out report with their request for payment summarizing the Work accomplished in the month for which the request is being submitted, the forecast cost to complete, a summary of the pending GMP or CGMP adjustments, Schedule and Work planned for the following month, progress percentage complete of Work deliverables, current status per budget line item, and variances and deviations from the overall total Project Budget.

6.7 DESIGN BUILD CONTRACTOR MANAGEMENT PLAN

- A. Within Thirty (30) days after the Notice to Proceed, the DB shall prepare a DB Management Plan, to be reviewed and accepted by the OMT, which documents the DB's plan for delivery of the Project. A summary of the status of each element of the DB Management Plan shall be prepared monthly to reflect actual project progress and shall be submitted to the OMT at least one week prior to the Monthly Progress Review Meetings. The DB Management Plan shall address, but not be limited to:
 1. Project Management and Administration Plans.
 - a. Project communications plan in accordance with Airport policies and procedures.
 - b. Preconstruction and Construction Organization Chart.
 - c. Design management plan
 - d. Design quality assurance/control plan
 - e. Schedule management plan.
 - f. Management reporting plan.
 - g. Pay request preparation and submittal plan.
 - h. Record keeping and document control plan.
 - i. Change management plan.
 - j. Project Procurement Plan
 - k. Material Management Plan
 - l. Coordination and Logistics Plan

- m. Subcontracting Plan
 - n. Construction Work Plan
2. Preconstruction Evaluation Report
- a. Preliminary Project Schedule incorporating design activities and progress.
 - b. DB's constructability recommendations including construction phasing, site logistics and traffic control.
 - c. Identify opportunities for increased efficiency and/or innovation.
 - d. Material recommendations and risks due to inflation, lead times, resource availability, and supply demands.
 - e. Design option reviews including a comparison of the risks and benefits of the different design element types and their corresponding schedule, cost, and construction related impacts.
 - f. Development of the Project Procurement Plan outlining supporting DB subcontract and deliverables and project buy out schedule.
 - g. Forecast and Trend Reports that identify and itemize specific events which may cause costs to change.
 - h. Any issue that, in the opinion of the DB, should be considered in the planning, management, or execution of the Project to maintain cost, schedule, scope, and quality objectives.
 - i. Recommendations and identification of issues concerning the Project Schedule, risk analysis and mitigation, and other required information updated based on the design development and changes to the Project known at the time of submittal.
3. Risk Management Plan
- a. The DB shall prepare a Risk Management Plan that will include risk identification, allocation and mitigation based upon the Work. Risks to be addressed include, cost, schedule, design/constructability risks, and any other matter that affects the execution of the Project. The DB shall work with OMT to review and update the preliminary list of preconstruction and construction related risks which:
 - 1. Lists the related program risks.
 - 2. Creates a qualitative ranking of the risks most critical to the achievement of Project Schedule and budget limitations.
 - 3. Defines of the potential cost and schedule impacts of the identified risks.
 - 4. Includes research and development of documents and materials on topics specific to the identified Project risks and opportunities.

5. Proposes risk mitigation strategies.
4. Material Management Plan
 - a. Prepare a plan for ordering materials and equipment and provide a monthly procurement, fabrication, and delivery status report.
 - b. Identify long-lead and early procurement materials plans, including definition of materials for which the DB will intend to seek payment for stored materials.
5. Quality Control (QC) Program
 - a. The DB shall submit a Quality Control Program for Preconstruction, Design, and Construction Phase Services for the Project for the OMT review and acceptance. The DB shall ensure that all services comply with the Project requirements, all design services fully comply with the requirements of the Contract and all procured materials conform to plans, technical specifications and any other project requirements, whether constructed by the DB or procured from Subcontractors or vendors. The DB shall assume full responsibility for the QC Program execution throughout the Preconstruction and Construction phases of the Project.
 - b. The DB shall be responsible for all activities necessary to manage, control, and document Work to ensure compliance with the QC Program established to comply with the requirements of the Contract Documents. The DB responsibilities include, but are not limited to:
 - 16) Ensuring adequate resources (labor, equipment, and materials) are provided for quality control services to be accomplished on and off-site by its organization,
 - 17) Pre-inspection of work prior to notifying the OMT for inspections or testing,
 - 18) Coordinating with suppliers and subcontractors,
 - 19) Tracking and resolution of non-conformance issues,
 - 20) Hiring and management of quality control laboratories and professionally credentialed consultants appropriate to meet the Contract Documents requirements.
6. Industry Outreach
 - a. The DB shall perform sufficient industry outreach to ensure that adequate trade and MBE/WBE/SBE participation, as required by the Contract, occurs for each Work Package and the complete Project. The DB shall also conduct bid research to determine that bids were reasonable as well as responsive to the Work Packages.
7. Subcontracting Plan

b. The DB shall develop and submit to the OMT a subcontracting plan that addresses all Subcontractor required elements of the Contract as well as how the DB plans to meet the requirements of the work and the Contract criteria.

8. Construction Work Plan

The DB shall develop a Construction Work Plan which shall define the DB's approach to constructing the Project. At a minimum, the Plan shall include:

- a. Project management systems necessary for successful execution of the Project and use of how they are integrated into HAS's systems. The OMT will implement project management systems specific to this Project.
- b. Phasing, Coordination, and Logistics Plans tied to the Project Schedule.
- c. Construction Disruption Mitigation Analysis, which includes coordination of airfield safety, logistics, and airport/airlines operations.
- d. Field office and staging area and temporary facility needs.
- e. Plans and actions taken to comply with environmental requirements and permits.
- f. Use and access to public roadways.
- g. Coordination of Work and communication of construction activities with the OMT regarding airlines, tenants and other stakeholders including utility disruptions.
- h. Protection of private and public properties, including lease properties on at the Airport
- i. Dust/dirt/debris mitigation.
- j. Temporary erosion control.
- k. Storm water drainage management during construction.
- l. Proposed construction means and methods validation.
- m. 3rd party coordination with utilities and other entities.
- n. Construction zone accommodation of vehicular traffic, deliveries and employee parking.
- o. Safety Plan including public and worker health and safety protection.
- p. Security Plan.
- q. Temporary construction signage.
- r. Traffic Control Plan during construction.

- s. Security of work site including Airport Operational Areas (AOA).
- t. BIM Execution Plan.
- u. Closeout Plan

ARTICLE 20. SECTION 7 - CONSTRUCTION SERVICES

7.1 GENERAL

- A. Upon issuance of the Phase 1 and Phase 2 NTP(s), the DB shall provide all labor, materials, equipment, temporary utility service and facilities to construct the entire Project as required by the Contract Documents. Those policies and procedures defined in the Preconstruction Phase Services section of this document shall be maintained, enhanced, and utilized throughout management of Construction Phase Services.
- B. The DB will be solely responsible for construction means and methods of the Work.
- C. The DB shall comply at all times with any and all oral and /or written instructions by the OMT regarding routes of travel to be used in moving personnel and/or materials to and from the Project site. The deliveries of materials and removal of construction related debris may be required to be done at night. The DB shall coordinate with the OMT on the schedule of any night work that needs to be performed on HAS property. Delivery vehicles, material trucks and heavy equipment shall enter and depart through a point designated by the OMT. Except as otherwise directed or approved by HAS, vehicles in use on the Airport shall be confined to the Project site. Only operators with current restricted area driving passes issued by HAS will be permitted to operate vehicles in the AOA. When an operator does not have a current pass, a HAS authorized driver must escort the operator.
- D. The DB is expected to solicit bids from subcontractors for elements of the work. Under management of the DB, the selected subcontractor/trade may provide materials, equipment and labor including the necessary coordination, supervision, programming, scheduling, cost control, contract administration, field engineering, commissioning, and closeout and support services to accomplish the work covered by each work package.
- E. The DB will be responsible for completing all Work related to this Project whether or not Work is contained in trade packages or subcontracts for the Project.
- F. The DB will be responsible to interact and efficiently coordinate with the various HAS departments, FAA, TSA, utility companies, and other agencies as required and address all federal, state, county and city permitting requirements. The OMT and Director will be kept fully informed regarding communication with these parties and shall be included in all interagency meetings, unless otherwise decided by the Director or authorized designee. All communications with these parties shall be documented by the DB for inclusion in the Project records and appropriate submittal to the Director.

7.2 COORDINATION RESPONSIBILITIES

- A. The DB shall coordinate all construction operations included in the Contract to ensure efficient and orderly development and installation of each part of the Work. The DB shall not delegate responsibility for project coordination to any Subcontractor. The DB's coordination responsibilities include but are not limited to:
1. Preparing and issuing material and subcontractor bids to obtain input from Subcontractors for use in the final design phase.
 2. Scheduling and managing the documentation and permitting process with the various regulatory agencies with jurisdiction over the Project.
 3. Scheduling and managing the construction submittal process.
 4. Preparing and managing the Project Safety and Security Plans.
 5. Scheduling construction operations in the sequence required to obtain the best results where installation of one part of the Work depends on installation of other components, before or after its own installation.
 6. Coordinating the installation of all components to ensure maximum performance and allow access for required maintenance, service, and repair, including but not limited to mechanical, electrical, and plumbing systems.
 7. Making adequate provisions to accommodate items scheduled for future installation.
 8. Resolving actual or potential conflicts between Subcontractors concerning coordination, interference, and sequencing.
 9. Coordinating Code and Permit documentation requirements.
 10. Implementation of all systems integration and commissioning for compliance with contractual and permitting requirements.
 11. Coordination with Operational Readiness, Activation and Transition (ORAT) Teams to support the requirements for turn-over of the completed Project to HAS, as required.

7.2.1 COORDINATION WITH THE PROGRAM MANAGEMENT TEAM

- A. The DB shall notify the OMT in writing, a minimum of thirty (30) calendar days in advance, of any activity that will be outside the Contract limits or that would interfere with HAS's daily operation. Utility interruptions (shutdowns or connections) require at a minimum thirty (30) days advance written notice or as otherwise directed by the OMT for longer durations.
- B. Within 30 days of Phase 1 NTP, the DB shall notify OMT of any foreseeable Project work that requires interruption of primary airport facilities or infrastructure. Any such work shall be specifically identified on the Project Schedule, included with the DB Management Plan and discussed with the OMT and affected HAS representatives regarding the required notice period and actual scheduling of work.

- C. Observation of Work by HAS or the OMT shall not be interpreted as relieving the DB from responsibility for coordination, superintendence, scheduling, and direction of the Work.
- D. Coordinate with the OMT to assure that Work on the Project site, access to and from the Project site, and the general conduct of operations is maintained in a safe and efficient manner, and that disruption and inconvenience to existing facilities and property is minimized.

7.3 CONSERVATION

- A. The DB will coordinate construction activities to ensure that operations are carried out with consideration given to conservation of energy, water, and materials.
- B. The DB will salvage materials and equipment involved in performance of, but not actually incorporated into, the Work. Refer to the Contract Documents for disposition of salvaged materials that are designated as HAS's property.

7.4 PROJECT REPORTS

- A. Daily Construction Reports
 - 1. Prepare and submit within 24 hours of the end of each construction work day, Daily Construction Reports which record at a minimum, the following information describing the daily events, incidents, accomplishments, and general progress as well as environmental conditions on the Project:
 - a. Description of construction activities performed
 - b. Meetings and significant decisions
 - c. Accurately recorded high and low temperatures, and general weather conditions at the site, including the presence and quantity of rain, sleet, or snow, wind direction and speed, and the relative humidity
 - d. Project security and safety compliance
 - e. Unusual events (including the discovery of missing or damaged materials)
 - f. The list of all Subcontractors (of any tier) at the Project site
 - g. The list of other contractors at the Project site
 - h. The total number of all workers at the Project site, subdivided into:
 - i. The number of DB's workers at the Project site
 - ii. The number of subcontractor workers at the Project site, by subcontractor, vendor, etc.
 - i. The DB and Subcontractors' equipment at the Project site
 - j. Material deliveries for the Project by location of delivery

- k. Quality related issues and Non-Conformance Reports.

SAMPLE

B. Material Location Reports

1. At weekly intervals, prepare and submit a comprehensive list of materials delivered to and stored at the Project site. The list shall be cumulative, showing materials previously reported plus items recently delivered. Include with the list a statement of progress and delivery dates for materials or items of equipment fabricated or stored away from the Project site.
2. For material stored off-site, the DB shall provide the address where fabricated equipment and materials are stored (see General Conditions for further requirements).

B. Field Condition Reports

1. Immediately upon discovery of a difference between field conditions and the Contract Documents, the DB shall prepare and submit a detailed report in accordance with the provisions of the Contract.

7.5 PROJECT MEETINGS

The person designated to make decisions binding on and on behalf of the DB, defined as the DB's Project Manager, shall attend all of the meetings described below. Meetings in addition to those described below may be required for special purposes as determined by the OMT.

A. Scheduling Conference

1. A separate scheduling conference is required during both Preconstruction and Design Phase and Construction Phase(s) of the Project.
2. Attendees: OMT, the DB's Key Management Personnel, Designer, major Subcontractors, and other major Consultants and other concerned parties shall each be represented at the conference by persons familiar with and authorized to conclude matters relating to the Work.
3. Agenda:
 - a. Introduction to the DB's scheduling team's qualified personnel that will develop and update the Project Schedule.
 - b. Content, format, and submittal requirements and reports.
 - c. Schedule for other concurrent work under HAS's separate contracts and coordination with other work and personnel.
 - d. Review time required for design and construction phase submittals and resubmittals.
 - e. Review time required for RFI's, Change Orders.
 - f. Regulatory Agency Reviews and Approvals.

- g. Project logistics.
 - h. Requirements for tests and inspections by independent testing and inspecting agencies.
 - i. Time required for completion and startup procedures. List of Contract activities to be included in schedule. Procedures for updating schedule.
 - j. Project scheduling and document management software.
4. Minutes: The DB will record and distribute meeting minutes, regardless of whether someone else is also doing the same to facilitate verification of a complete and accurate understanding of the meeting. The minutes shall be issued to the OMT within two (2) days of the meeting for review and comment.
- B. Preconstruction Conference
- 1. The OMT will schedule a preconstruction conference and organizational meeting, following the construction scheduling conference and before start of construction.
 - 2. Attendees: OMT, the DB and its Project Manager, Superintendent, Quality Control Manager, major Subcontractors, Designer, and other concerned parties shall each be represented at the conference by persons familiar with and authorized to conclude matters relating to the Work.
 - 3. Agenda: The purpose of the meeting will be to discuss items of significance that could affect progress, including the following:
 - a. Introduction/designation of Key Personnel and their duties
 - b. Procedures to be followed during performance of the Work
 - c. Construction phase schedule
 - d. Critical work sequencing and long-lead items
 - e. Phasing
 - f. Work restrictions
 - g. Work hours
 - h. Procedures for processing change requests
 - i. Procedures for requesting information (RFIs)
 - j. Procedures for testing and inspecting
 - k. Procedures for processing Applications for Payment
 - l. Distribution of the Construction Documents
 - m. Submittal procedures
 - n. Preparation of record documents

- o. Use of the premises and if applicable, existing building(s)
 - p. Parking availability
 - q. Office, work, and storage areas
 - r. HAS occupancy requirements
 - s. Responsibility for temporary facilities and controls
 - t. Equipment deliveries and priorities
 - u. Safety
 - v. First aid and Local Emergency Response Plan
 - w. Security
 - x. Project in-progress site cleaning
 - y. Construction waste management
4. Minutes: The DB will record and distribute meeting minutes, regardless of whether someone else is also doing the same to facilitate verification of a complete and accurate understanding of the meeting. The minutes shall be issued to the OMT within two (2) days of the meeting for review and comment.

C. Project Coordination and Logistics Meetings

- 1. The DB will schedule and administer coordination and logistics meetings among all parties affected by the Work, as required to effectively manage performance of the Project.
- 2. Attendees shall include, but are not limited to, the OMT, DB, Designer, relevant Subcontractors, applicable Consultants and applicable, representatives of entities or Regulatory Agencies affected by or having jurisdiction over the Work plus stakeholders that will be affected by the Project.
- 3. The DB shall plan ahead for work that requires approvals from regulatory agencies and other logistical considerations to allow for a reasonable review and preparation time.
- 4. Refer to the Contract Documents for specific requirements on utility work and shutdowns, navigation and traffic impact plans, and other logistical and environmental mitigation or special construction work.
- 5. The DB shall develop an agenda incorporating all operational impacts identified in the DB's logistical and coordination plan into the Project Schedule to allow for at least thirty (30) days' notice before implementation of Work affecting normal operations of the premises Airport operations, unless more time is indicated in the Contract Documents or defined by the OMT.

6. The DB shall identify all oversized, over-weight, and/or long materials to be delivered to the Project site and shall define specific plans for the handling of these materials for review and acceptance by the OMT.
7. The DB shall identify long-lead materials and establish a plan to obtain the materials to not unnecessarily impact the Project Schedule.
8. Applications for Area Shutdown Request (ASR) and Utility Shutdown Request (USR) are required to be submitted by the DB at least 30 days prior to the proposed shutdown time, unless otherwise defined by the OMT based on the level of impact to the affected facilities. Primary airport infrastructure shutdowns will require longer notification periods, defined through coordination with the OMT and the affected parties. An ASR/USR meeting will be held with the DB and OMT and Airport Operations before any ASR is approved. Agenda for the meeting will include:
 - a. Review of current ASR and USR work as well as look-ahead scheduling for all project work. Provide appropriate narratives, schedules, documentation, and graphics to adequately describe planned work and to meet requirements of ASR and USR applications
 - b. Plans for forthcoming ASR and USR work,
 - c. Long-lead materials procurement plans,
 - d. Project coordination and logistics plan, and
 - e. Traffic control plan
9. The DB shall coordinate with HAS for identification and inclusion of HAS defined blackout periods within the Project Schedule.
10. Traffic Control Plans for impacts to vehicular traffic must be prepared by professionals in traffic management. The plans must meet HAS drawing standards and are required to support ASR applications. (See Division 01 55 26 Traffic Control for further requirements)
11. The DB is to publish minutes of the meetings. Minutes to include: topics discussed, alternatives considered, reasons that given alternatives were either discarded or adopted, attendees and copies as appropriate of documents distributed. Publish minutes within two days of the meeting to all attendees and to other appropriate parties as identified.

D. Weekly Progress Meetings

1. The OMT will schedule and administer weekly progress meetings following Construction Phase NTP(s). The OMT will distribute agendas in advance of the meeting and minutes of each meeting to those in attendance. The DB shall coordinate the meeting agendas with the OMT for issuance.
2. Attendees: In addition to the OMT, the DB management team, applicable Subcontractors, plus other entities concerned with current progress or who are involved in planning, coordination, or performance of future activities.

3. Agenda: Agenda items include reviewing, correcting or approving minutes of the previous progress meeting and reviewing other items of significance that could affect Project progress. Topics for discussion shall be established as appropriate to the current status of the Project such as:
 - a. The DB's Four-Week Look-Ahead Construction Schedule and Overall Construction Schedule status.
 - b. Review the current and future needs of each entity present, including such items as:
 - c. Safety
 - d. Security
 - e. Four (4) week look ahead Schedule
 - f. Project Logs
 - g. Submittals
 - h. RFI's
 - i. Work Change Directives
 - j. Non-Conformances
 - k. Quality Control and Work standards
 - l. Traffic Control
 - m. Site utilization
 - n. Hours of Work
 - o. Temporary facilities and services
 - p. Temporary Erosion Control
 - q. Deliveries
 - r. Status of off-site fabrications
 - s. Project Costs: budget, commitment, and progress payments.
 - t. Project Record File additions (Change Orders, meeting minutes, etc.)
 - u. Applications for Payment
 - v. Project Risks including:
 - 1) Hazardous conditions
 - 2) Hazardous materials

- 3) Unforeseen conditions and potential impacts and mitigation measures.
 - 4) Major coordination or construction challenges that affect project's budget, schedule, or its environment (logistics, sequencing, traffic).
4. Minutes: The DB will record and distribute meeting minutes, regardless of whether someone else is also doing the same to facilitate verification of a complete and accurate understanding of the meeting. The minutes shall be issued to the OMT for review and comment within two (2) days of the meeting.

E. Pre-Installation Meetings

1. The DB will conduct pre-installation meetings before each major construction activity or activity that requires coordination with others. The DB will develop a list and schedule for the OMT of all required meetings and scheduled dates. Dates of pre-installation meetings shall be identified on the Project Schedule.
2. Attendees: The OMT, Consultants, DB management team and Subcontractors, equipment installer and representatives of manufacturers and fabricators involved in or affected by installation, and its coordination or integration with other materials and installations that have preceded or will follow the installation.
3. The DB will review progress of construction activities affected by the installation and preparations for the particular activity under consideration at each pre-installation meeting. The review shall include, but not be limited to, requirements for the following, as applicable:
 - a. Applicable Construction Documents/Specifications
 - b. Manufacturer's recommendations
 - c. Governing regulations
 - d. Installation means and methods
 - e. Deliveries/site logistics
 - f. Space and access requirements/limitations
 - g. Existing facilities and Work protection
 - h. Possible conflicts
 - i. Temporary facilities
 - j. Time schedules
 - k. Weather limitations
 - l. Submittals and RFI's
 - m. Shop Drawings, product data, and quality-control sample

- n. Review of mockups, as applicable
 - o. Compatibility of materials
 - p. Warranty requirements
 - q. Safety
 - r. Inspecting and testing requirements
 - s. Required performance results
 - t. Project records requirements
4. Minutes: The DB will record and distribute meeting minutes, regardless of whether someone else is also doing the same to facilitate verification of a complete and accurate understanding of the meeting. The minutes shall be issued to the OMT within two (2) days of the meeting for review and comment.
5. The DB shall not proceed with installation if the pre-installation conference cannot be successfully concluded. The DB shall initiate whatever actions are necessary to resolve impediments to performance of Work and reconvene the pre-installation conference at earliest feasible date.

F. Monthly Progress Reviews

1. In addition to the requirements of the Contract Documents, the DB will conduct project status review meetings on a monthly basis, or as otherwise needed to effectively and efficiently deliver the Project in accordance with the Contract Documents.
2. The Monthly Progress Review meetings will be held in lieu of the Weekly Progress Meeting once each month and shall include the following agenda items in addition to the weekly meeting agenda topics, as required. Weekly meeting attendees shall be adjusted to reflect the Monthly meeting agendas.
3. Attendees: The OMT, the DB's senior construction scheduler, project manager, general superintendent, Designer plus relevant subcontractors and Consultants.
4. Purpose: Review of the Project progress since the last meeting. Determine whether each activity is on time, ahead of schedule, or behind schedule, in relation to the DB's published, updated and approved construction schedule. Determine how design and/or construction that is behind schedule will be expedited (including review of recovery schedules, as appropriate) and secure commitments from parties involved to do so. Discuss whether schedule revisions are required to ensure that current and subsequent activities will be completed within the Contract Time.
5. Agenda: The intent of the meeting is to expand the weekly progress meeting agenda to include any proposed schedule revisions including, but not limited to, the following:
 - a. Delays to critical path and near critical path activities and actions taken or to be taken by the DB to mitigate the delays.

- b. An analysis of any Project progress problem areas, current and anticipated delaying factors (causes) and their impacts, explanations of corrective action taken or to be taken, and any proposed schedule revisions to facilitate a recovery plan.
 - c. Revisions of any assumed activity durations including those due to conditions the DB deems to be outside their control.
 - d. Proposed Change Orders issued during the update period including any time impacts.
 - e. The resolution of conflicts between actual Work progress and schedule logic when out-of-sequence activities develop due to actual construction progress. DB shall submit revisions to schedule logic to conform to current job status and directions, without changing original activity identification.
6. Schedule Updating:
- a. The DB will revise the actualized construction schedule after each monthly progress review meeting, where revisions to the schedule have been made or recognized. The DB will issue revised schedule concurrently with the minutes of each meeting. Upon acceptance by the OMT, schedule revisions submitted by the DB shall be incorporated into the Project Schedule in the next monthly update.
7. Minutes: The DB will record and distribute meeting minutes, regardless of whether someone else is also doing the same to facilitate verification of a complete and accurate understanding of the meeting. The minutes shall be issued to the OMT within two (2) days of the meeting for review and comment.
- G. Safety Meetings
1. Within thirty (30) days after the Construction Phase NTP(s) but prior to commencement of field work activities, the DB will arrange a Safety Meeting with the OMT to review Project safety requirements.
- H. Pre-Demolition Meetings
1. The DB shall schedule and administer meetings through the OMT for stakeholders affected by the Work prior to any demolition activities. Demolition work shall not start unless authorized by the OMT. In addition to addressing specific requirements of the proposed demolition Work to be undertaken, the DB shall include requirements of the "Project Coordination and Logistics Meetings" defined earlier in this section.
- I. Project Closeout Conference
1. The DB shall request a Project Closeout Meeting at a time convenient to the OMT, but no later than 90 days prior to the scheduled date of Substantial Completion. Refer to the defined requirements on Project Closeout for specific policy and procedure details. The OMT will conduct the meeting to review requirements and responsibilities related to Project Closeout, in accordance with the provision of Specification Section 01 77 00 Closeout.

2. Attendees: The OMT, the DB Management Team, including QC Manager, Senior Superintendent and Construction Manager, major Subcontractors, suppliers, and other concerned parties. Participants at the meeting shall be familiar with the Project and authorized to conclude matters relating to the Work.
3. Agenda: Discuss items of significance that could affect or delay Project Closeout including, as applicable, the following:
 - a. Preparation of as-built documents
 - b. Procedures required prior to inspection for Substantial Completion
 - c. Submittal of written warranties
 - d. Requirements for preparing sustainable design documentation, as applicable
 - e. Requirements for preparing operations and maintenance data and manuals
 - f. Requirements for demonstration and training
 - g. Preparation of DB's punch list
 - h. Procedures for processing Applications for Payment at Substantial Completion and for final payment
 - i. Final Submittals procedures
 - j. Beneficial use requirements
 - k. Installation of HAS's equipment
 - l. Responsibility for removing temporary facilities and controls
 - m. Site cleanup and restoration
4. Minutes: The DB will record and distribute meeting minutes, regardless of whether someone else is also doing the same to facilitate verification of a complete and accurate understanding of the meeting. The minutes shall be issued to the OMT within two (2) days of the meeting for review and comment.

ARTICLE 21. SECTION 8 - DESIGN SUBMITTAL PRODUCTION STANDARDS

8.1 DEFINITIONS

- A. OMT BIM (Building Information Modeling) Manager leads BIM implementation and oversees the BIM application to the Program.
- B. Designer BIM Manager leads BIM implementation and oversight for the Designer.
- C. Design Build Contractor BIM Manager leads BIM implementation and oversight for the Design Build Contractor.

- D. Designer BIM Manager and Design Build Contractor BIM Manager may be represented by a single individual, the details will be defined in the BIM Project Execution Plan (BPxP).
- E. Design Model(s): created and developed by the Designer in order to develop the Project design.
- F. Construction Model(s): created by Design Build Contractor from the Design Model in order to develop and fulfill construction requirements.
- G. As-Built Model(s): prepared by the Design Build Contractor to show on-site changes to the original Construction Models.
- H. Record Model: the BIM model prepared by the Designer from the Design Model to reflect on-site changes that the Design Build Contractor noted in the As-Built Models.
- I. The BPxP defines BIM requirements which shall be performed during Project execution. The BPxP at a minimum shall include:
 - 1. Project information
 - 2. Key Project contacts
 - 3. Project goals / BIM uses
 - 4. BIM process design
 - 5. BIM information exchanges
 - 6. BIM and facility data requirements
 - 7. Modeling requirements
 - 8. Construction sequencing and cost loading (4D and 5D) requirements
 - 9. Collaboration procedures
 - 10. Coordination procedures
 - 11. Quality control
 - 12. Technological infrastructure needs
 - 13. Model structure
 - 14. Project BIM deliverables
 - 15. Delivery strategy / contract

8.2 SCOPE

- A. The general scope of producing design submittals is to create technically accurate, highly developed computer models of the civil, utilities, architectural, structural, and building system elements for Preconstruction and Construction phases.

- B. The Designer BIM Manager and Design Build Contractor shall freely and openly exchange models and data within a collaborative BIM environment. Development of the models will be the composite efforts of the Designer and Design Build Contractor teams. The fundamental use and purpose of the model(s) will be to serve as a data rich legacy document for operations and maintenance management.
- C. The model(s) developed for the Project may be utilized for multiple purposes including, but not limited to: design, documentation, spatial coordination, interference checking, record drawings, and operations and maintenance. The extent to which BIM is used will be decided within the BPxP created collaboratively by the OMT, Designer and Design Build Contractor BIM Managers.
- D. The OMT BIM Manager, the Designer BIM Manager and the Design Build Contractor BIM Manager shall collaborate to develop the Project BPxP no later than thirty (30) calendar days after the Preconstruction NTP is issued.
- E. The BIM model shall include a high-level of detailed facility data, which consist of a set of intelligent elements for all discipline models. The facility data shall include all material definitions, quantities, and attributes that are necessary for the Project design. Each discipline will iteratively develop a highly detailed model to include all required systems as they will be built to ensure complete and accurate quantity take-offs of relevant construction materials at appropriate stages of the Project, and reflect final record conditions. The extent of details and data shall be defined by the BPxP.

8.3 BIM PRODUCTS

- A. Designer and Design Build Contractor, including all vendors, consultants, and any subcontractors/subconsultants, shall use the HAS approved Autodesk products including Civil 3D as the core product to develop the civil and site models and Revit as the core product to develop the building architectural, structural, and Mechanical/Electrical/Plumbing (MEP) models. Design deliverables such as PDFs and DWGs shall be directly generated from Civil3D and Revit.
- B. Designer and Design Build Contractor shall use Navisworks throughout the Project to coordinate the models and identify clashes.
- C. No member of the Project team shall update software without the permission of Director.
- D. Other secondary software usage shall be based upon mutual agreement and with approval by the Director.

8.4 ORGANIZATIONAL ROLES

- A. Designer BIM Manager will be a key implementer and will take the lead in setting up and developing the models and in managing the technologies. Designer will be responsible for directing, developing, and coordinating the work of subconsultants and will ensure that subconsultants' BIM-based work products are seamlessly integrated into the Project Design Models and resulting Construction Documents. Designer BIM Manager will work closely with the Design Build Contractor and OMT to receive design phase feedback and transition the model to construction phase integration.

- B. The Design Build Contractor BIM Manager will work closely with the Designer BIM Manager to add value to the Design Model by providing feedback during design. The Design Build Contractor will determine when best to engage subcontractors. The Design Build Contractor BIM Manager will use the Design Model as the basis for developing Construction Models, shop drawings for fabrication and construction and will be responsible for the assembly and integration of subcontractor (trade) models with the Designer civil, utilities, architectural, structural, MEP/FP models, as appropriate to the Project scope.
- C. OMT BIM Manager will be the primary point of contact for BIM related issues, overseeing application of BIM technologies and ensuring that the model adheres to all internal and HAS-specific goals. OMT BIM Manager will lead the BPxP workshops and other BIM related meetings as determined in the BPxP and will oversee the application of the BPxP. OMT BIM Manager will also be responsible for archiving models and conducting reviews/audits of model deliverables.

8.5 BIM MODELS AUTHORSHIP

- A. In order to maximize effectiveness throughout the Project's planning, design, and construction phases, the BIM Design Model will be authored, maintained, and kept accurate at all times by the Designer's BIM Manager during design.
- B. Design Build Contractor BIM Manager will author, maintain, and keep accurate the Construction Model during construction. The Design Build Contractor BIM Manager will provide its information to the Designer BIM Manager for incorporation into the Design Model.
- C. Designer will retain control of the final Design Model. While the Design Model is an integral tool of design, it is imperative that the Design Model be monitored at milestones during the preconstruction and construction phases to assure the Design Model is being properly updated.
- D. As the Project proceeds through construction completion, the Designer BIM Manager in collaboration with the Design Build Contractor BIM Manager, will capture and track record conditions in BIM as each system is procured and installed. The Record Model will become a tool in streamlining startup activities. The completed Record Model will create the foundation for operations and maintenance, as well as a baseline for future facility modifications.
- E. The Designer BIM Manager will oversee review of interference checking reports and note areas that require further coordination or redesign and will review all models for integrity and validate that Project facility data is populated.
- F. The Designer BIM Manager shall coordinate the Design Models to minimize or eliminate conflicts between design elements. Prior to every transmittal of design files, the Designer shall coordinate the Design Models and check for clashes between model elements using Autodesk Navisworks. The identified clashes shall be organized in an interference check report and issued to the Project Team with the transmittal.

8.6 INTERFERENCE CHECKS

- A. The Designer BIM Manager shall coordinate the BIM design models to minimize or eliminate conflicts between design elements during design phase. Prior to every transmittal of design files, the Designer BIM Manager shall coordinate the Design Models and check for clashes between model elements. Designer will be responsible for presentation and documentation of interference checks / clashes and resolutions. Specific processes, meetings, and reports will be defined in the BPxP workshops.
- B. The Design Build Contractor BIM Manager shall coordinate the Construction Models to minimize or eliminate conflicts between construction elements during the construction phase. Prior to every transmittal of construction files, the Design Build Contractor BIM Manager shall coordinate the construction models and check for clashes between model elements. The Design Build Contractor BIM Manager will be responsible for presentation and documentation of interference checks / clashes and resolutions. Specific processes, meetings and reports will be defined in the BPxP workshops.
- C. The Designer BIM Manager will oversee review of interference checking reports and note areas that require further coordination or redesign and will review the Design Model and Record Model for integrity and validate that Project facility data is populated.
- D. During construction, the Design Build Contractor shall keep the Designer current with any clashes or field changes affecting the Design Model throughout the construction phase. Designer shall support this effort as needed with updates provided in response to RFI's, HAS requested changes, and other design modifications affecting the Construction Model.
- E. Accompanying documentation shall be within the OMT document management software.

8.7 BIM DELIVERABLES

- A. Models shall be prepared using HAS approved Autodesk Suite of tools. Authoring tools shall be Civil3D and Revit. Various disciplinary models, as appropriate to the project scope, federates into an aggregate project model using Autodesk Navisworks software.
- B. After receiving the Design Build Contractor As-Built Models, Designer shall revise the Design Model to incorporate all addenda, all change orders, and modifications and deliver the final Record Model to HAS as part of project close-out documents. Design Build Contractor shall deliver all As-Built Models to HAS as part of project close-out documents.

8.8 DRAWING CONVENTIONS FOR DOCUMENTATION

- A. HAS maintains CAD/ Geospatial Data Standards and Procedures, available on the HAS Fly2Houston website to address Airport Spatial Information System (ASIS) general requirements and CAD drawing standards.
- B. HAS maintains BIM Standards and Procedures, available on the HAS Fly2Houston website to address Airport Spatial Building Information Modeling general requirements.

- C. Project files are specific to the Project and must be organized to facilitate the production of Contract Documents, record documents, and facility management documents from many different files. Project files include building and site models, details, sheets, schedules, text, database, symbols, borders, title blocks, and other files created for the Project.

8.9 DESIGN SUBMITTAL FILE FORMATS

- A. Designer and Design Build Contractor shall submit drawings electronically at each formal submittal stage as follows:
 - 1. Civil3D files in .dwg native data rich format that were used to generate the drawing sheets
 - 2. Revit files in .rvt format that were used to generate the drawing sheets
 - 3. 2D and 3D files that were used to produce the design in their native format
 - 4. Project Manuals in native and PDF file format
 - 5. AutoCAD files in .dwg native format for each drawing sheet exported from BIM (Civil3d and Revit) model(s)
 - 6. PDF files for each of the drawing sheets exported from the BIM model
 - 7. Navisworks Files: The.nwc shall be exported from a 3D view that shows all 3D objects in the model without cropping and without 2D objects or 3D objects from references. An .nwf or .nwd that compiles all NWC files and contains the design coordination data. An interference check report (PDF or HTML) that shows the coordination progress
 - 8. All electronic format files delivery shall be within HAS document management software.
- B. Design Build Contractor shall submit to HAS printed half size design review sets and printed project manuals of each design phase submittal at each formal design review stage and at issue for pricing, construction, or permit stages. Numbers of review sets and copies of project manuals will be confirmed during Project execution.
- C. All electronic format file delivery shall be in accordance with the requirements of Specification, Section 01 33 00 Submittal Procedures.

ARTICLE 22. SECTION 9 - ENERGY AND SUSTAINABILITY

9.1 INTRODUCTION

- A. While sustainability and energy conservation are critical factors in the determination of system design concepts and in the selection of building materials, the City will not seek the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED™) certification for the Project. The DB; however, will be required to design the Project to include energy and sustainability measures as appropriate to the Project for

the City's review, using the LEED™ Silver certification rating system for new building design and construction as a guide.

9.2 SUSTAINABLE MANAGEMENT PLAN

- A. HAS is in the process of developing a Sustainable Management Plans for their airports.
- B. The Airport may require the DB to incorporate the concepts in the final design or construction documents where feasible at the time of preparation of these documents.

9.3 LIFE CYCLE ANALYSIS

- A. The DB, shall perform Life Cycle Analysis (LCA) for the Project lifetime period as defined by the OMT (minimum 30-year service life) to select design alternatives related to all energy and water consuming devices and to select materials and finishes for total cost of ownership that reflects overall building operation and maintenance parameters that are the most cost effective and sustainable, for the applicable portion of the Project.

EXHIBIT C - GENERAL CONDITIONS (DESIGN-BUILD)

SAMPLE

EXHIBIT D - KEY PERSONNEL

SAMPLE

EXHIBIT E - PRECONSTRUCTION SERVICES SCHEDULE

SAMPLE

EXHIBIT F – COMPONENT AND GUARANTEED MAXIMUM PRICE PROPOSAL

SAMPLE

EXHIBIT G - FORMS OF BONDS

The following documents are incorporated by reference (See Division 00):

10. 1. City of Houston Standard Document No. 00610 – Performance Bond
11. 2. City of Houston Standard Document No. 00611 – Statutory Payment Bond
12. 3. City of Houston Standard Document No. 00612 – One-Year Maintenance Bond
13. 4. City of Houston Standard Document No. 00613 – One-Year Surface Correction Bond

SAMPLE

EXHIBIT H - CITY'S WAGE RATES

(See Division 00)

SAMPLE

EXHIBIT I - PROJECT SCHEDULE

SAMPLE

Exhibit J – FEDERALLY REQUIRED PROVISIONS

SAMPLE

EXHIBIT L – Project Manual

SAMPLE

EXHIBIT M - Title VI Non-Discrimination

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

22. 1. Compliance with Regulations - The Design-Builder shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (“DOT”) 49 CFR Part 21, as may be amended from time to time (“Regulations”), which are incorporated by reference and made a part of this Agreement.
23. 2. Non-discrimination - The Design-Builder, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Design-Builder shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
24. 3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment - In all solicitation, either by competitive bidding or negotiation, made by the Design-Builder for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential Subcontractor or supplier shall be notified by the Design-Builder of the Design-Builder’s obligations under this Agreement and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
25. 4. Information and Reports - The Design-Builder shall provide all information and reports required by the regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the FAA to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of the Design-Builder is in the exclusive possession of another who fails or refuses to furnish this information, the Design-Builder shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
26. 5. Sanctions for Noncompliance - In the event of the Design-Builder’s noncompliance with the non-discrimination provisions of this Agreement, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including but not limited to:
 27. 5.1 withholding of payments to the Design-Builder under the Agreement until the Design-Builder complies; and/or
 28. 5.2 cancellation, termination, or suspension of the Agreement, in whole or in part.

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

FEDERAL CONTRACT PROVISIONS

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

GENERAL CIVIL RIGHTS PROVISIONS

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

30. 1. Title VI List of Pertinent Nondiscrimination Acts and Authorities
31. 2. During the performance of this contract, the Design-Builder, for itself, its assignees, and successors in interest (hereinafter referred to as the "Design-Builder") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:
32. 3. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
33. 4. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
34. 5. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

CITY OF HOUSTON – HOUSTON AIRPORT SYSTEM
TSU FLIGHT ACADEMY PROJECT - Design-Build Agreement

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

**EXHIBIT N
DRUG POLICY COMPLIANCE AGREEMENT**

I, _____, _____,
(Name) (Title)

as an owner or officer of _____ (Contractor)
(Name of Company)

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

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

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

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

Date

Design-Builder Name

Signature

Title

EXHIBIT O

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

I, _____, _____,
(Name) (Title)

as an owner or officer of _____ (Contractor)
(Name of Company)

have authority to bind the Design-Builder with respect to its bid, and hereby certify that Design-Builder has no employee safety impact positions, as defined in §5.18 of Executive Order No. 1-31, that will be involved in performing _____.
(Project)

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

(Date)

(Typed or Printed Name)

(Signature)

(Title)

**EXHIBIT P
DRUG POLICY COMPLIANCE DECLARATION**

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

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

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

_____ Written drug testing procedures have been implemented in conformity with the Mayor's
 Initials Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31.
 Employees have been notified of such procedures.

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

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

_____ From _____ [Start date] to _____ [End date] the following test has occurred:
 Initials

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

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

_____ I affirm that falsification or failure to submit this declaration timely in accordance with
 Initials established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this
 declaration are within my personal knowledge and are true and correct.

 (Date)

 (Typed or Printed Name)

 (Signature)

 (Title)