

SAMPLE CONTRACT SUBJECT TO CHANGE:

DESIGN BUILD CONTRACT

BETWEEN

THE CITY OF HOUSTON

AND

FOR

PROJECT No.

CIP No. []

TABLE OF CONTENTS

ARTICLE 1. THE PROJECT	6
ARTICLE 2. CONTRACT DOCUMENTS AND INTERPRETATION	6
ARTICLE 3. GENERAL PERFORMANCE REQUIREMENTS	6
ARTICLE 4. PRECONSTRUCTION SERVICES	8
ARTICLE 5. GUARANTEED MAXIMUM PRICE PROPOSAL.....	13
ARTICLE 6. CONSTRUCTION SERVICES.....	14
ARTICLE 6. LIQUIDATED DAMAGES	20
ARTICLE 7. TIME.....	21
ARTICLE 9. CONTRACT COMPENSATION	22
ARTICLE 10. REPRESENTATIONS AND WARRANTIES.....	41
ARTICLE 11. MWBE COMPLIANCE	43
ARTICLE 12. BONDS AND INSURANCE.....	45
ARTICLE 13. TERMINATION AND SUSPENSION	47
ARTICLE 14. MISCELLANEOUS PROVISIONS	48

EXHIBITS

A	Defined Terms
B	Scope of Services
C	General Conditions (including Supplementary Conditions, if applicable)
D	Key Personnel Staff Classification and Rates
E	Preconstruction Services Schedule
F	Component and Guaranteed Maximum Price Proposal
G	Forms of Bonds
H	City's Wage Rates
I	Project Schedule
J	Title VI Non-Discrimination
K	Intellectual Property Confidentiality Agreement
L	Drug Policy Compliance Agreement
M	Certification of No Safety Impact Positions
N	Drug Policy Compliance Declaration

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Contract as of the Effective Date.

DESIGN BUILD CONTRACTOR:

CITY:

[NAME OF CONTRACTOR]

THE CITY OF HOUSTON, TEXAS

By: _____
Name: _____
Title: _____
Tax ID NO. _____

By: _____
Mayor

APPROVED:

ATTEST:

Mario C. Diaz
Director, Houston Airport System

By: _____
City Secretary

APPROVED AS TO FORM:

COUNTERSIGNED:

Assistant City Attorney
L.D. File No.

City Controller

DATE COUNTERSIGNED:

Effective Date

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: _____

DESIGN BUILD CONTRACT
FOR -----

This **DESIGN BUILD CONTRACT** ("Contract") is entered into and effective as of the Effective Date, by and between the **CITY OF HOUSTON, TEXAS**, a home-rule city (the "City") and ----- ("DESIGN BUILD CONTRACTOR"), a [**VENDOR FILL IN TYPE OF BUSINESS ASSOCIATION**] 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 BUILD CONTRACTOR is: [_____]

Address for Written Notice: [_____]

E-mail address: [_____]

The Project is: [_____]

Project Location: Ellington Field Airport (EFD)

Project No: [_____]

DESIGN-BUILD CONTRACTOR's Lead Design Firm Designer is:
[_____]

ARTICLE 1. THE PROJECT

1.1 Project Description. As of the Effective Date, City intends to construct the Project, at EFD, as set forth in **Exhibit “B”**. The date of Substantial Completion for the Construction Phase will be established when and if the Director accepts DESIGN BUILD CONTRACTOR’s Guaranteed Maximum Price proposal.

ARTICLE 2. CONTRACT DOCUMENTS AND INTERPRETATION

2.1 Contract Documents. The “Contract Documents” comprise :

- 2.1.1 this Contract and all Exhibits;
- 2.1.2 any GMP Amendment;
- 2.1.3 any Change Order or other Modification or Amendment;
- 2.1.4 any Notice to Proceed; and
- 2.1.5 any Construction Drawings and Specifications.

2.2 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. **Section 2.3** shall govern matters of interpretation related to the applicability, stringency, and consistency of the Contract Documents, which are included among the Contract Standards. Unless stated otherwise in this Contract, if a conflict between the sections of this Contract and the exhibits arises, the sections control over the exhibits.

2.3 Applicability of Contract Standards. The DESIGN BUILD CONTRACTOR shall be obligated to comply only with those Contract Standards which are applicable in any particular case. Where more than one Contract Standard applies to any particular performance obligation of the DESIGN BUILD CONTRACTOR hereunder, each such applicable Contract Standard shall be complied with. In the event there are different levels of stringency among such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern. In the event of any inconsistency among the Contract Standards, the DESIGN BUILD CONTRACTOR shall notify the Director. The Director’s determination as to the applicable standard shall be binding.

2.4 Defined Terms. Capitalized terms used in the Contract Documents have the meanings set forth in **Exhibit “A”**. Further interpretation provisions are set forth in **Exhibit “A”**.

ARTICLE 3. GENERAL PERFORMANCE REQUIREMENTS

3.1 Reliance. The DESIGN BUILD CONTRACTOR acknowledges and agrees that the City is entering into this Contract in reliance on the DESIGN BUILD CONTRACTOR’s expertise with respect

to the performance of the Work. The Project will serve an essential public service and will be critically important to enable the City to continue to meet its needs and obligations. The DESIGN BUILD CONTRACTOR shall perform the Work in accordance with the Contract Standards to further the interests of the City and the Project.

3.2 Scope of the Work. The Scope of the Work or “Scope of Work” is divided into Preconstruction and Construction Phase Services as more thoroughly described in **Exhibit “B”**. The DESIGN BUILD CONTRACTOR recognizes that, notwithstanding this division, the components of the Work may overlap and agrees to perform the Work in accordance with the applicable Contract Standards. Except as authorized under a CGMP Amendment, in no event will the DESIGN BUILD CONTRACTOR commence performance of any construction prior to the issuance of a Notice to Proceed following the GMP Amendment Date.

3.3 Information Provided by or on Behalf of the City. The City makes no representation or warranty with respect to any information provided to the DESIGN BUILD CONTRACTOR by or on behalf of the City in connection with this Contract. The DESIGN BUILD CONTRACTOR shall assess all risks related to the Project and independently verify and confirm all information supplied to it by or on behalf of the City and upon which the DESIGN BUILD CONTRACTOR elects to rely in connection herewith. Except as may reasonably be requested by the DESIGN BUILD CONTRACTOR, expressly permitted by this Contract and General Conditions, and provided there is no resulting increase to the GMP or the Contract Time (unless otherwise agreed by the Director in his sole discretion), DESIGN BUILD CONTRACTOR, and expressly established in the GMP), shall have no right to relief hereunder, or to make any claim against the City, or to seek any adjustment to compensation or the Contract Times as the result of any error, omission, or insufficiency relating to any information provided to the DESIGN BUILD CONTRACTOR by or on behalf of the City in connection with this Contract.

3.4 Related Projects. The DESIGN BUILD CONTRACTOR acknowledges that the City may undertake other capital projects at or near the Project (“Related Projects”) and agrees to accept the obligations of the DESIGN BUILD CONTRACTOR concerning the Related Projects, as set forth in the General Conditions. Nothing in the Contract Documents shall be interpreted as granting the DESIGN BUILD CONTRACTOR exclusive occupancy of the Project Site. The DESIGN BUILD CONTRACTOR must ascertain to its own satisfaction the scope of the Project and the nature of any other contracts that have been or may be awarded for any Related Project(s).

3.5 Responsibility for Personnel and DESIGN BUILD CONTRACTOR-Related Entities. All obligations of the DESIGN BUILD CONTRACTOR hereunder shall be performed by DESIGN BUILD CONTRACTOR-Related Entities (subject to the limitations established herein) who are qualified to perform the specific services and meet all licensing and certification requirements of Applicable Law. The DESIGN BUILD CONTRACTOR shall be fully responsible, in accordance with the terms and conditions of the Contract Documents, for all Work performed by all DESIGN BUILD CONTRACTOR-Related Entities. The DESIGN BUILD CONTRACTOR shall, as between itself and the City, be responsible and liable to the City for, and not relieved of, its obligations under the Contract Documents by, the acts, omissions, breaches, defaults, non-compliance, negligence, wilful misconduct, or other legal fault of each DESIGN BUILD CONTRACTOR-Related Entity and all references in this Contract to any act, omission, breach, default, non-compliance, negligence, wilful misconduct, or other legal fault of the DESIGN BUILD CONTRACTOR will be construed accordingly to include any such act, omission, breach, default, non-compliance, negligence, wilful misconduct or other legal fault committed by any other DESIGN BUILD CONTRACTOR-Related Entity.

3.6 Key Personnel. The DESIGN BUILD CONTRACTOR acknowledges that the identity and commitment of certain key management and supervisory personnel proposed by the DESIGN BUILD CONTRACTOR in its Proposal were material factors in the selection of the DESIGN BUILD CONTRACTOR to perform this Contract. Such personnel, their affiliations, and their anticipated roles in the performance of the Work are set forth in **Exhibit “D”**. The DESIGN BUILD CONTRACTOR shall utilize such personnel to perform such services unless such personnel are unavailable for good cause shown. “Good cause shown” shall not include performing services on other projects for the DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR shall utilize replacement key management and supervisory personnel of equivalent skill, experience, and reputation. Any on-site 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.

3.7 Designated Representative. The individual identified in **Exhibit “D”** as the “Designated Representative” shall, until further designation under this Section, act as the designated representative of the DESIGN BUILD CONTRACTOR with respect to this Contract and shall coordinate with the Director as to administrative matters under this Contract. The DESIGN BUILD CONTRACTOR may replace the individual designated as its representative under this Contract from time to time by written notice to the Director, subject to the reasonable approval of the Director. The DESIGN BUILD CONTRACTOR shall replace the individual designated as its representative under this Contract at any time upon written notice by the Director in the Director’s reasonable discretion. Any individual designated as the representative of the DESIGN BUILD CONTRACTOR under this Contract shall have sufficient qualifications and experience to serve as the DESIGN BUILD CONTRACTOR’s representative hereunder and shall be vested with the authority to act on behalf of the DESIGN BUILD CONTRACTOR, to receive notices on behalf of the DESIGN BUILD CONTRACTOR, to make binding decisions with respect to the performance of the Work, and to bind the DESIGN BUILD CONTRACTOR with respect to any certification to be made by the DESIGN BUILD CONTRACTOR 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.

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

ARTICLE 4. PRECONSTRUCTION SERVICES

4.1 Generally. The DESIGN BUILD CONTRACTOR shall render and perform the Preconstruction Services for the City in accordance with **Exhibit “B”** and all other applicable Contract Standards. The DESIGN BUILD CONTRACTOR’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. The Design-Build Contractor will perform services for this Project under a Four-Phase delivery method. The four phases consist of:

Phase 1 – CGMP for Pre-Engineering/Design/Preconstruction/Enabling Work (180 calendar days): This phase will commence shortly after award of the Contract upon issuance of a Phase 1 – 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 Issued for Construction drawings and specifications and construction execution plans and the obtaining of all necessary permits.

Phase 2 – CGMP for Phase 1 Construction of Portions of the Taxiway L for Runway 4-22 Access to Spaceport Tenants (180 calendar days): This phase 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.

Phase 3 – CGMP for Phase 2 Construction for Remaining Portion of Taxiway L (210 calendar days): This phase 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.

Phase 4 – CGMP for Remaining Construction Work and Connection to Runway 17-35 (180 calendar days): This phase 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.

4.2 Notices to Proceed. The DESIGN BUILD CONTRACTOR shall commence performing Preconstruction Services upon the date specified in a Notice to Proceed with Preconstruction Services issued by the Director. The DESIGN BUILD CONTRACTOR is not entitled to reimbursement for any costs incurred for performance of Preconstruction Phase Services incurred prior to the performance before issuance of a Notice to Proceed. The DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR.

4.3 Existing Conditions. DESIGN BUILD CONTRACTOR acknowledges that it was afforded unrestricted access to the existing improvements and conditions on the Project Site and it has thoroughly investigated those conditions. The results of DESIGN BUILD CONTRACTOR's investigation shall be deemed to be taken into account in establishing the Guaranteed Maximum Price of the Work. Therefore, DESIGN BUILD CONTRACTOR may not make and is not entitled to any claim for any adjustment to the Contract Time, Preconstruction Phase Services Fee, or the GMP arising from Project conditions that DESIGN BUILD CONTRACTOR discovered or, in the exercise

of reasonable care, should have discovered in DESIGN BUILD CONTRACTOR's investigation of the Project site.

4.4 Design Errors and Omissions. Before proceeding with the Construction Phase Services, DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR is responsible for discovering and correcting any defect, error, omission, conflict, inconsistency, failure to comply with the Contract Documents, or lack of clarity in the Construction Documents. DESIGN BUILD CONTRACTOR 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, or failure to comply with the Contract Documents in the Construction Documents.

4.5 Additional Preconstruction Phase Services

4.5.1 Provision of Additional Preconstruction Services shall apply only when necessary, as determined by the Director in his sole discretion and as authorized in writing by the Director related to the purpose of the Agreement, and when sufficient funding is allocated for such services. City, as provided in **Article 9** of the Agreement, shall pay for the following Additional Preconstruction Phase Services, in addition to the compensation for Basic Preconstruction Services, if authorized by the Director in writing:

4.5.1.1. Provide financial, feasibility or other special studies;

4.5.1.2. Provide planning surveys, site evaluations, environmental studies or comparative studies of prospective sites;

4.5.1.3. Prepare special surveys, studies and submissions required for approvals by governmental authorities or others having jurisdiction over the Project;

4.5.1.4. Provide services relative to future facilities, systems, and equipment that are not intended to be constructed during the Contract Administration Services;

4.5.1.5. Provide detailed estimates of construction cost beyond the scope based on current area, volume, or similar unit costs as required in the Contract Documents (but providing estimating to prepare the GMP proposal is part of Basic Preconstruction Phase Services);

4.5.1.6. Provide analyses of owning and operating costs, or detailed quantity surveys, inventories of material, equipment, and labor;

4.5.1.7. Make revisions in drawings, specifications, or other documents when the revisions are inconsistent with written approvals or instructions previously given, or during Construction Documents Phase, making revisions to Construction Documents required by the enactment or revision of codes, laws, or regulations subsequent to the preparation of the Construction Documents or due to other causes not within the control of DESIGN BUILD CONTRACTOR;

- 4.5.1.8. Prepare Drawings, Specifications, supporting data and provide other services in connection with a change to approved Construction Documents to the extent that such services are in excess of the Basic or other Additional Pre-Construction Services required of DESIGN BUILD CONTRACTOR pursuant to the Contract Documents, as determined by the City Engineer in his sole discretion; provided that such changes are not necessitated by an act or omission of DESIGN BUILD CONTRACTOR. In the event a Change Order is caused by an act or omission of DESIGN BUILD CONTRACTOR, DESIGN BUILD CONTRACTOR is required to prepare the Drawing, Specifications, and supporting data at no expense to City;
- 4.5.1.9. Provide land survey services to supplement any legal description and site information provided by City, and to include, but not be limited to, as applicable to the Project, grades of streets, alleys, pavements, adjoining property; rights-of-way, restrictions, easements, encroachments, deed restrictions, contours of the site, locations, dimensions and complete data pertaining to existing buildings, other improvements and trees, as well as information concerning available services and utility lines both public and private, above and below grade, including inverts and depths, in accordance with the Project requirements. DESIGN BUILD CONTRACTOR, if authorized by the Director, shall commission a signed and sealed survey prepared by a registered land surveyor acceptable to the Director;
- 4.5.1.10. Provide geotechnical investigation and engineering services beyond that required for the design of the Project in Basic Preconstruction Phase Services. Such services may include, as applicable to the Project, test borings, test pits, soil bearing values, percolation tests and similar investigations and engineering services with reports and appropriate recommendations in accordance with the Project requirements. DESIGN BUILD CONTRACTOR, if authorized by the City Engineer, shall commission the completion of a signed and sealed geotechnical investigation by a registered geotechnical Subcontractor acceptable to the Director;
- 4.5.1.11. Provide cultural resource reconnaissance or surveying services as defined in the General Rules of Practice and Procedures, Chapter 41 of the Texas Antiquities Committee, to supplement the site information provided by City and to identify potential historic or prehistoric sites in the Project areas affected by improvements planned as part of the Project. Performance of the reconnaissance, if authorized by the City Engineer, shall be in accordance with procedures promulgated by the Texas Antiquities Committee in conformance with the Antiquities Code of Texas, and signed by a professional archaeologist acceptable to the Texas Antiquities Committee and the Director. For the purpose of this Agreement, the Director is authorized to approve the archaeologist's permit applications for the cultural resource reconnaissance or surveys on behalf of City;
- 4.5.1.12. Provide data processing and photographic production techniques when used in connection with another Additional Preconstruction Phase Service; and

4.5.1.13. Any other Additional Preconstruction Phase Services mutually agreed to by Director and DESIGN BUILD CONTRACTOR.

4.6 Ownership and Use of Work Products.

- 4.6.1 DESIGN BUILD CONTRACTOR conveys and assigns to the City its entire interest and full ownership worldwide in and to any work, invention, notes, plans, computations, data bases, tabulations, exhibits, reports, underlying data, photographs and other work products, and any modifications or improvements to them (collectively "Documents"), and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively "Proprietary Rights") that DESIGN BUILD CONTRACTOR, its agents, employees, contractors, and Subconsultants (collectively "Authors") develop, write, or produce under this Contract (collectively "Works").
- 4.6.2 The Authors shall not claim or exercise any Proprietary Rights related to the Works. If requested by the Director, DESIGN BUILD CONTRACTOR shall place a conspicuous notation on any Works which indicates that the City owns the Proprietary Rights.
- 4.6.3 DESIGN BUILD CONTRACTOR shall execute all documents required by the Director to further evidence this assignment and ownership. DESIGN BUILD CONTRACTOR shall cooperate with the City in registering, creating, and enforcing Proprietary Rights arising under this Contract. If DESIGN BUILD CONTRACTOR's assistance is requested and rendered under this Section, the City shall reimburse DESIGN BUILD CONTRACTOR for all out-of-pocket expenses it incurs in rendering assistance, subject to the availability of funds. On termination of this Contract, or if requested by the Director, DESIGN BUILD CONTRACTOR shall deliver all Works to the City. DESIGN BUILD CONTRACTOR shall obtain written agreements from the Authors which bind them to the terms in this Section.
- 4.6.4 All Works developed, written, or produced under this Contract for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, are "works made for hire."
- 4.6.5 DESIGN BUILD CONTRACTOR may retain copies of the Documents for its archives. DESIGN BUILD CONTRACTOR shall not otherwise use, sell, license, or market the Documents.
- 4.6.6 Confidentiality: Design-Build Contractor, its agents, employees, contractors, consultants and Subconsultants shall hold all City information, data, and Documents (collectively, the "Information") that they receive, or to which they have access, in strictest confidence. Design-Build Contractor, its agents, employees, contractors, and Subconsultants shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Design-Build Contractor shall obtain written agreements from its agents, employees, contractors, consultants and Subconsultants which bind them to the terms in this Section.

ARTICLE 5. GUARANTEED MAXIMUM PRICE PROPOSAL

5.1 GMP Submittal. The Design-Build Contractor 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-Build Contractor's possession as a result of this Contract.

5.2 CGMP. The Parties anticipate that there may be some phases of Construction that are ready for commencement before the GMP Amendment Date. In addition to the Advanced Packages set forth in **Exhibit "B"**, the DESIGN BUILD CONTRACTOR may recommend such phases or elements of the Construction ("Advance Packages") to the Director, as appropriate, during performance of the Preconstruction Services. The Director shall have the sole discretion to authorize an Advance Package pursuant to this Section and **Exhibit "B"** but has no obligation to enter into any CGMP Amendment. Prior to any such authorization, the DESIGN BUILD CONTRACTOR shall provide the Director with a CGMP Submittal in accordance with Section 5.3 and **Exhibit "F"**.

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

5.4 CGMP Negotiation and Execution. If the Director agrees to authorize the commencement of a portion of Construction under a CGMP Submittal, the DESIGN BUILD CONTRACTOR and Director shall negotiate and enter into a CGMP Amendment. A CGMP Amendment at a minimum shall incorporate and definitively address all of the items identified in **Exhibit "F"** and shall contain any other commercial terms and conditions specific to the Advanced Package (but shall not alter the terms and conditions of this Contract). Advanced Packages may be structured in a manner that provides for the commencement of the related Construction at any time determined by the Parties.

5.5 CGMP Amendment. If the Director determines to accept the CGMP Submittal, following negotiations at the election of the Director in his sole discretion and subject to approval by the Director, the Parties will enter into the CGMP Amendment and the CGMP Amendment Date will be established hereunder. Subject to the appropriation of funds, the Director has the authority to enter into a CGMP Amendment. Upon the Director's approval of a CGMP Amendment, the CGMP Amendment shall become a part of this Contract for all purposes.

5.6 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.

5.7 CGMP Compensation. The City shall pay the CGMP for the Advanced Package Work to the DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR 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.

5.8 GMP Submittal. The DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR of any additions, corrections, or revisions required to achieve such compliance. The DESIGN BUILD CONTRACTOR, without any increase in the Preconstruction Services Fee, shall promptly take all necessary rectification action, making multiple re-submittals, if required.

5.9 GMP Amendment. If the Director determines to accept the GMP Submittal, following negotiations at the election of the Director in his sole discretion and subject to approval by the City Council, the Parties will enter into 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.

5.10 Failure to Reach a GMP. In the event the City rejects the GMP Amendment, the City, in its sole discretion, may direct the DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR. In the event DESIGN BUILD CONTRACTOR’s scope of work is reduced by the Director, then the Director and DESIGN BUILD CONTRACTOR shall attempt to negotiate a new GMP. In the event the City elects to end its attempts to reach an agreement with the DESIGN BUILD CONTRACTOR, the DESIGN BUILD CONTRACTOR does hereby assign all rights to any agreement with DESIGN BUILD CONTRACTOR to the City effective upon written notice of acceptance by the City to the DESIGN BUILD CONTRACTOR. The City shall be entitled to use any intellectual property developed by or on behalf of DESIGN BUILD CONTRACTOR for this Project for the completion, maintenance, and further development of the TSA-HPD Bunker & K-9 Facility, or for any other purpose, without additional compensation to DESIGN BUILD CONTRACTOR.

ARTICLE 6. CONSTRUCTION SERVICES

6.1 Generally. The DESIGN BUILD CONTRACTOR shall render and perform Construction Services for the City in accordance with **Exhibit “B”**, **Exhibit “C”**, and all other applicable Contract Documents, Standards and Codes. The DESIGN BUILD CONTRACTOR’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 BUILD CONTRACTOR shall commence performing Construction Services upon the date specified in a Notice to Proceed with Construction Services issued by the Director. The DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR.

6.3 The DESIGN BUILD CONTRACTOR 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 the Project, including the performance of work in a high volume and international airport with ongoing operations.

6.4 The DESIGN BUILD CONTRACTOR'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 BUILD CONTRACTOR 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 BUILD CONTRACTOR's skill and knowledge in performing the services required hereunder.

6.5 The DESIGN BUILD CONTRACTOR warrants, represents, covenants, and agrees that the DESIGN BUILD CONTRACTOR and all persons connected with the DESIGN BUILD CONTRACTOR directly in charge of its services are duly 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 BUILD CONTRACTOR 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 BUILD CONTRACTOR (by the City or any other party) which the DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR's responsibilities or obligations hereunder in any case where such document or data is furnished unless the DESIGN BUILD CONTRACTOR advises City in writing that in DESIGN BUILD CONTRACTOR'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 BUILD CONTRACTOR to proceed in accordance with the documents or data as originally given. DESIGN BUILD CONTRACTOR shall suspend that portion of the Work affected by the reported discrepancy until clarification is received. If DESIGN BUILD CONTRACTOR does not suspend work, any increase in cost as a result, including the necessity to perform any re-work, shall be borne by DESIGN BUILD CONTRACTOR and not be reimbursable under this Contract. Notwithstanding the foregoing DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR.

6.7 The DESIGN BUILD CONTRACTOR warrants, represents, covenants, and agrees to furnish efficient business administration and superintendence and perform its services hereunder 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 BUILD CONTRACTOR 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 BUILD CONTRACTOR becomes aware of such errors or omissions or is notified of such errors or omissions. Should the DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR. This commitment by DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR 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 BUILD CONTRACTOR 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 sub-subcontracts and the Work performed, including any Change Order Work, for the assessment of reasonableness by the Director.

6.12 DESIGN BUILD CONTRACTOR shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to DESIGN BUILD CONTRACTOR by the terms of the Contract Documents, and to assume toward DESIGN BUILD CONTRACTOR all the obligations and responsibilities that DESIGN BUILD CONTRACTOR, 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 BUILD CONTRACTOR shall require each Subcontractor to enter into similar agreements with sub-subcontractors. DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR shall provide City with a copy of each subcontract agreement upon request.

6.13 Each subcontract agreement is assignable by DESIGN BUILD CONTRACTOR to City on acceptance by the Director of the assignment. DESIGN BUILD CONTRACTOR agrees to execute such additional documents as City may request to confirm such assignments. DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR to the Subcontractor. Acceptance of any such assignment shall not relieve DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR is an independent contractor and not an agent of City. DESIGN BUILD CONTRACTOR shall be liable to City for acts and omissions that result in a breach of the obligations herein of DESIGN BUILD CONTRACTOR and DESIGN BUILD CONTRACTOR'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 BUILD CONTRACTOR, including any design professionals and their consultants and sub-consultants of any tier.

6.16 DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR 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 BUILD CONTRACTOR 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.

6.18 DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR, DESIGN BUILD CONTRACTOR represents and agrees that it will perform its services under no circumstances with less than the usual and customary standards of DESIGN BUILD CONTRACTOR's profession or business and in compliance with all Applicable Laws and in strict accordance with the Contract Documents. DESIGN BUILD CONTRACTOR agrees to correct in a timely manner and as may be directed by the Director and to bear the full cost of correcting DESIGN BUILD CONTRACTOR'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 BUILD CONTRACTOR agrees to perform Work required by the Contract Documents in a good and workman-like manner.

6.20 DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR 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 BUILD CONTRACTOR or to anyone claiming through or under DESIGN BUILD CONTRACTOR by reason of the execution or performance of this Contract.

6.23 DESIGN BUILD CONTRACTOR shall give all required notices and comply with all Applicable Laws. The Work, including documents that are the responsibility of DESIGN BUILD CONTRACTOR, shall be in accordance with all Applicable Laws. If DESIGN BUILD CONTRACTOR otherwise performs any Work that is contrary to Applicable Laws, DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR shall establish, implement, and follow a quality control program for the Work during all Construction Services. DESIGN BUILD CONTRACTOR shall provide Director with a copy of the written quality control program.

6.25 DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR 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 BUILD CONTRACTOR and Contractors shall work in the event of a disagreement, and the DESIGN BUILD CONTRACTOR shall cooperate in such processes and decisions. The DESIGN BUILD CONTRACTOR 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 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 BUILD CONTRACTOR 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 BUILD CONTRACTOR 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 BUILD CONTRACTOR shall notify the City before the Work is impacted to resolve the interference.

6.28 DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR 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 BUILD CONTRACTOR remains solely responsible for its means, methods, techniques, sequences and procedures and safety programs in connection with its Work.

6.30 DESIGN BUILD CONTRACTOR 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 at EFD. DESIGN BUILD CONTRACTOR 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 given by any authorized HAS personnel. 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 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 BUILD CONTRACTOR agrees and warrants that all delays and disruptions within the reasonable contemplation of those knowledgeable of airfield operations (including absolute deference to aircraft operations) caused by such adherence to rules and instructions or coordination for activities as specified herein have been taken into account in preparing the Guaranteed Maximum Price and that DESIGN BUILD CONTRACTOR will not seek any increase in the Guaranteed Maximum Price or the Contract Time on account of such adherence and coordination. DESIGN BUILD CONTRACTOR agrees that the City's needs arising from its ongoing airport operations as described herein has been expressly contemplated by DESIGN BUILD CONTRACTOR 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 H through a process overseen by the Project Team. DESIGN BUILD CONTRACTOR shall notify Director in advance in writing of the identities of all Subcontractors with which it intends to subcontract. DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR 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 BUILD CONTRACTOR 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 BUILD CONTRACTOR shall propose another against whom Director has no reasonable objection. DESIGN BUILD CONTRACTOR. DESIGN BUILD CONTRACTOR shall not be required to subcontract with any Subcontractor to which it has reasonable objection. When DESIGN BUILD CONTRACTOR'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 BUILD CONTRACTOR 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 BUILD CONTRACTOR to submit a proposal for the specific portion of work for approval.

6.32 The DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR shall not self-perform any work to which the Director has a reasonable objection.

ARTICLE 7. LIQUIDATED DAMAGES

7.1 Liquidated Damages Generally. Additional liquidated damages provisions are set forth in Article 9 of the General Conditions.

7.2 Failure to Achieve Milestones. DESIGN BUILD CONTRACTOR and City agree that failure to achieve the Project milestones in this Section by the dates set forth in the agreed upon Guaranteed Maximum Price proposal will cause damages to City and that actual damages from such harm are difficult to estimate accurately. Therefore, DESIGN BUILD CONTRACTOR and City agree that DESIGN BUILD CONTRACTOR and Surety are liable for and shall pay to City the amounts below per Day, on a cumulative basis, as liquidated damages and not as a penalty, for each and every Day or portion of a Day of delay beyond the milestone dates established in the approved Guaranteed Maximum Price proposal for the Project. DESIGN BUILD CONTRACTOR and City agree that the amounts of liquidated damages fixed in this Section are reasonable forecasts of just compensation for harm to City resulting from DESIGN BUILD CONTRACTOR's failure to achieve the milestones set forth herein. These liquidated damages shall be City's sole remedy for damages from delay by DESIGN BUILD CONTRACTOR except that City shall be entitled to recover all of its actual, direct, and consequential damages in the event liquidated damages are determined to be unenforceable, and City shall also be entitled to City's remedies under Article 14 of the General Conditions. Liquidated damages for each of the Project milestones are as follows:

- 7.2.1 Final Completion of Phase 1 – CGMP for Pre-Engineering, Design, Preconstruction Phase and Enabling Work Services necessary to complete Phase 1: Phase 1 Milestone: \$----- per Day. The milestone duration is **180** Calendar Days from the date of the Phase 1 - Notice to Proceed.
- 7.2.2 Final Completion of Phase 2 - CGMP for Phase 1 Construction for portions of Taxiway L for Runway 4-22 Access to Spaceport Tenants : Phase 2 Milestone: \$----- per Day. The milestone duration is **180** Calendar Days from the date of the Phase 2 Notice to Proceed.
- 7.2.3 Final Completion of Phase 3 – CGMP for Phase 2 Construction for remaining portion of Work on Taxiway L : Phase 3 Milestone: \$----- per Day. The milestone duration is **210** Calendar Days from the date of the Phase 3 Notice to Proceed.

- 7.2.4 Final Completion of Phase 4 – CGMP for Remaining Construction Work and Connection to Runway 17-35: Phase 4 Milestone: \$----- per Day. The milestone duration is **180** Calendar Days from the date of the Phase 4 Notice to Proceed.
- 7.2.5 The maximum aggregate liquidated damages assessed to the DESIGN BUILD CONTRACTOR for Construction Services shall not exceed 100% of the DESIGN BUILD CONTRACTOR's Fee established by the estimated Cost of the Work until a GMP is established and thereafter it shall be 100% of the DESIGN BUILD CONTRACTOR's fee calculated against the GMP.
- 7.2.6 The maximum aggregate consequential damages (excluding damages for delay, whether liquidated or otherwise) which shall be recoverable against the DESIGN BUILD CONTRACTOR shall not exceed 100% of the DESIGN BUILD CONTRACTOR's Fee established by the estimated Cost of the Work until a GMP is established and thereafter it shall be 100% of the DESIGN BUILD CONTRACTOR's fee calculated against the GMP.
- 7.3 High Sulfur Diesel Fuel Usage.** The DESIGN BUILD CONTRACTOR and City agree that incidents of high sulfur diesel fuel usage by DESIGN BUILD CONTRACTOR will cause damages to City and that actual damages from such harm are difficult to estimate accurately. Therefore, DESIGN BUILD CONTRACTOR and City agree that DESIGN BUILD CONTRACTOR and Surety are liable for and shall pay to City the amount stipulated in this Section as liquidated damages. DESIGN BUILD CONTRACTOR and City agree that DESIGN BUILD CONTRACTOR and Surety are liable for and shall pay to City, as liquidated damages and not as a penalty, the amount equal to \$----- per diesel operating vehicle or piece of motorized equipment per incidence of high sulfur diesel fuel usage per Day. DESIGN BUILD CONTRACTOR and City agree that the amount of liquidated damages fixed in this Section is a reasonable forecast of just compensation for harm to City resulting from an incident of high sulfur diesel fuel usage. An incident of high sulfur diesel fuel usage as used herein means use of fuel in breach of the General Conditions. DESIGN BUILD CONTRACTOR and City agree that in the event the amount of liquidated damages set forth in this Section are held to be unenforceable for any reason, City shall be entitled to recover its actual direct damages, if any, resulting from incidence of high sulfur diesel fuel usage as may be authorized by the laws of Texas.
- 7.4 Liquidated Damages for CGMPs and Phased GMP's if authorized.** The Director shall issue a separate Notice to Proceed or Change Order for each phase of Design and Construction and each phase of Design and Construction shall have a separate substantial completion date and a separate liquidated damages amount, as appropriate and detailed herein.

ARTICLE 8. TIME

- 8.1 Time of the Essence.** Time limits stated in the Contract Documents are of the essence. DESIGN BUILD CONTRACTOR is responsible for schedule development and updating and reporting throughout the Project, including Preconstruction Services and Construction Services. DESIGN BUILD CONTRACTOR shall comply in all regards with 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 Contract Time is **750** Calendar Days from Notice to Proceed for Preconstruction Services to Final Completion of the Work, excluding the GMP

approval period (which is the time from DESIGN BUILD CONTRACTOR submission of the GMP Submittal to Notice to Proceed for Construction Services unless extended by Change Order).

- 8.1.1 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.
- 8.1.2 DESIGN BUILD CONTRACTOR 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.
- 8.1.3 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.

8.2 The DESIGN BUILD CONTRACTOR shall complete all services in accordance with the completion dates set forth in the Preconstruction Services Schedule (Exhibit “E”), as such dates may be adjusted in accordance with the General Conditions. The DESIGN BUILD CONTRACTOR recognizes that the Preconstruction Services Schedule is of the essence and that the City shall be entitled to the recovery of damages from the DESIGN BUILD CONTRACTOR as set forth in Article 7.2.1 for the DESIGN BUILD CONTRACTOR’s failure to comply with the Preconstruction Services Schedule, subject to the terms and conditions of the Contract Documents.

ARTICLE 9. CONTRACT COMPENSATION

9.1 General Payment Requirements.

- 9.1.1 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 BUILD CONTRACTOR’s Services are set forth in Article 9 of the General Conditions.
- 9.1.2 As of the Effective Date, the maximum amount payable to the DESIGN BUILD CONTRACTOR under this Contract is as follows:

Preconstruction and Design Services Price:

Preconstruction Services

DESIGN BUILD CONTRACTOR’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 BUILD CONTRACTOR's Fee percentage:	_____ %

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

- 9.1.2.1. The DESIGN BUILD CONTRACTOR 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.
- 9.1.2.2. The DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR 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 BUILD CONTRACTOR until such time as the Probable Cost of the Work is less than or equal to the Agreed Cost of the Work.
- 9.1.2.3. There shall be no increase in the DESIGN BUILD CONTRACTOR's compensation for any such re-design to maintain the Agreed Cost of the Work.
- 9.1.2.4. For purposes of **Section 9.1.2**, 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.
- 9.1.3 As of the Effective Date, the maximum amount payable to the DESIGN BUILD CONTRACTOR 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 9.2.1 below. Without limiting any term or condition hereunder with respect to payments to the DESIGN BUILD CONTRACTOR, the DESIGN BUILD CONTRACTOR's entitlement to, and the City's obligation to pay, any additional compensation to the DESIGN BUILD CONTRACTOR for the performance of the Work will be dependent upon the execution of a CGMP Amendment and/or the GMP Amendment. The DESIGN BUILD CONTRACTOR recognizes that the City has no

obligation hereunder to enter into any such amendment. In the event the Director and DESIGN BUILD CONTRACTOR agree on a GMP and the Director authorizes DESIGN BUILD CONTRACTOR to proceed with Construction Services, DESIGN BUILD CONTRACTOR's compensation shall be calculated under Section 9.3.

9.2 Preconstruction Services Price – Phase 1 Only.

- 9.2.1 Subject to the City's limit of appropriation for properly performed and completed Preconstruction Services, the City shall pay the DESIGN BUILD CONTRACTOR 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.
- 9.2.2 City will pay DESIGN BUILD CONTRACTOR 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-Build Contractor will negotiate and agree upon the final design solution and the time allotted for the performance of the design to 60% Design Development stage, preparation of the GMP, and design to 100% Construction Documents. The Preconstruction Services Price shall be full compensation to DESIGN BUILD CONTRACTOR for all Preconstruction Services for design, including all costs, overhead, and profit. The Preconstruction Services Price shall also include full compensation for the DESIGN BUILD CONTRACTOR for all DESIGN BUILD CONTRACTOR Preconstruction Services, including all costs, overhead, and profit.
- 9.2.3 All payment requests for Preconstruction Services shall be submitted on an Application for Payment and Schedule of Values approved by Director and include all required attachments identifying payments to Design-Build Contractor, as well as to all Subcontractors.
- 9.2.4 DESIGN BUILD CONTRACTOR 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.
- 9.2.5 During the Preconstruction Services, the Director shall have the right but not the obligation, to negotiate performance incentives, and the City and DESIGN BUILD CONTRACTOR may amend this Contract to incorporate such incentives, if any, provided that the DESIGN BUILD CONTRACTOR has then met all its obligations under this Contract as determined by the Director in his sole discretion.

9.3 Construction Services Payments

- 9.3.1 Pursuant to the terms of this Contract, City shall pay DESIGN -BUILD CONTRACTOR for DESIGN BUILD CONTRACTOR's proper and complete performance of the

Construction Services, the Cost of the Work and the DESIGN BUILD CONTRACTOR'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 BUILD CONTRACTOR 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 BUILD CONTRACTOR's "home/branch office overhead" and "profit" refer to DESIGN BUILD CONTRACTOR's Fee.

- 9.3.2 DESIGN BUILD CONTRACTOR shall not receive any fee for Work deleted by Modifications. The DESIGN BUILD CONTRACTOR's Fee shall be compensation in full to DESIGN BUILD CONTRACTOR for all overhead and profit and all costs not otherwise recoverable.
- 9.3.3 The sum of the Cost of the Work and DESIGN BUILD CONTRACTOR's Fee is guaranteed by DESIGN BUILD CONTRACTOR not to exceed whatever Guaranteed Maximum Price Director and DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR 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.
- 9.3.4 In the event that the DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR.
- 9.3.5 If the sum of the Cost of the Work and the DESIGN BUILD CONTRACTOR'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.
- 9.3.6 Subject to the City's appropriation of funds, in full consideration of DESIGN BUILD CONTRACTOR's Construction Services the City shall pay the DESIGN BUILD CONTRACTOR's Fee of ____% of the Cost of the Work, in addition to a lump sum price of \$X, XXX,XXX.00 for the DESIGN BUILD CONTRACTOR's Preconstruction and Design Services. DESIGN BUILD CONTRACTOR agrees that if the Guaranteed Maximum Price, inclusive of CGMPs, increases or decreases from the amount originally agreed upon, the DESIGN BUILD CONTRACTOR's Fee will increase or decrease based upon the actual Cost of the Work. Notwithstanding anything in the Contract Documents to the contrary, DESIGN BUILD CONTRACTOR shall not earn a fee on the lump sum price of the DESIGN BUILD CONTRACTOR. DESIGN BUILD CONTRACTOR's Fee is inclusive of DESIGN BUILD CONTRACTOR's profit, general

overhead and all expenses in connection with maintaining and operating DESIGN BUILD CONTRACTOR's main office and any branch office, including:

- 9.3.6.1. Salaries of persons employed in the main or branch offices of the DESIGN BUILD CONTRACTOR whose time is devoted to the general conduct of the DESIGN BUILD CONTRACTOR'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"**.
 - 9.3.6.2. 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 BUILD CONTRACTOR's office and even if at the Project site, except as specifically identified herein.
 - 9.3.6.3. Interest on the DESIGN BUILD CONTRACTOR's capital or on money borrowed by the DESIGN BUILD CONTRACTOR, including the capital employed by the DESIGN BUILD CONTRACTOR in the performance of the Work.
 - 9.3.6.4. Amounts required to be paid by DESIGN BUILD CONTRACTOR for Federal and/or State income and franchise taxes.
- 9.3.7 In addition to the payment procedures described in the General Conditions, the following payment procedures shall apply:
- 9.3.7.1. 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 BUILD CONTRACTOR'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.
 - 9.3.7.2. 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 Director.
 - 9.3.7.3. Payment for DESIGN BUILD CONTRACTOR'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.
 - 9.3.7.4. DESIGN BUILD CONTRACTOR shall submit a monthly cost breakdown, including cost elements for staff labor and expenses over the duration of the construction period to Director for approval. Payment for DESIGN

BUILD CONTRACTOR's General Conditions shall be made on a monthly basis per the approved breakdown.

- 9.3.7.5. 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.
- 9.3.7.6. 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.
- 9.3.7.7. 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).
- 9.3.7.8. Payments to Subcontractors shall be made based on the same percentage of Work completed that is allocable to that Subcontractor for each respective Schedule of Values classification 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.
- 9.3.7.9. With each application for payment, DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR 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 BUILD CONTRACTOR delivers to City a complete release by DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR 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 BUILD CONTRACTOR) and an affidavit that so far as DESIGN BUILD CONTRACTOR has knowledge or information, the release includes and covers all materials and services over which DESIGN BUILD CONTRACTOR has control for which a lien could be filed, but DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR 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.

- 9.3.7.10. The aggregate total of payments to DESIGN BUILD CONTRACTOR shall not exceed the total of the actual Cost of the Work as verified by Director from DESIGN BUILD CONTRACTOR's final accounting plus the applicable DESIGN BUILD CONTRACTOR'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 BUILD CONTRACTOR exceed that which is due and owing pursuant to this **Article 8**, then DESIGN BUILD CONTRACTOR shall promptly refund such excess to City.
- 9.3.8 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 BUILD CONTRACTOR hereunder if any one or more of the following conditions exist:
- 9.3.8.1. The DESIGN BUILD CONTRACTOR is in breach or default under this Contract;
- 9.3.8.2. 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;
- 9.3.8.3. The DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR; or
- 9.3.8.4. 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 BUILD CONTRACTOR hereunder unless and until DESIGN BUILD CONTRACTOR, at DESIGN BUILD CONTRACTOR'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.
- 9.3.9 Nothing contained herein shall require the City to pay the DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR.

- 9.3.10 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 BUILD CONTRACTOR of any of DESIGN BUILD CONTRACTOR's obligations hereunder or liabilities with respect to such Work.
- 9.3.11 DESIGN BUILD CONTRACTOR shall promptly pay all bills validly due and owing for labor and material performed and furnished by DESIGN BUILD CONTRACTOR-Related Entities in connection with the performance of the Preconstruction and Construction Services.
- 9.3.12 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 BUILD CONTRACTOR'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 BUILD CONTRACTOR with respect to the Project during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing DESIGN BUILD CONTRACTOR'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 BUILD CONTRACTOR'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"**.
- 9.3.13 Design-Build Contractor shall establish and maintain a reasonable accounting system that enables the City to readily identify Design-Build Contractor'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-Build Contractor, including, but not limited to those kept by the Design-Build Contractor, 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 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.
- 9.3.14 Design-Build Contractor 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-Build Contractor shall at any time requested by the City, whether during or after completion of this Contract, and at Design-Build Contractor'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-Build Contractor'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.

- 9.3.15 Design-Build Contractor shall ensure the City has these rights with Design-Build Contractor's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Design-Build Contractor and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Design-Build Contractor'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-Build Contractor to the City in excess of one-half of one percent (.5%) of the total contract billings, the Design-Build Contractor shall reimburse the City for the costs of the audit up to the amount of overpricing or overcharges. DESIGN BUILD CONTRACTOR 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-Build Contractor. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Design-Build Contractor'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-Build Contractor.
- 9.3.16 The acceptance by DESIGN BUILD CONTRACTOR or DESIGN BUILD CONTRACTOR'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 BUILD CONTRACTOR or DESIGN BUILD CONTRACTOR's successors have or may have against City under the provisions of this Contract except those previously made in writing and identified by DESIGN BUILD CONTRACTOR as unsettled at the time of the final request for payment in a document captioned "Unsettled Claims" included with DESIGN BUILD CONTRACTOR's final request for payment.

9.4 Cost of the Work.

- 9.4.1 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 BUILD CONTRACTOR necessarily incurs to properly perform the Work in strict compliance with the Contract Documents. Cost of Work does not include the DESIGN BUILD CONTRACTOR's Fee.

9.4.1.1. 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 BUILD CONTRACTOR, (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 BUILD CONTRACTOR into the Project; (iv) Alternates; (v) Unit Priced Work; (vi) Contingency; (vii) Miscellaneous Costs; and (viii) Pass-Through Items.

9.4.1.2. 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 shall all be subject to verification by audit.

9.4.2 General Conditions of the Work

9.4.2.1. Labor Costs.

- a. **Actual hourly wages paid to construction workers directly employed by DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR, DESIGN BUILD CONTRACTOR 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"**. 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 BUILD CONTRACTOR'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.
- b. Actual wages or salaries (inclusive of Labor Burden) of DESIGN BUILD CONTRACTOR'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 BUILD CONTRACTOR shall identify actual wages and salaries of Key Personnel within fourteen (14) Calendar Days from NTP for Preconstruction Services and upon submission of DESIGN BUILD CONTRACTOR'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 BUILD CONTRACTOR'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 BUILD CONTRACTOR's Construction Services Maximum Guaranteed Price proposal. The 3% increase shall be available to DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR'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 BUILD CONTRACTOR'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 BUILD CONTRACTOR's actual substantiated cost for such burden. Should DESIGN BUILD CONTRACTOR require employees, other than those listed on **Exhibit "D"**, DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR 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 BUILD CONTRACTOR'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 BUILD CONTRACTOR's Labor Burden for the previous year. The components which comprise the Labor Burden, as set forth in **Exhibit "A" – 2.1.78** 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 BUILD CONTRACTOR 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 BUILD CONTRACTOR's actual substantiated cost for such burden.

- c. Actual out of town travel expenses of DESIGN BUILD CONTRACTOR'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.

- 9.4.2.2. Actual costs paid or incurred by DESIGN BUILD CONTRACTOR 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.

9.4.3 Subcontractor Costs

9.4.3.1. Payments actually made by DESIGN BUILD CONTRACTOR to Subcontractors for prosecution of the Work in accordance with the requirements of their agreements with DESIGN BUILD CONTRACTOR, 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 BUILD CONTRACTOR from complying with the terms of this Agreement.

9.4.4 Costs of Materials and Equipment Incorporated in the Completed Construction

9.4.4.1. Costs, including transportation, of materials and equipment incorporated or to be incorporated into the Work.

9.4.4.2. 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 BUILD CONTRACTOR 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

- a. 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 BUILD CONTRACTOR 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 BUILD CONTRACTOR 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 BUILD CONTRACTOR.
- b. Rental charges for temporary facilities, machinery, equipment, excluding hand tools which are provided at the Project site, whether rented from DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR or any person affiliated with or owned or controlled by DESIGN BUILD CONTRACTOR or persons affiliated with DESIGN BUILD

CONTRACTOR 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.

- c. Costs of removal of debris from the Project site.
- d. 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.
- e. Area specific site periodic and final clean up, not previously included, and in accordance with all Applicable Laws and regulations.

9.4.4.3. Other Costs

9.4.5 Miscellaneous Costs

- 9.4.5.1. Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which DESIGN BUILD CONTRACTOR is liable. Notwithstanding, City is a home-rule municipal corporation and DESIGN BUILD CONTRACTOR shall avail itself of all exemptions which may exist for such taxes based on City's status.
- 9.4.5.2. Fees and assessments for building permits and for other permits and inspections that DESIGN BUILD CONTRACTOR is required by the Contract Documents to pay for or obtain.
- 9.4.5.3. Premiums for insurance and bonds to the extent directly attributable to this Agreement. Any premium allocation plan to this Project by DESIGN BUILD CONTRACTOR 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
- 9.4.5.4. Payments actually made by DESIGN BUILD CONTRACTOR to Subcontractors for prosecution of the Work, including DESIGN BUILD CONTRACTOR, in accordance with the requirements of their agreements with DESIGN BUILD CONTRACTOR, 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 BUILD CONTRACTOR from complying with the terms of this Contract.

- 9.4.5.5. City shall be entitled to take possession of excess materials not incorporated into the Work, or at Director's option, DESIGN BUILD CONTRACTOR shall sell such materials and deduct the gross proceeds from the Cost of the Work.

9.4.6 Alternates as identified in the Contract Documents

9.4.7 Unit Priced Work as identified in the Contract Documents

9.4.8 Contingency allowed by the Contract Documents, and identified as a line item in the Schedule of Values

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

- 9.4.8.2. 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 BUILD CONTRACTOR 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 BUILD CONTRACTOR'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 BUILD CONTRACTOR 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 BUILD CONTRACTOR shall be responsible for such payments, fees and losses unless DESIGN BUILD CONTRACTOR notifies Director of the potential infringement promptly before proceeding and in writing.

- 9.4.8.3. 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.

- 9.4.8.4. That portion of the reasonable travel and subsistence expenses of DESIGN BUILD CONTRACTOR'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.
- 9.4.8.5. Any hazardous materials handling, abatement and disposal cost(s).
- 9.4.8.6. Other costs approved in advance in writing by Director at Director's sole option and discretion.
- 9.4.9 Pass Through Items not included in the calculations for the DESIGN BUILD CONTRACTOR's fee.
 - 9.4.9.1. Fees and assessments for building permits and for other permits and inspections that DESIGN BUILD CONTRACTOR is required by the Contract Documents to pay for or obtain.
 - 9.4.9.2. 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 BUILD CONTRACTOR must be approved by the City's Legal Department.
 - 9.4.9.3. Cash Allowances as identified in the Contract Documents.

9.5 Costs Not Included in the Cost of the Work.

- 9.5.1 The Cost of the Work shall not include the items listed in this Section:
 - 9.5.1.1. Except as provided in Section 9.4.2, salaries and other compensation of DESIGN BUILD CONTRACTOR's personnel stationed at DESIGN BUILD CONTRACTOR's principal office or offices other than the Project site office.
 - 9.5.1.2. Expenses of DESIGN BUILD CONTRACTOR's principal office and offices other than the Project Site office.
 - 9.5.1.3. Overhead and general expenses.
 - 9.5.1.4. Markup imposed by DESIGN BUILD CONTRACTOR on other direct costs (ODCs) such as reimbursable expenses and pass-through costs from DESIGN BUILD CONTRACTOR and its Subcontractors and Suppliers.
 - 9.5.1.5. DESIGN BUILD CONTRACTOR's capital expenses, including interest on DESIGN BUILD CONTRACTOR's capital employed for the Work.

- 9.5.1.6. Rental costs of machinery and equipment, except as specifically provided in this Contract.
- 9.5.1.7. Costs due in whole or in part to the fault or negligence of DESIGN BUILD CONTRACTOR, 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.
- 9.5.1.8. Costs of entertainment.
- 9.5.1.9. Costs incurred or that should have been incurred for Preconstruction Phase Services.
- 9.5.1.10. Any legal, accounting, professional, or other similar costs incurred by DESIGN BUILD CONTRACTOR, 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.
- 9.5.1.11. Any sales, use, income, franchise, and similar taxes paid by DESIGN BUILD CONTRACTOR. Any fines, penalties, sanctions, or other levies assessed by any governmental body against DESIGN BUILD CONTRACTOR.
- 9.5.1.12. The cost of any and all insurance deductibles and self-insured retentions payable by DESIGN BUILD CONTRACTOR, and all uninsured losses and costs, whether due to the failure of DESIGN BUILD CONTRACTOR or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents, or otherwise.
- 9.5.1.13. Costs that would cause the Guaranteed Maximum Price to be exceeded.
- 9.5.1.14. 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 BUILD CONTRACTOR.
- 9.5.1.15. Legal and administrative costs to review and negotiate this Contract and all other Contract Documents.
- 9.5.1.16. Costs incurred by DESIGN BUILD CONTRACTOR resulting from the failure of DESIGN BUILD CONTRACTOR or its Subcontractors to coordinate their work with that of City and its other contractors, if any, after agreeing to schedules therefor.
- 9.5.1.17. Liquidated damages imposed by City.
- 9.5.1.18. Any costs arising out of the intentional acts or negligence of DESIGN BUILD CONTRACTOR, 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.

- 9.5.1.19. Costs including, but not limited to, the failure to perform of any Subcontractor or the bankruptcy or insolvency of any Subcontractor.
- 9.5.1.20. Costs for licenses, re-inspections and improperly timed permits and inspections that are the responsibility of the DESIGN BUILD CONTRACTOR to obtain.
- 9.5.1.21. Costs related to warranty work over and above the warranty work indicated in the Contract Documents.
- 9.5.1.22. Costs associated with deferred compensation and bonuses.
- 9.5.1.23. Costs associated with Subcontractor default insurance or similar products, except for the actual risk transfer premium as specifically allowed in Section 9.4.
- 9.5.1.24. Any other cost not specifically and expressly described in this Contract as a Cost of the Work.
- 9.5.1.25. Notwithstanding anything in the Contract Documents to the contrary, the Lump Sum fee for Design-Build Contractor's Preconstruction Phase and Design Services and/or other costs or expenses for Design-Build Contractor's Design Services shall not be included in the Cost of the Work.

9.6 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:

- 9.6.1 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 BUILD CONTRACTOR, 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 BUILD CONTRACTOR (unless turned-over to the City as set forth above) and the DESIGN BUILD CONTRACTOR shall use its best efforts to obtain the highest price in respect of such sales.
- 9.6.2 If City makes funds available to DESIGN BUILD CONTRACTOR, discounts earned by the DESIGN BUILD CONTRACTOR through advance or prompt payments. DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR 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 BUILD CONTRACTOR shall purchase materials for this Project in such quantities as will provide the most advantageous prices to the City.

- 9.6.3 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 BUILD CONTRACTOR upon completion of the Work.
- 9.6.4 Rebates, discounts, or commissions allowed to and collected by the DESIGN BUILD CONTRACTOR 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.
- 9.6.5 DESIGN BUILD CONTRACTOR shall reimburse City for deposits made by City and not returned to City due to the negligent or intentional acts of the DESIGN BUILD CONTRACTOR. Should DESIGN BUILD CONTRACTOR not promptly so reimburse City upon demand, City shall be entitled to recover said amount from DESIGN BUILD CONTRACTOR, including, but not limited to, by deducting the amount from payments due the DESIGN BUILD CONTRACTOR.

9.7 Limit of Appropriation.

- 9.7.1 The City's duty to pay money to the DESIGN BUILD CONTRACTOR for any purpose under this Contract is limited in its entirety by the provisions of this Section.
- 9.7.2 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.
- 9.7.3 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 BUILD CONTRACTOR must assure itself that sufficient Appropriated Funds have been made to pay for services it provides. If Appropriated Funds are exhausted, the DESIGN BUILD CONTRACTOR's only remedy is suspension or termination of its performance under this Contract and the DESIGN BUILD CONTRACTOR has no other remedy in law or in equity against the City and no right to damages of any kind.
- 9.7.4 The DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR's continued performance of the authorized Work would exceed the amount of remaining Appropriated Funds, the DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR's planned suspension. Once Appropriated Funds have been increased, the DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR shall have the right to terminate its performance in accordance with the applicable provisions of the Contract Documents. However, termination shall not relieve DESIGN BUILD CONTRACTOR of its continuing obligations to the City already incurred. The City shall not under any circumstances be obligated to seek a Supplemental Appropriation.

ARTICLE 10. REPRESENTATIONS AND WARRANTIES

10.1 Representations and Warranties of the City. The City represents and warrants that:

- 10.1.1 The City is a home-rule city in the State of Texas, with full legal right, power and authority to enter into and to perform its obligations under this Contract.
- 10.1.2 This Contract has been duly authorized, executed and delivered by all necessary action of the City and constitutes a legal, valid, and binding obligation of the City, enforceable against the City in accordance with its terms, except to the extent that its enforceability may be limited by the Bankruptcy Code and by equitable principles of general application.

10.2 Representations and Warranties of the DESIGN BUILD CONTRACTOR. In addition to any other representations and warranties made by the DESIGN BUILD CONTRACTOR hereunder, the DESIGN BUILD CONTRACTOR represents and warrants that:

- 10.2.1 The DESIGN BUILD CONTRACTOR is a Corporation, duly organized, validly existing, and in good standing under the laws of Texas. The DESIGN BUILD CONTRACTOR has the authority to do business in the State of Texas and in any state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Contract.
- 10.2.2 This Contract has been duly authorized, executed and delivered by all necessary corporate action of the DESIGN BUILD CONTRACTOR and constitutes a legal, valid and binding obligation of the DESIGN BUILD CONTRACTOR, enforceable against the DESIGN BUILD CONTRACTOR in accordance with its terms, except to the extent that its enforceability may be limited by the Bankruptcy Code or by equitable principles of general application.
- 10.2.3 To the best of its knowledge after due inquiry, neither the execution nor delivery by the DESIGN BUILD CONTRACTOR of this Contract nor the performance by the DESIGN BUILD CONTRACTOR of its obligations in connection with the transactions contemplated hereby nor the fulfillment by the DESIGN BUILD CONTRACTOR of the terms or conditions hereof: (a) conflicts with, violates, or results in a breach of any constitution, law, governmental regulation, by-laws, or certificates of incorporation applicable to the DESIGN BUILD CONTRACTOR; or (b) conflicts with, violates or results in a breach of any order, judgment, or decree, or any contract, agreement, or instrument to which the DESIGN BUILD CONTRACTOR is a party or by which the DESIGN BUILD CONTRACTOR or any of its properties or assets are bound, or constitutes a default under any of the foregoing.
- 10.2.4 No approval, authorization, order or consent of, or declaration, registration, or filing with, any Governmental Authority is required for the valid execution and delivery of this Contract by the DESIGN BUILD CONTRACTOR except as such have been duly obtained or made.
- 10.2.5 Except as disclosed in writing to the City, there is no legal proceeding, at law or in equity, before or by any court, arbitral tribunal, or other Governmental Authority pending or, to the best of the DESIGN BUILD CONTRACTOR's knowledge after due

inquiry, overtly threatened or publicly announced against the DESIGN BUILD CONTRACTOR, in which an unfavorable decision, ruling, or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Contract by the DESIGN BUILD CONTRACTOR or the validity, legality, or enforceability of this Contract against the DESIGN BUILD CONTRACTOR, or any other agreement or instrument entered into by the DESIGN BUILD CONTRACTOR in connection with the transactions contemplated hereby, or on the ability of the DESIGN BUILD CONTRACTOR to perform its obligations hereunder or under any such other agreement or instrument.

- 10.2.6 Except as disclosed in writing to the City, there are no material and adverse claims or demands based in environmental, contract, or tort law pending or threatened against the DESIGN BUILD CONTRACTOR or any of its Affiliates with respect to any facilities designed or constructed by the DESIGN BUILD CONTRACTOR or any of its Affiliates that would have a material and adverse effect upon the ability of the DESIGN BUILD CONTRACTOR to perform the Work.
- 10.2.7 Neither the DESIGN BUILD CONTRACTOR nor any of its Affiliates has any knowledge of any material violation of any law, order, rule, or regulation with respect to any facilities designed or constructed by the DESIGN BUILD CONTRACTOR or any of its Affiliates.
- 10.2.8 The information supplied, and representations and warranties made by the DESIGN BUILD CONTRACTOR in all submittals made in response to the RFQ with respect to the DESIGN BUILD CONTRACTOR (and to its knowledge, all information supplied in such submittals with respect to any Affiliate or DESIGN BUILD CONTRACTOR-Related Entity) are true, correct, and complete in all material respects.
- 10.2.9 The DESIGN BUILD CONTRACTOR is under no obligation, commitment or impediment of any kind, whether contractual or otherwise, that will limit or prevent performance of its obligations under this Contract.
- 10.2.10 The DESIGN BUILD CONTRACTOR is financially secure and no action relating to the Bankruptcy Code or suspension of payments by the DESIGN BUILD CONTRACTOR or any Affiliate has, to the best of its knowledge after due inquiry, been taken or is threatened.
- 10.2.11 The DESIGN BUILD CONTRACTOR:
- 10.2.11.1. has examined, carefully studied, and thoroughly understands the Contract Documents;
 - 10.2.11.2. has visited the Project site and has become familiar with and is satisfied as to the general, local, and Project Site conditions that may affect cost, progress, and performance of the Work;
 - 10.2.11.3. is familiar with and is satisfied as to all Applicable Laws that may affect cost, progress, and performance of the Work;

- 10.2.11.4. has carefully studied all information concerning the Project site and the performance of the Work which have been identified or made available by the City prior to the Effective Date; and
- 10.2.11.5. is prepared to perform the Work in accordance with Contract Standards and subject to the terms and conditions of the Contract Documents.

ARTICLE 11. DBE COMPLIANCE

11.1 Policy. The City has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26, which are incorporated herein by reference. The City has received Federal financial assistance from the Department of Transportation and as a condition of receiving this assistance, the City has signed an assurance that it shall comply with 49 CFR Part 26. It is the policy of the Department of Transportation and the City to ensure that DBEs as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts.

11.2 Contract Goal. Contractor shall make Good Faith Efforts, as defined in City of Houston Ordinance No. 99-893 and 49 CFR Part 26, to subcontract 27.0% of the dollar value of the Contract to DBEs. For purposes of this Section, DBEs means for-profit business concerns in which at least 51% of the entity is owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock owned by one or more such individuals; and whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals who own it. "Socially and economically disadvantaged individual" means a U.S. citizen (or a lawfully admitted permanent resident of the United States) who is:

- 11.2.1 : Any individual who the City finds to be socially and economically disadvantaged on a case-by-case basis:
- 11.2.2 Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged
 - 11.2.2.1. "Black Americans,"
 - 11.2.2.2. "Hispanic Americans,"
 - 11.2.2.3. "Native Americans,"
 - 11.2.2.4. "Asian-Pacific Americans,"
 - 11.2.2.5. "Subcontinent Asian Americans,"
 - 11.2.2.6. "Women," or
 - 11.2.2.7. "Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective."

- 11.2.3 The Contractor, including a DBE prime contractor, if any, shall be required to submit information concerning the DBEs that shall participate in this contract. The information shall include the name and address of each DBE, a description of the work to be performed by each named firm, the dollar value of the contract or subcontract, bidder's written commitment to use such DBEs; and written confirmation from the DBEs that they are participants in the contract. If the Contractor fails to achieve the contract goal stated therein, it shall be required to provide documentation demonstrating that it made Good Faith efforts.
- 11.2.4 DBE prime contractors must meet goals and make good faith efforts on the same basis as other Contractors, but DBEs may count toward goals the work that they commit to perform with their own work force, as well as work performed by DBE subcontractors and DBE suppliers
- 11.2.5 The Director of Office of Business Opportunity ("OBO Director") is the DBE Liaison Officer. In that capacity, the Director is responsible for implementing all aspects of the DBE program. The Contractor shall establish and maintain records and submit regular reports, as required by the Director and the OBO Director, which shall identify and assess progress in achieving DBE subcontract goals and other DBE affirmative action efforts
- 11.2.6 Contractor is hereby notified that failure to carry out the DOT policy and the DBE obligation, as set forth herein, shall constitute a breach of contract which may result in termination of the contract or such other remedy as deemed appropriate by the City. This goal is further discussed in Exhibit J.
- 11.2.7 Contract Assurance. The Contractor or subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this contract or such other remedy as the City deems appropriate
- 11.2.8 Prompt Payment. The City is obligated to pay in accordance with any applicable prompt payment statute. The Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its contract no later than 30 days from receipt of each payment the Contractor receives from the City. The Contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City.
- 11.2.9 Termination of DBE Subcontractor. Contractor must not terminate for convenience a DBE subcontractor and then perform the work of the terminated subcontract with its own forces or those of an affiliate without the City's prior written consent

- 11.2.10 When a DBE subcontractor is terminated or fails to complete its work on the contract for any reason, Contractor must notify the City in writing and must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal.
- 11.2.11 Subcontract Clauses. The Contractor hereby assures that it shall include the above clauses in all subcontracts which offer further subcontracting opportunities.

ARTICLE 12. BONDS AND INSURANCE

12.1 Within 10 days of the date the DESIGN BUILD CONTRACTOR executes this Contract, DESIGN BUILD CONTRACTOR shall provide performance and payment bonds on forms prescribed by City in **Exhibit "G"**, unless in the discretion of the Director, the DESIGN BUILD CONTRACTOR furnishes a security bond acceptable to the Director to ensure that the DESIGN BUILD CONTRACTOR will furnish the required performance and payment bonds when a CGMP or the GMP is established. The penal sum of the payment and performance bonds shall be equal to the construction budget, as specified in the request for qualifications, or as otherwise specified by the Director.

12.2 DESIGN BUILD CONTRACTOR shall cause its design professional(s) to purchase and maintain professional liability, worker's compensation, automobile liability, commercial general liability and excess insurance, covering the Preconstruction Phase Services and Construction Phase Services provided under this Contract, as is acceptable to and approved by the Director. The insurance shall have minimum policy limits set forth in **Article 11 of the General Conditions**. The premium for the insurance will be at no expense to the City. DESIGN BUILD CONTRACTOR shall cause its design professional(s) to maintain the insurance throughout the course of the Work and for a minimum of two years following the Date of Substantial Completion. Each design professional's professional liability insurance policy is required to be furnished to the Director prior to performance. No policy providing the insurance shall be cancelled, materially altered, or allowed to expire without 30 days' prior written notice to Director.

12.3 Prior to commencing the Work, DESIGN BUILD CONTRACTOR shall be required to purchase and maintain the insurance coverages set forth in Article 11 of the General Conditions; provided however, that DESIGN BUILD CONTRACTOR may delay purchase and maintenance of Owner's and Contractor's Protective Liability, Installation Floater, and Property and Casualty Coverage until no later than 10 days of the date the Director accepts a CGMP and/or the GMP Submittals, as applicable. The DESIGN BUILD CONTRACTOR shall not commence Construction Services unless all insurance coverages set forth in Article 11 of the General Conditions are in full force and effect.

12.4 DESIGN BUILD CONTRACTOR shall not request payment, and City shall not be required to pay for DESIGN BUILD CONTRACTOR's additional general liability insurance, builder's all risk insurance or any other form of insurance coverage that is in excess of the required coverage amounts specified in this Contract and in Article 11 of the General Conditions, and City shall be entitled to repayment of any amounts paid in excess of what City is required to pay. The additional costs for coverages in addition to those coverages specifically required by this Contract shall be the sole responsibility of DESIGN BUILD CONTRACTOR.

12.5 City reserves the right to review the insurance requirements set forth in this Article and the General Conditions during the effective period of the Contract and to make reasonable adjustments to the insurance coverages and their limits when deemed necessary and prudent by City based upon changes in statutory law, court decisions, or the claims history of the industry or DESIGN BUILD CONTRACTOR. DESIGN BUILD CONTRACTOR shall use its best efforts to comply with City's requests hereunder, and a Change Order shall be issued compensating DESIGN BUILD CONTRACTOR for the increased costs of insurance premiums incurred as a result thereof.

12.6 City shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the Parties or the underwriter of any of such policies or to the extent that such deletion, revision, or modification results in increased costs for insurance premiums and City does not agree to compensate DESIGN BUILD CONTRACTOR for such increased costs after receiving notice from DESIGN BUILD CONTRACTOR of such increased costs. To the extent the losses should have been covered by insurance required by the Contract Documents that DESIGN BUILD CONTRACTOR failed to provide, then actual losses not covered by insurance as required by this Article shall be paid by the DESIGN BUILD CONTRACTOR.

12.7 DESIGN BUILD CONTRACTOR shall also procure Pollution Liability Insurance as authorized and approved by the Director, to provide insurance coverage for DESIGN BUILD CONTRACTOR with respect to its obligations, if any, whether included in the GMP, directed or agreed to by change order for hazardous materials abatement, handling and disposal. The actual limits will be reviewed and mutually agreed upon as part of the establishment of the GMP.

12.8 City shall have the option of obtaining its own insurance coverage for part or all of the _____ project. In the event City's insurance provides coverage for some or all of DESIGN BUILD CONTRACTOR's obligations under this Contract, City shall have the option of replacing all or part of DESIGN BUILD CONTRACTOR's insurance with the City's insurance.

12.9 City intends to establish an Owner Controlled Insurance Program ("OCIP") for this Project. In the event City procures an OCIP, DESIGN BUILD CONTRACTOR may participate in the OCIP. If and when the OCIP is established, the Director shall send notice to DESIGN BUILD CONTRACTOR and DESIGN BUILD CONTRACTOR must respond within 10 days either opting into or out of the OCIP. If DESIGN BUILD CONTRACTOR opts into the OCIP, the insurance requirements described in Sections 12.3 through 12.6 shall be eliminated. If DESIGN BUILD CONTRACTOR opts out of the OCIP, all insurance requirements described herein remain mandatory.

ARTICLE 13. TERMINATION AND SUSPENSION

13.1 Termination rights shall be as provided in the General Conditions and Applicable Laws.

13.2 The City's termination of this Contract shall not relieve the DESIGN BUILD CONTRACTOR or any of its employees of liability for violations of this Contract, any act or omission, or negligence of the DESIGN BUILD CONTRACTOR.

13.3 As of the date of termination of this Contract, the DESIGN BUILD CONTRACTOR shall furnish to Director all statements, accounts, reports and other materials as are required hereunder or as have been prepared by the DESIGN BUILD CONTRACTOR in connection with the DESIGN BUILD CONTRACTOR's responsibilities hereunder. City shall have the right to use the ideas and designs therein contained for the completion of the services described by this Contract, and for completion of the Project, or otherwise. All drawings, plans, specifications, renderings and models, etc., prepared by the DESIGN BUILD CONTRACTOR are the property of City. They are not to be used by any person or entity other than City on other projects unless expressly authorized by City in writing prior to such use.

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

14.2 Successors and Assigns: This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the Texas Business Code. This Agreement does not create any personal liability on the part of any officer or agent of the City.

14.3 Assignments. This Contract is a personal service contract for the services of DESIGN BUILD CONTRACTOR, and DESIGN BUILD CONTRACTOR's interest in this Contract, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party, except as provided by the Texas Business and Commerce Code.

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

14.3.2 DESIGN BUILD CONTRACTOR shall not delegate any portion of its performance under this Agreement without the Director's prior written consent.

14.4 Entire Contract; Modifications; Conflicts. This Contract supersedes all prior agreements, written or oral, between DESIGN BUILD CONTRACTOR and City and shall constitute the entire Contract and understanding between the parties with respect to the subject matter hereof. This Contract and each of its provisions shall be binding upon the Parties and may not be waived, modified, amended, or altered except by a writing signed by City and DESIGN BUILD CONTRACTOR. If there is a conflict between these Articles and the General Conditions of the Contract, then the provision which provides the greatest benefit to City shall govern.

14.5 Captions. The captions of paragraphs in this Contract are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. DESIGN BUILD CONTRACTOR and City shall both be deemed equally to be the drafters of the Contract Documents, and the Contract Documents shall not be construed against City or DESIGN BUILD CONTRACTOR as the drafter.

14.6 Governing Law. This Contract and all of the rights and obligations of the Parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. Exclusive venue for litigation shall be located in Harris County, Texas.

14.7 Non-Waiver. If either Party fails to require the other to perform a term of this Contract, that failure does not prevent the Party from later enforcing that term and all other terms. If either Party

waives the others' breach of a term, that waiver does not waive a later breach of this Contract. An approval or direction by the Director, or by any other employee or agent of the City, of any part of DESIGN BUILD CONTRACTOR's performance does not waive compliance with this Contract or establish a standard of performance other than that required by this Contract and by law.

14.8 Binding Effect. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

14.9 Appointment. City hereby expressly reserves the right from time to time to designate by notice to DESIGN BUILD CONTRACTOR one or more representatives to act partially or wholly for City in connection with the performance of City's obligations hereunder. DESIGN BUILD CONTRACTOR shall act only upon instructions from such representatives unless otherwise specifically notified to the contrary.

14.10 Notices. All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as set forth in the preamble or to such other person or address as may be given in writing by either party to the other in accordance with the aforesaid and, in accordance with Paragraph 13.4 of the General Conditions.

14.11 Severability. In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid or unenforceable provision had not been included herein.

14.12 Independent Contractor. DESIGN BUILD CONTRACTOR recognizes that it is engaged as an independent contractor and acknowledges that City will have no responsibility to provide transportation, insurance, or other fringe benefits normally associated with employee status. DESIGN BUILD CONTRACTOR, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer, partner, employee, or agent of City by reason hereof, and that it will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of City, including, but not limited to, unemployment insurance benefits, social security coverage, or retirement benefits. DESIGN BUILD CONTRACTOR hereby agrees to make its own arrangements for any of such benefits as it may desire and agrees that it is responsible for all income taxes required by Applicable Law.

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

AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS CONTRACT.

14.14 Compliance with Certain State Law Requirements.

Anti-Boycott of Israel. Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

Anti-Boycott of Energy Companies. Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.

Anti-Boycott of Firearm Entities or Firearm Trade Associations. Contractor certifies that Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.

Certification of No Business with Foreign Terrorist Organizations. For purposes of Section 2252.152 of the Texas Government Code, Contractor certifies that, at the time of this Agreement neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code as a company known to have contracts with or provide supplies to a foreign terrorist organization.

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

14.15 Confidentiality: DESIGN BUILD CONTRACTOR, its agents, employees, contractors, and Subconsultants shall hold all City information, data, and Documents (collectively, the "Information") that they receive, or to which they have access, in strictest confidence. DESIGN BUILD CONTRACTOR, its agents, employees, contractors, and Subconsultants shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. DESIGN BUILD CONTRACTOR shall obtain written agreements from its agents, employees, contractors, and Subconsultants which bind them to the terms in this Section in substantially the same form as shown in **Exhibit K**.

14.16 Sensitive Security Information: The DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR’s possession as a result of this Contract.

14.17 Airport Security and Badging:

14.17.1 DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR’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 BUILD CONTRACTOR’s operations. Within 10 days of notification in writing, DESIGN BUILD CONTRACTOR shall reimburse the City for any fine or penalty assessed against the City because of DESIGN BUILD CONTRACTOR’s non-compliance with 49 CFR 1540 and 1542 or other applicable laws or regulations.

14.17.2 DESIGN BUILD CONTRACTOR 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.

14.18 Airport Symbols: DESIGN BUILD CONTRACTOR 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.

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

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

14.21 Publicity: DESIGN BUILD CONTRACTOR shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the Director.

14.22 Parties in Interest: This Agreement does not bestow any rights upon any third party, but binds and benefits the City and DESIGN BUILD CONTRACTOR only.

14.23 Enforcement: The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. DESIGN BUILD CONTRACTOR shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining DESIGN BUILD CONTRACTOR's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

14.24 Airport Security Customs Bond: In accordance with Title 19 of the Code of Federal Regulations, Part 113, the contractor shall obtain an Airport Customs Security Bond in order to have access to the Federal Inspection Station (FIS), and One Stop Cargo and Fumigation Facility at George Bush Intercontinental Airport (IAH), William P. Hobby Airport (HOU) and Ellington Airport (EFD) .

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

14.26 Non-Exclusivity. This Contract does not create an exclusive right for Design Consultant to perform all architecture, engineering, and other professional services concerning this Project. The City may procure and execute contracts with other architecture, engineering, or other professional firms for the same, similar, or additional services as those set forth in this Contract.

14.27 Compliance with Equal Opportunity Ordinance. Design Consultant shall comply with the City's Equal Employment Opportunity Ordinance set out in in Section 15-17 of the Houston Code of Ordinances.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT “A”**DEFINED TERMS****ARTICLE 1. INTERPRETATION**

10.1 This Contract, including all Contract Documents, will be interpreted in accordance with the following:

- A. **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 deemed to mean those contained in this main body of the Contract unless specified otherwise.
- B. **Entire Contract.** This Contract, including all Contract Documents, contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Contract. Without limiting the generality of the foregoing, this Contract shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions, including those contained in the RFQ (if any), the submittal made by the DESIGN BUILD CONTRACTOR in response thereto, the RFP, the proposal made by the DESIGN BUILD CONTRACTOR in response thereto, and any amendments or supplements to any such documents.
- C. **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.
- D. **Headings.** The table of contents and any headings preceding the text of the articles, sections and subsections of this Contract shall be solely for convenience of reference and shall not affect its meaning, construction or effect.
- E. **References to Hereto.** The terms “hereto,” “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Contract.
- F. **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.
- G. **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.
- H. **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.

- I. **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.
- J. **Delivery of Documents in Digital Format.** In this Contract, the DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR agrees that all such documents shall be submitted to the City both in printed form (in the number of copies indicated) and, at the City's request, 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 Contract. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.
- K. **Severability.** If any provision of this Contract is held to be invalid, unenforceable or illegal to any extent, such provision may be severed, and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Contract. If any such provision of this Contract is held to be invalid, unenforceable or illegal, the Parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Contract as nearly as possible to its original intent and effect.
- L. **Drafting Responsibility.** The Parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Contract to the effect that ambiguous or conflicting terms or provisions should be construed against the Party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.
- M. **Counterparts.** This Contract may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Contract.
- N. **Governing Law.** This Contract and all of the rights and obligations of the Parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. Exclusive venue for litigation shall be located in Harris County, Texas.

ARTICLE 2. DEFINITIONS

- As used in the in the Contract Documents, the following terms shall have the meanings set forth below:
 - **Actual Cost:** A verifiable amount paid for labor, material, equipment and supplies in the performance of the Work.
 - **Addenda:** Any addenda to the Drawings or Specifications or other Contract Documents identified as Addenda, if any, in the Contract Documents.

- **Advanced Work Package:** A portion of the Cost of Work prescribed in Exhibit A or that the DESIGN BUILD CONTRACTOR proposes to the Director for construction work before the GMP has been finalized. A CGMP shall be agreed upon for each Advance Work Package.
- **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.
- **Agreed Cost of the Work:** The specific amount defined in **Section 9.1.2** that may not be exceeded by the Probable Cost of the Work without the express written consent of the Director.
- **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.
- **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.
- **Allowance:** “Allowance” means “Cash Allowance” as defined herein.
- **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.
- **As-Builts or As-Built Drawings:** A set of Project drawings and/or BIM Model, prepared by the DESIGN BUILD CONTRACTOR, that identifies and reflects all Project design changes that were made during the Construction Services.
- **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.
- **Beneficial Occupancy:** When the City takes possession of and operates the Work (or portions of the Work) for its intended purposes.
- **BIM:** Building Information Modeling. The digital or electronic representation of the project model and includes the process to create the model.

- **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.
- **Bridging Documents:** The documents included in the Design Criteria Package as defined in Texas Government Code Section 2269.358.
- **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”).
- **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.
- **Calendar Day:** Shall mean Day.
- **Capital Improvement Program (CIP):** HAS’s Capital Improvement Program.
- **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”.
- **CBP:** U.S. Customs and Border Protection.
 - **CGMP Amendment:** CGMP Submittal accepted and approved by the Director.
 - **CGMP Submittal:** The proposal for the CGMP Amendment submitted by DESIGN BUILD CONTRACTOR to the Director.
- **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 BUILD CONTRACTOR, 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.
- **City:** The City of Houston, a home rule municipality located principally within Harris County, Texas, including its successors and its authorized representatives.

- **City Engineer:** City Engineer, or the City employee representing the City Engineer, designated in the Contract and authorized to represent City, or successors.
- **Claim:** Written demand or written assertion by one Party seeking adjustment of the Contract, payment of money, extension of time, or other relief under the Contract, at law or equity and includes, but is not limited to, claims for materials, labor, equipment, delay, changes, adjustments, substitutions, fees and third party claims. The Party making the Claim has the responsibility to substantiate the Claim.
- **Co-Location:** A system under which the DESIGN BUILD CONTRACTOR's Key Personnel are located "under one roof" along with the Program Management Team in a location near the site.
- **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.
- **Commissioning Authority (CxA):** A third party firm contracted with the City to oversee the DESIGN BUILD CONTRACTOR's commissioning plan.
- **Component Guaranteed Maximum Price (CGMP):** A guaranteed maximum price for construction of a defined incremental element of Work.
 - **Component Guaranteed Maximum Price (CGMP) Amendment:** CGMP Submittal accepted and approved by the Director.
 - **Component Guaranteed Maximum Price (CGMP) Submittal:** The proposal for the CGMP Amendment submitted by DESIGN BUILD CONTRACTOR to the Director.
- **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.
 - **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 at his sole reasonable discretion for (i) any increased costs required for schedule recovery, if any; (ii) any increase in the costs of materials and equipment set forth in approved CGMP and/or GMP; and (iii) any other costs that Director in his sole discretion deems appropriate to be covered by contingency. 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.

- **Construction Documents (CD):** All of the graphic and written information prepared or assembled by DESIGN BUILD CONTRACTOR for communicating the design and for the bidding and construction of the Project.
- **Construction Services:** The services more fully described as Construction Services in **Exhibit “B”**.
- **Contract:** This agreement between the Parties including all exhibits, any written amendments authorized by City Council and DESIGN BUILD CONTRACTOR, any CGMP Amendments, a GMP Amendment, and any Change Orders authorized by this Contract.
- **Contract Documents:** The executed Contract and all Exhibits, any CGMP or GMP Amendment, any Notice to Proceed, Change Order, or other Modification or Amendment, and Construction Drawings and Specifications.
- **Contract Price:** The monetary amount originally stated in the Contract adjusted by the CGMPs, GMP, Change Orders and/or Amendments, if any.
- **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 BUILD CONTRACTOR.
 - **Contract Termination:** For purposes of DESIGN BUILD CONTRACTOR's indemnity obligation, the Contract terminates upon the earlier of Final Completion or termination by either Party pursuant to the terms of the Contract.
- **Contract Time:** The number of days stated in the Contract to complete the Work, plus days authorized by Change Order and/or Amendment.
- **Contractor:** A construction contractor or construction manager other than the DESIGN BUILD CONTRACTOR hired by the City that may work on the Project or in connection with the Project, except as set out in the Division 01 Specifications.
- **Correction Period:** The period during which the DESIGN BUILD CONTRACTOR 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.

- **Cost of the Work:** Cost of the Work has the meaning set forth in Article 9, **Section 9.4** of the Agreement.
- **Date of Commencement of the Work:** Date established in Notice to Proceed on which Contract Time will commence. This date will not be changed by failure of DESIGN BUILD CONTRACTOR, or persons or entities for whom DESIGN BUILD CONTRACTOR is responsible, to act.
- **Date of Substantial Completion:** Date that construction, or portion thereof designated by the Director, is certified by Director to be substantially complete.
- **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.
- **DB:** Shall mean DESIGN BUILD CONTRACTOR. The DB is the entity contracted by HAS to perform preconstruction and construction services for a project. Design- Build is the delivery method.
 - **Deficiency Notice (DN):** For the 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.
- **DESIGN BUILD CONTRACTOR-Related Entity:** The DESIGN BUILD CONTRACTOR, its Subcontractors, Suppliers, subconsultants including professionals, technicians, engineers and anyone for whose acts any of the foregoing DESIGN BUILD CONTRACTOR may be legally or contractually liable, including officers, directors, employees, representatives, agents, consultants and contractors.
- **DESIGN BUILD CONTRACTOR Fee:** The fee for the DESIGN BUILD CONTRACTOR'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.
 - **Design to Budget:** The process by which the DESIGN BUILD CONTRACTOR designs the Project to ensure the Agreed Cost of the Work is not exceeded.
- **DESIGN BUILD CONTRACTOR:** 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
- **Director:** The Director of the Houston Airport System, or any person designated by the Director to perform one or more of the Director's duties under this Contract.

- **Drawings:** Graphic and pictorial portions of the Contract that define the character and scope of the Work.
- **Effective Date:** The date the City Controller countersigns the Signature Page of this Contract.
- **EFD:** Ellington Field Airport
- **FAA:** The Federal Aviation Administration.
- **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.
- **Furnish:** To supply, pay for, deliver to the site, and unload.
- **General Conditions:** The requirements, terms and conditions set forth in **Exhibit “C”** of the Design Build Contract, which may include terms and conditions that are substantially the same as those found in this Contract and therefore shall be read together and interpreted by City and DESIGN BUILD CONTRACTOR to eliminate conflict between the two. However, should a conflict exist, after Director and DESIGN BUILD CONTRACTOR have used best efforts to reconcile the conflict, the provision most favorable to the City shall prevail.
- **General Conditions Costs:** DESIGN BUILD CONTRACTOR'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 BUILD CONTRACTOR Labor Costs for 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; demobilization; 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 DESIGN BUILD CONTRACTOR Agreement Article 8, § 8.4)
- **General Requirements:** The sections of Division 01 Specifications that specify

administrative and procedural requirements and temporary facilities required for the Work.

- **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.
- **GSE:** Ground Support Equipment.
- **Guaranteed Maximum Price (GMP):** The amount agreed upon by City and DESIGN BUILD CONTRACTOR as the maximum cost to City for the Work for the Construction Services, including the Cost of the Work and the DB's Fee for the Construction Services. The GMP shall incorporate all prior CGMPs as further described in Section 5.8 of the Contract.
- **GMP Amendment:** GMP Submittal accepted by the Director and approved by City Council.
- **GMP Submittal:** The proposal for the GMP Amendment submitted by DB to the Director.
- **HAS:** The Houston Airport System, a department of the City of Houston.
- **IAH:** George Bush Intercontinental Airport Houston.
- **Inspector:** City's employee or agent authorized to assist with inspection of the Work.
- **Install:** Unpack, assemble, erect, place, anchor, apply, work to dimension, finish, cure, clean, protect, and similar operations.
- **Key Personnel:** Those people having authority and responsibility for planning, directing and controlling the activities of the DB, either directly or indirectly.
- **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 9.4.2.1(c), vacation and sick leave, pension contributions and other benefits. Labor Burden includes actual costs paid or incurred by the DB 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.
- **Legal Holiday:** Day established by the City Council as a holiday.

- **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.
- **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.
- **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.
- **MLIT:** The Mickey Leland International Terminal, or Terminal D at IAH.
- **Modification:** Change Order, Work Change Directive, or Minor Change in the Work, all of which must be in writing and in conformance with HAS's existing processes.
 - **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.
- **Notice of Noncompliance (NCN):** A written notice by Director to DESIGN BUILD CONTRACTOR 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 BUILD CONTRACTOR shall correct the defective or nonconforming work. The NCN is the third and highest level of non-conformance reporting on the _____ Project. In accordance with the contract documents, further escalation may include Notice of Event Default, Notice of Pending Termination and Notice of Termination.
- **Notice to Proceed:** A written notice by the Director to DB establishing (a) Date of Commencement of the Work for a phase or stage of Construction or (b) the date DB is to begin performing Preconstruction Services.
- **R/OCIP:** Rolling Owner Controlled Insurance Program or Owner Controlled Insurance Program.
 - **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.
- **ORAT:** Operational Readiness, Activation and Transition.
- **Original Contract Price:** The monetary amount originally stated in the Contract.
- **Overhead:** Indirect or fixed expenses of operating a business, including both home

office locations and offsite and jobsite locations.

- **Owner:** The City of Houston, Texas.
- **Parties:** DB and the City. When in singular form, refers to either the City or DB (as appropriate).
- **PDM:** Program Definition Manual for the Mickey Leland International Terminal – Final Version December 2014.
- **Phase or Phases:** A discrete portion of the Work or sequencing of the Work.
- **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).
- **Pollutant:** Any materials subject to the Texas Solid Waste Disposal Act.
- **Preconstruction Services:** The services more fully described as Preconstruction Services in **Exhibits “B” and “E”**.
- **Price Proposal:** The completed RFP Cost Proposal Form submitted by DB.
- **Probable Cost of the Work:** An estimate of the Cost of the Work as reconciled by the DB and the Director.
- **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.
- **Product Data:** Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by DB to illustrate a Product.
- **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.
- **Project Manual:** The specifications for the Work. Certain provisions of the Project Manual may be revised during Preconstruction Services. If any revisions to the Project Manual are inconsistent with the material terms of this Contract, this Contract shall control.
- **Project Schedule:** The DB’s full scope of Works and Services, time phased and logic linked, in a schedule that represents how the DB intends to reach Final Completion within the Contract Time.
- **Project Team:** The City (acting through the Director and other City employees and

representatives working in connection with the Project), DB, 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 DB, will be designated by the Director and may be modified from time to time by him, without additional time or compensation being awarded to DB.

- **Proposal Documents:** Documents submitted by DB that may or may not have Price Proposal as part of the submittal.
- **Provide:** Furnish and Install, complete, ready for intended use.
- **Punch List:** Uncompleted work items that the DB, or Subcontractor must complete in order to achieve Final Completion.
- **Quality Control (QC):** Those standards, systems, processes, procedures and activities exercised by the DB, subcontractors and suppliers to ensure that the Work is constructed in accordance with the Contract Documents.
 - **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.
- **Safety Impact Position:** DB'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.
- **Samples:** Physical examples that illustrate Products, or workmanship, and establish standards by which the Work is judged.
 - **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 DB in accordance with the Contract Standards and accepted by Director to serve as the basis for progress payments for the Work.
- **Shop Drawings:** Drawings, diagrams, schedules, and other data specially prepared for the Work by DB, Subcontractor or Supplier, to illustrate a portion of the Work.
- **SIDA:** Security Identification Display Area. The SIDA is the secure area of the Airport in which an identification badge must be visible and displayed.
- **Special Conditions:** Any additional provisions identified as Special Conditions, if any, in the Contract Documents.

- **Specifications:** Specifications developed by the DESIGN BUILD CONTRACTOR during the Project design and, in limited instances modified by the City, that generally follow Divisions 01-50 of the CSI Master Format.
 - **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.
 - **Statement of Qualification:** Document submitted by the DB in response to a Request for Qualifications, to demonstrate its ability to perform the requested services.
- **Subcontractor:** Person or firm that has direct or indirect contract with DB or with a Subcontractor to perform a portion of the Work and its authorized representatives.
- **Substantial Completion:** The date, as reasonably determined by the Director, 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 Director.
- **Superintendent:** Employee of DB having authority and responsibility to act for and represent DB.
- **Supplier:** Manufacturer, distributor, materialman, or vendor having a direct agreement with DB or Subcontractor for Products, or services and its authorized representatives.
- **Surety Bond:** A three-party contract between the Surety, the DESIGN BUILD CONTRACTOR, and the Owner (the City) guaranteeing performance and/or payment by the DESIGN BUILD CONTRACTOR in accordance with the terms and conditions of its Contract with the City. If the DESIGN BUILD CONTRACTOR defaults on its obligations of performance or is terminated by the Owner, 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 owner, or c) to pay the Owner for the costs of an Owner-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.
- **TSA:** Transportation Security Administration.
- **UMP:** The IAH Utilities Master Plan.
- **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.

- **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.
- **Work:** the Work comprises the completed pre-construction, design, and construction, as required by the Contract Documents, and every part 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.
- **Work Area Notification (WAN):** The form and process used by HAS as a means for the DESIGN BUILD CONTRACTOR 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.
- **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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT “B”
SCOPE OF SERVICES

EXHIBIT “C”

Document 00700

GENERAL CONDITIONS (DESIGN BUILD)

EXHIBIT “D”

KEY PERSONNEL STAFF CLASSIFICATION AND RATES

DESIGNATED REPRESENTATIVE

EXHIBIT “E”

PRECONSTRUCTION SERVICES SCHEDULE

EXHIBIT “F”

COMPONENT AND GUARANTEED MAXIMUM PRICE PROPOSAL FORMS

Exhibit F-1

GUARANTEED MAXIMUM PRICE (GMP) AMENDMENT

This is a sample which may be modified by the Director.

**Exhibit F - 1**GMP No: **See Numbering Tab for Format****Guaranteed Maximum Price (GMP) Amendment**

Contract No: _____

Date: _____

Project: _____
Contract: _____
Prepared By: _____
PMSS Project Manager: _____

Title _____

Description _____

_____**GMP General Comments**

The GMP for the Project includes all Claims, Work, and Change Orders in existence as of the date of signing this GMP. Y/N _____

The Construction Drawings and Specifications upon which the GMP is based are set forth in Exhibit 1 attached hereto. Y/N _____

The Contractor shall provide complete performance as it relates to the completion of the Work of this GMP. Y/N _____

The Clarification and Assumptions made by the Contractor are set forth in Exhibit 4 Y/N _____

The Contractor waives all right to an extension of time or delay damages for any events or circumstances prior to the date of signing the GMP Y/N _____

The funds for this GMP have been fully Appropriated Y/N _____

This GMP Value is the maximum amount payable by the City to the Contractor for the prescribed scope of works. Y/N _____

GMP Impact**Contract Value Summary**

Initial Contract Price: \$ _____

CGMP-1: \$ -

CGMP-2: \$ -

CGMP-3: \$ -

GMP Balance Scope: \$ -

Total CGMP + GMP Contract Amendment: -

Revised Contract Value: -

Contract Duration SummaryOriginal Construction Services Duration _____
(Calendar Days):

Duration of Work of CGMP's: _____

Duration of GMP: _____

Number of days in excess of original
duration for construction services: _____

Except as specifically provided herein, all terms and conditions of the Contract shall remain in full force and effect, together with previous CGMP's, Change Orders and Amendments.

Budget - Appropriation

Original Appropriation	\$ -
Previous Early Works (CGMP's) Appropriated:	\$ -
This Appropriation Request:	\$ -
Total Appropriation	\$ -

References & Attachments

**Exhibit F - 1**GMP No: **See Numbering Tab for Format****Guaranteed Maximum Price (GMP) Amendment**

Contract No: _____

Date: _____

The following exhibits are incorporated into the CGMP

Exhibit 1 - Summary of Work, including a list of all Construction Drawings and a list of Specifications
Exhibit 2 - GMP Price Summary with line item Schedule of Values.
Exhibit 3 - Project Team and Burden Rates
Exhibit 4 - Scope Clarifications and Assumptions.
Exhibit 5 - Procurement Plan.
Exhibit 6 - GMP Construction Schedule.
Exhibit 7 - Analysis of Impact on the Total Construction Budget and Project Schedule.

Exhibit 8 - MWBE/WBE/DBE/SBE participation level, including a total-to-date participation level status report.
Exhibit 9 - Permitting Plan
Exhibit 10 - Risk Management Plan
Exhibit 11 - Construction Work Plan
Exhibit 12 - Commissioning and Activation Plans
Exhibit 13 - Project Manuals
Exhibit 14 - Bond
Exhibit 15 - Insurance

Submitted By

Title	Required (Y/N)	Name	Date	Signature
Contractor Delivery Lead	<input type="checkbox"/>			

Recommend for Approval

Title	Required (Y/N)	Name	Date	Signature
	<input type="checkbox"/>			
	<input type="checkbox"/>			
	<input type="checkbox"/>			
	<input type="checkbox"/>			
	<input type="checkbox"/>			

Approval

The insurance and bonds for the Guaranteed Maximum Price form have been reviewed as to form by the undersigned legal assistant and have been found to meet established Legal Department criteria. Legal Department has not reviewed the content of this document or its exhibits, except for Exhibit 14 and Exhibit 15 of the GMP/CGMP document.

Title	Required (Y/N)	Name	Date	Signature
Contractor / Design Consultant	<input type="checkbox"/>			
Legal Assistant	<input type="checkbox"/>			
HAS Assistant Director - Planning	<input type="checkbox"/>			
HAS Dep. Director - Capital Projects	<input type="checkbox"/>	Robert Barker		
HAS Director of Aviation	<input type="checkbox"/>	Mario Diaz		

CGMPs may be entered into without the need of a contract amendment and are effective upon the Director's approval. The GMP must be approved by City Council in order to be effective.

Exhibit F-2

COMPONENT GUARANTEED MAXIMUM PRICE (GMP)

AMENDMENT

This is a sample which may be modified by the Director.

<p align="center">Exhibit F-2</p> <p align="center">Component Guaranteed Maximum Price (CGMP)</p> <p align="center">Amendment</p>	<p>CGMP No: <u>See Numbering Tab for Format</u></p>
	<p>Contract No: _____</p>
	<p>Date: _____</p>

Project:	<input type="text"/>	Title:	<input type="text"/>
Contract:	<input type="text"/>	Description:	<input type="text"/>
Prepared By:	<input type="text"/>		
PMSS Project Manager:	<input type="text"/>		

Justification	
CGMP General Comments	

The CGMP for the Project includes all Claims, Work, and Change Orders in existence as of the date of signing this CGMP.	Y/N	
The Construction Drawings and Specifications upon which the CGMP is based are set forth in Exhibit 1 attached hereto.	Y/N	
The Contractor shall provide complete performance as it relates to the completion of the Work of this CGMP.	Y/N	
The Claims and Disputations made by the Contractor are set forth in Exhibit 4.	Y/N	
The Contractor waives all right to an extension of time or any magnifying events or circumstances prior to the date of signing the CGMP.	Y/N	
The funds for this CGMP have been fully Appropriated.	Y/N	
This CGMP Value is the maximum amount payable by the City to the Contractor for the prescribed scope of works.	Y/N	

CGMP Impact		CGMP Schedule Summary	
CGMP Cost Summary		CGMP Schedule Summary	
Total Committed to Date:	\$ <input style="width: 90%;" type="text" value="-"/>	CGMP Works Start:	<input style="width: 95%;" type="text"/>
This CGMP Cost of Work:	\$ <input style="width: 90%;" type="text" value="-"/>	KD-00001 - Description*	<input style="width: 95%;" type="text"/>
A. General Conditions Included in the Cost of Work:	\$ <input style="width: 90%;" type="text" value="-"/>	KD-00002 - Description	<input style="width: 95%;" type="text"/>
B. Pass Through Item - Cash Allowances Included in the Cost of Work:	\$ <input style="width: 90%;" type="text" value="-"/>	KD-00003 - Description	<input style="width: 95%;" type="text"/>
C. Alternates Included in the Cost of Work:	\$ <input style="width: 90%;" type="text" value="-"/>	KD-00004 - Description	<input style="width: 95%;" type="text"/>
D. Unit Price Work Included in the Cost of Work:	\$ <input style="width: 90%;" type="text" value="-"/>	KD-00005 - Description	<input style="width: 95%;" type="text"/>
E. Contingency Includes in the Cost of Work:	\$ <input style="width: 90%;" type="text" value="-"/>	KD-00005 - Description	<input style="width: 95%;" type="text"/>
F. Pass Through Item - Insurance and Bonds Included in the Cost of Work:	\$ <input style="width: 90%;" type="text" value="-"/>	KD-00005 - Description	<input style="width: 95%;" type="text"/>
G. Pass Through Item - Permit Fees Included in the Cost of Work:	\$ <input style="width: 90%;" type="text" value="-"/>	KD-00005 - Description	<input style="width: 95%;" type="text"/>
This CGMP Construction Phase Fee	\$ <input style="width: 90%;" type="text" value="-"/>	CGMP Works Duration (Calendar Days):	<input style="width: 95%;" type="text"/>
(Percent of Cost of the Work minus Pass-through Items)	\$ <input style="width: 90%;" type="text" value="-"/>	CGMP Works Finish:	<input style="width: 95%;" type="text"/>
This CGMP Total (Cost of Work + Fee):	\$ <input style="width: 90%;" type="text" value="-"/>	* Attach milestone schedule as needed	
Revised Total Commitment:	\$ <input style="width: 90%;" type="text" value="-"/>		

Except as specifically provided herein, all terms and conditions of the Contract shall remain in full force and effect, together with previous CGMP's, Change Orders and Amendments.

The following exhibits are incorporated into the CGMP	
Exhibit 1 - Summary of Work, including a list of all Construction Drawings and a list of Specifications	Exhibit 8 - MWBE/WBE/DBE/SBE participation level, including a total-to-date participation level status report.
Exhibit 2 - CGMP Price Summary with Line Item Schedule of Values.	Exhibit 9 - Permitting Plan
Exhibit 3 - Project Team and Burden Rates	Exhibit 10 - Risk Management Plan
Exhibit 4 - Scope Clarifications and Assumptions.	Exhibit 11 - Construction Work Plan
Exhibit 5 - Procurement Plan.	Exhibit 12 - Commissioning and Activation Plans
Exhibit 6 - CGMP Construction Schedule.	Exhibit 13 - Project Manuals
Exhibit 7 - Analysis of Impact on the Total Construction Budget and Project Schedule.	Exhibit 14 - Bond
	Exhibit 15 - Insurance

**Exhibit F-2****Component Guaranteed Maximum Price (CGMP)
Amendment**CGMP No: **See Numbering Tab for Format**

Contract No: _____

Date: _____

Submitted By

Title	Required (Y/N)	Name	Date	Signature
Contractor Project Manager	<input type="checkbox"/>			

Recommend for Approval

Title	Required (Y/N)	Name	Date	Signature
	<input type="checkbox"/>			
	<input type="checkbox"/>			
	<input type="checkbox"/>			
	<input type="checkbox"/>			
	<input type="checkbox"/>			

Approval

The insurance and bonds for the (Component) Guaranteed Maximum Price form have been reviewed as to form by the undersigned legal assistant and have been found to meet established Legal Department criteria. The legal department has not reviewed the content of this document or its exhibits, except for Exhibit 14 and Exhibit 15 of the GMP/CGMP document.

Title	Required (Y/N)	Name	Date	Signature
Contractor / Design Consultant	<input type="checkbox"/>			
Legal Assistant	<input type="checkbox"/>			
HAS Assistant Director - Planning	<input type="checkbox"/>			
HAS Dep. Director - Capital Projects	<input type="checkbox"/>	Robert Barker		
HAS Director of Aviation	<input type="checkbox"/>	Mario Diaz		

CGMPs may be entered into without the need of a contract amendment and are effective upon the Director's approval. The GMP must be approved by City Council in order to be effective.

EXHIBIT “G”
FORMS OF BONDS

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

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

EXHIBIT “H”

CITY'S WAGE RATES

(See Division 00)

Document 00820

**WAGE SCALE AND PAYROLL REQUIREMENTS FOR ENGINEERING
CONSTRUCTION**

Wage Scale Requirements

- 1.1 Contractor and its Subcontractors must pay the general prevailing wage rates for building construction for each craft or type of worker or mechanic employed in the execution of any building construction or repair under the Contract in accordance with Chapter 2258 of the Texas Government Code and City of Houston, Texas Ordinance Nos. 85-2070, 2000-1114, 2001-152, 2006-91 and 2006-168, and 2009- 247 all as amended from time to time. City Council has determined the prevailing wage rate in the locality in which the work is being performed, which is set forth in Exhibit "A".
- 1.2 This prevailing wage rate does not prohibit the payment of more than the rates stated.
- 1.3 In bidding, Contractor warrants and represents that it has carefully examined the classifications for each craft or type of worker needed to execute the Contract and determined that such classifications in Exhibit "A" include all necessary categories to perform the work under the Contract.
- 1.4 The wage scale for engineering construction is to be applied to all site work greater than five feet from an exterior wall of new building under construction or from an exterior wall of an existing building.
- 1.5 If Contractor believes that an additional classification for a particular craft or type of worker is necessary to perform work under the Contract, it must submit with its bid a request to the Contract Compliance Division of the Office of Business Opportunity ("OBO") to use an additional labor classification not listed in Exhibit "A" and specify the proposed new classification. OBO shall determine whether a proposed classification is already covered in Exhibit "A", and, if it is, specify which classification is appropriate. OBO's decision is conclusive. If OBO decides that a new classification is necessary, it will determine the appropriate prevailing wage rate for any resurveyed, amended, new, or additional craft or type of worker not covered by Exhibit "A". Such determination must be decided in accordance with procedures established by OBO, and in compliance with Chapter 2258 of the Texas Government Code and City of Houston, Texas Ordinance Nos. 85-2070, 2000-1114, 2001-152, 2006-91, 2006-168 and 2009-247 subject to City Council approval.
- 1.6 Contractor must not use any labor classification not covered by Exhibit "A" until such classification is established and approved for use by OBO.
- 1.7 A Contractor or Subcontractor who violates Chapter 2258 of the Texas Government Code must pay to the City, \$60 per each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates set forth in Exhibit "A".
- 1.8 The City may withhold money required to be withheld under Chapter 2258 of the Texas Government Code from the final payment to Contractor or earlier payments if City

Council makes a determination that there is good cause to believe that Contractor has not complied with these provisions and Chapter 2258 of the Government Code, in which case the City may withhold the money at any time subsequent to the finding by City Council.

1.9 Contractor and Subcontractors must keep records specifying:

- (1) the name and classification of each worker employed under the Contract; and
- (2) the actual per diem wages paid to each worker, and the applicable hourly rate.

The records must be open at all reasonable hours for inspection by the officers and agents of the City.

1.10 The hourly cost of salary for non-exempt workers for labor in excess of 40 hours per worker per week, shall be calculated at 1.5 times the worker's base pay, plus 1.0 times fringe benefits, for the applicable craft and level.

Certified Payroll Requirements

- 2.1 Employees are paid weekly, and payrolls are submitted weekly using the City of Houston's electronic payroll submission module, unless the prime Contractor has been instructed to do otherwise by the Office of Business Opportunity. When no work is done after a Contractor has started work, the Contractor is required to submit a weekly compliance statement indicating no work was performed. The payrolls must reflect the exact work and classification of the workers, the exact amount that they were paid. Workers must be paid the contracted amount (prevailing wage rates). The Contractor will be penalized \$60.00 a day for each employee who is underpaid per Texas Government Code §2258-023 for all contracts.
- 2.2 Payrolls must be submitted electronically & indicate whether the worker worked inside or outside the building area when both wage rates are applicable to the contract.
- 2.3 Payrolls must be submitted each week until all work by the contractor is complete and the electronic payroll submission is marked as final in the system.
- 2.4 Payrolls must cover a seven-day period from the start of the work week and must be consecutive seven-day periods until all work is complete.
- 2.5 Payrolls must have employees' names, addresses, last four digits of the social security numbers, and job classifications. The job classifications must be the same as the classifications on the prevailing wage rate schedule.
- 2.6 A payroll deduction authorization form must be submitted for each employee for any deductions other than Federal and FICA taxes.
- 2.7 Employees must be paid overtime (time and a half) for all hours worked over 40 hours a week on both federally and City-funded contracts.
- 2.8 The Contractor has the responsibility to comply with all Internal Revenue Service rules

and regulations. Contractors who submit certified payrolls with **Owner Operators (truckers)** must submit a signed tax liability statement from Owner Operator acknowledging their responsibility for Federal Income Tax and FICA reporting obligations.

- 2.9 If the Contractor wants to use the apprentice wage rates for an employee, the apprenticeship certificates must be submitted to the Office of Business Opportunity in advance of the employee working on the project and appearing on the payroll. You must comply with the listed number of journeymen to apprentices as listed.
- 2.10 A poster of the Prevailing Wage Rate Schedule should be clearly displayed on each job site from the time the project starts until the work is completed, or in case of annual service agreements, in the Contractor's office.
- 2.11 The Contractor shall submit the "Certificate from Contractor Appointing Officer or Employee to Supervise Payment of Employees" (Exhibit "B") to the Monitoring Authority listed in Document 00495 prior to final execution of the contract.
- 2.12 During the work, ALL Subcontractors shall submit the "Certificate from Subcontractor Appointing Officer or Employee to Supervise Payment of Employees" (Exhibit "C") to the Monitoring Authority listed in Document 00495.
- 2.13 Upon completion of the Project, as part of the contract-awarding department's total clearance process, the Office of Business Opportunity's Contract Compliance Section must review whether the Wage Rate and Payroll Requirements were met and report the results to the department.

REST OF PAGE INTENTIONALLY LEFT BLANK

EXHIBIT "A"

Wage Determination Publication Date:

January 1, 2021

for

General Decision Number: **TX20210038 01/01/2021 TX38**

Superseded General Decision Number: TX20200038

State: Texas
Construction Type: Highway
Counties: Austin, Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, San Jacinto and Waller Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number Publication Date
0 01/01/2021

* SUTX2011-013 08/10/2011

CITY OF HOUSTON
STANDARD DOCUMENT

WAGE SCALE AND PAYROLL REQUIREMENTS
FOR ENGINEERING CONSTRUCTION

LABOR CLASSIFICATIONS AND PREVAILING WAGE RATES FOR
ENGINEERING CONSTRUCTION 2021

CLASSIFICATION	RATE	CLASSIFICATION	RATE
Asphalt Distributor Operator	\$14.06	Loader/Backhoe Operator	\$14.29
Asphalt Paving Machine Operator	\$14.32	Mechanic	\$16.96
Asphalt Raker	\$12.36	Milling Machine Operator	\$13.53
Broom or Sweeper Operator	\$12.68	Motor Grader Operator, Fine Grade	\$15.69
Cement Mason / Concrete Finisher- Paving and Structures	\$12.98	Motor Grader Operator, Rough	\$14.23
Concrete Paving, Curing, Float Texturing Machine Operator	\$11.71	Off Road Hauler Operator	\$14.60
Concrete Paving Finishing Machine Operator	\$13.07	Painter (Structures)	\$18.62
Concrete, Saw Operator	\$13.99	Pavement Marking Machine Operator	\$11.18
Crane Operator, Hydraulic 80 tons or less	\$13.86	Piledriver Operator	\$14.95
Crane Operator, Lattice boom 80 tons or less	\$14.97	Pipelayer	\$12.12
Crane Operator, Lattice boom over 80 tons	\$15.80	Roller Operator, Asphalt	\$11.95
Crawler Tractor Operator	\$13.68	Roller Operator, Other	\$11.57
Electrician * 3 Journeyman to 2 Apprentices Allowed	\$27.11	Scraper Operator	\$13.47
Excavator, 50,000 pounds or less	\$12.71	Servicer	\$13.97
Excavator, over 50,000 pounds	\$14.53	Spreader Box Operator	\$13.58
Flagger	\$10.33	Steel Worker, Reinforcing Steel	\$15.15
Form Builder / Form Setter- Paving and Curb	\$12.34	Steel Worker, Structural Steel	\$14.39
Form Builder / Form Setter- Structures	\$12.23	Steel Worker, Structural Steel Welder	\$12.85
Foundation Drill Operator, Crawler Mounted	\$17.43	Truck Driver, Lowboy-float	\$16.03
Foundation Drill Operator, Truck Mounted	\$15.89	Truck Driver, Single-Axle	\$11.46
Front End Loader Operator, 3 CY or less	\$13.32	Truck Driver, Single-or Tandem Axle Dump	\$11.48
Front End Loader Operator, over 3 CY	\$13.17	Truck Driver, Tandem Axle Tractor w/ Semi-Trailer	\$12.27
Laborer, Common	\$11.02	Work Zone Barricade Servicer	\$11.67
Laborer, Utility	\$11.73		
Welders - Receive rate prescribed for craft performing operation to which welding is incidental			
* Apprentices- must be in an approved USDOL Program and cannot exceed ratios			

Engineering Prevailing Wages Classification Definitions

Asphalt Distributor Operator

Drives distributor truck, sets spray bars and operates valves and levers to control distribution of bituminous material for highway surfacing. May oil, grease or otherwise service and adjust equipment as needed. Performs other related duties.

Asphalt Paving Machine Operator

Operates paving machine that spreads and levels asphaltic concrete on highway subgrade. Controls movement of machine, raises and lowers screed, regulates width of screed. May, oil, grease, service and adjust equipment as needed. Performs other related duties.

Asphalt Raker

Distributes asphaltic materials evenly over road surface by raking and brushing material to correct thickness; directs Laborers when to add or take away material to fill low spots or to reduce high spots. Performs other related duties.

Asphalt Shoveler

A general term used on construction work covering many unskilled classifications requiring work of a physical nature. A laborer works with all crews doing everything from pick and shovel work to cleaning up lumber with hammer, shoveling and placing concrete, uses air tools, cleans concrete joints and fills joints with sealing compound from bucket or with hose and nozzle from a central source, applies coating of oil to inside face of forms, may help set and strip forms, unloads and transports reinforcing steel, cures newly poured concrete, helps lower pipe into ditch for pipelayers, builds fences, works with dirt crew keeping construction layout stakes out of the way of dirt moving equipment.

Broom or Sweeper Operator

Operates a self-propelled machine to sweep and clean roadway surfaces. They may also oil, grease, service and adjust equipment as needed. Performs other related duties.

Bulldozer Operator

Operates a crawler tractor with a bulldozer mounted in front of chassis to level, distribute and push earth or other material. May operate a ripper attachment to break up rock or other hard material. May use a push block on front of tractor to push load scrapers. May oil, grease, or otherwise service and make minor repairs to equipment as needed. Performs other related duties.

Carpenter, Rough

Works from plans to build, assemble, fit together, align, plum, and set in place forms for molding concrete structures. Forms may be wood, steel, aluminum, fiberglass or any other type of material. Checks form while concrete is placed. May install miscellaneous materials integral to concrete structures. May set precast concrete elements. Prepares for slip forming traffic rail and median barrier. May install permanent metal deck forms. May work with power tools Performs other related duties.

Concrete Finisher, Paving

Finishes the exposed surfaces of fresh concrete paving, median barrier and every element of concrete structures to the final grade and contour structures to the final grade and contour with the use of straight edges and steel trowels. Operates bridge deck finishing machine. Finishes concrete curbs and gutters. Finishes exposed surface of concrete after forms have been removed by patching imperfections with fresh concrete, rubbing surface with abrasive stone, and directing others in removing excess or defective concrete with power tools. Performs other related duties.

Concrete Finisher, Structures

A worker semi-skilled in concrete finishing who assists Concrete finisher by performing specific or general duties of lesser skill and keeping Concrete Finisher supplied with materials, tools, and supplies; cleaning working area an equipment; and holding materials and tools. Performs other related duties.

Concrete Paving Curbing Machine Operator

Operates self - propelled machine(s) which may or may not travel on concrete paving forms, spreading and leveling fresh concrete to grade by use of augers and screeds. May oil, grease or otherwise service and make adjustments to equipment as necessary. Performs other related duties.

Concrete Paving Finishing Machine Operator

Operates self - propelled machine(s) which may or may not travel on concrete paving forms, spreading and leveling fresh concrete to grade by use of augers and screeds. May oil, grease or otherwise service and make adjustments to equipment as necessary. Performs other related duties.

Concrete Paving Joint Sealer Operator

Cleans and seals joints requiring a hot or cold sealing compound in concrete paving, sidewalks, driveway and approach slabs. May oil, grease or make necessary repairs adjustments to equipment as needed. Performs other related duties.

Concrete Paving Saw Operator

Operates a water-cooled power saw with either or an abrasive blade to saw expansion and contraction joints in concrete paving. May also be used to saw asphaltic pavements. May oil grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Concrete Paving Spreader Operator

Operates self - propelled machine(s) which may or may not travel on concrete paving forms, spreading and leveling fresh concrete to grade by use of augers and screeds. May oil, grease or otherwise service and make adjustments to equipment as necessary. Performs other related duties.

Concrete Rubber

Finishes the exposed surface of concrete masonry after the forms have been removed by patching holes and broken corners with fresh concrete, rubbing surface with abrasive stone to remove rough spots, and removing high spots and defective concrete with hand chisel and hammer or pneumatic chisel and powered abrasive stone. Performs other related duties.

Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel Operator

A worker who operates a lattice boom type crane can hoist and move materials, raise and lower heavy weights and perform other related operations. May be crawler type or rubber tired. May include placement of rock riprap, clamshell, dragline, pipe and pile driving operations. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Crusher and Screed Plant Operator

Operates a crusher or screening plant through which rock is run to break it into crushed stone for construction or to control flow of materials not needed. May include minor repairs and may service and make necessary adjustments to equipment as needed. Performs other related duties.

Electrician * 1 Journeyman to 1 Electrician Trainee and 1 Apprentice Allowed

Plans and directs the layout of metal electrical conduit, installs wiring systems, switch-panels, buss bars, works on overhead distribution systems and underground distribution systems. Performs other related

Flagger

A worker who directs traffic in or around a construction site. May use signs or devices to direct traffic. May help assemble, position and clean devices or equipment used to direct traffic. Must be able to effectively communicate with the public. May require certain level of training by TXDOT specifications. Performs other related duties.

Form Builder/Setter, Structures

Fits together, aligns and sets to grade metal and wooden forms for placement of concrete. Forms may be wood, steel, aluminum, fiberglass or any other type of material. Checks forms while concrete is placed. May install miscellaneous materials integral to concrete structures. May set precast concrete elements. Prepares for slip forming traffic rail and median barrier. May install permanent metal deck forms. May work with power tools. Performs other related duties.

Form Liner, Paving & Curb

Fits together, panels align and sets to grade metal and wooden forms for placement of concrete. Works with survey crew to set stringline for panels or moles. Performs other related duties.

Form Setter, Paving & Curb

Fits together, align and set to grade metal and wooden forms for placement of concrete paving and curbs. Works with survey crew to set stringline for paving, curb and gutter curb. Performs other related duties.

Foundation Drill Operator, Crawler Mounted

Operates a hole-drilling machine that is crawler mounted. May include geotechnical operations such as soils nails, rock nails, tiebacks, anchors and jet grouting. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Foundation Drill Operator, Truck Mounted

Operates a hole drilling machine that is mounted on the rear of a rubber-tired vehicle or truck. May include soils nails, rock nails, tiebacks, anchors and jet grouting. Drive truck from location to location or may have laborer who drives truck. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Front End Loader Operator

Operates a rubber tired, skid steer or crawler type tractor with an attached scoop type bucket on front end. Machine is used to load materials from stockpiles, excavation, charging batch plants, loading and unloading trucks. May be used with attachments in lieu of the bucket. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Laborer, Common

A general term used on construction work covering many unskilled classifications requiring work of a physical nature. A laborer works with all crews doing everything from pick and shovel work to cleaning up lumber with hammer, shoveling and placing concrete, uses air tools, cleans concrete joints and fills joints with sealing compound from bucket or with hose and nozzle from a central source, applies coating of oil to inside face of forms, may help set and strip forms, unloads and transports reinforcing steel, cures newly poured concrete, helps lower pipe into ditch for pipelayers, builds fences, works with dirt crew keeping construction layout stakes out of the way of dirt moving equipment.

Laborer, Utility

Performs a variety of manual duties, usually working in a utility capacity by working on multiple projects

CITY OF HOUSTON
STANDARD DOCUMENT

WAGE SCALE AND PAYROLL REQUIREMENTS
FOR ENGINEERING CONSTRUCTION

and tasks where demands require workmen with varied experience and ability to work without close direction. Unloads and transports reinforcing steel. May occasionally place and tie reinforcing steel. Directs common laborers in pouring concrete. Erects shoring and bracing. Assists in installation of pipe. Installs, operate and maintains dewatering systems. May assist equipment operators in positioning machines, verifying grades and signaling operators. Directs truck drivers and scraper operators to dumping positions to maintain grades as directed. Uses power tools and air tools. May work as lead man in a labor crew. His performance of a wide variety of construction jobs distinguishes him from a helper assigned to a specific craft. Installs and maintains erosion control. Is more or less a general utility construction worker. May be second step in learning a skill and may later become a helper in a specific classification. Performs other related duties.

Manhole Builder

Constructs a means of permanent access to water and sewer lines for maintenance purposes. This work consists of laying brick or concrete slab at bottom of ditch up to an approximate grade line near the surface of the ground. Brick or block is normally laid to form a nearly circular manhole. Brick or block is laid in by eyesight and is normally to a plumb line. Chipped or culled brick can be used quite often is. No effort may be made to keep mortar off the face of the brick and joints are not pointed. May apply coating of concrete to interior and exterior surface. Performs other related duties.

Mechanic

Assembles, set up, adjusts and maintains and repairs all types of construction equipment and trucks. He may perform the duties of a welder in repair of equipment. Performs other related duties.

Milling Machine Operator, Fine Grade

Operates a power-driven milling machine that planes material of the to roadbed and discharges the material into a hauling unit or a windrow. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Mixer Operator

Performs a variety of manual duties, usually working in a utility capacity by working on multiple projects and tasks where demands require workmen with varied experience and ability to work without close direction. Unloads and transports reinforcing steel. May occasionally place and tie reinforcing steel. Directs common laborers in pouring concrete. Erects shoring and bracing. Assists in installation of pipe. Installs, operate and maintains dewatering systems. May assist equipment operators in positioning machines, verifying grades and signaling operators. Directs truck drivers and scraper operators to dumping positions to maintain grades as directed. Uses power tools and air tools. May work as lead man in a labor crew. His performance of a wide variety of construction jobs distinguishes him from a helper assigned to a specific craft. Installs and maintains erosion control. Is more or less a general utility construction worker. May be second step in learning a skill and may later become a helper in a specific classification. Performs other related duties.

Motor Grader Operator, Rough

Operates a motor grader. Equipment is used to grade excavation and embankment and to lay asphalt, base and other materials. May blade haul roads and do other general motor grader work but does not perform finish grade work to close specification tolerances. This operator may be a learner in the first phase of learning the skills of motor grader work. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Motor Grader Operator

Operates a motor grader. Equipment is used to grade excavation and embankment and to lay asphalt, base and other materials. May blade haul roads and do other general motor grader work but does not perform finish grade work to close specification tolerances. This operator may be a learner in the first

CITY OF HOUSTON
STANDARD DOCUMENT

WAGE SCALE AND PAYROLL REQUIREMENTS
FOR ENGINEERING CONSTRUCTION

phase of learning the skills of motor grader work. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Oiler

A learner or semi-skilled worker who under the direction of the watch engineer. May oil and grease or otherwise service all engines and necessary equipment as needed. He may clean, and paint engine room as needed. Performs other related duties.

Painter, Structures

Paints and stains structural steel and concrete surfaces of bridges, retaining walls, or other structures. Directs cleaning and abrasive blasting of surfaces prior to painting or staining. Performs other related duties.

Pavement Marking Machine Operator

Operates machine used in laying paint stripes or markers on all types of paving. Loads machine with appropriate materials and may walk or ride on machine. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Piledriverman

Sets in place, aligns, plumbs direct driving of timber, concrete, steel, pipe and any other type of piling. Sets, drives and pulls steel, concrete and other types of sheet piling. Rigs pile and leads and bracing. Signals operator. Splices piles before and after driving. Directs pile cutoff. May direct jetting or drilling equipment in connection with installing piles to grade. Performs other related duties.

Pipelay

Installs concrete, clay, steel, ductile iron, plastic, corrugated pipe and any other type of pipe for storm drainage, water lines, gas lines and sanitary sewer lines. Lays underground communication and electrical ducts. May install and set electrical ground boxes, hand holes, manholes, inlets and other structures. Caulks joints, makes threaded and flanged connections. Installs valves and other accessories. Performs other related duties.

Reinforcing Steel Setter, Paving

Works from plans to lay out and install reinforcing steel within forms or in mats of concrete paving. May direct unloading of material. Determines rigging required to complete work. Gives direction to reinforcing steel worker or common or utility laborers. May install miscellaneous materials integral to concrete structure or paving. May work with power tools. Performs other related duties.

Reinforcing Steel Setter, Structure

Works from plans to lay out and install reinforcing steel within forms or in mats of concrete paving. May direct unloading of material. Determines rigging required to complete work. Gives direction to reinforcing steel worker or common or utility laborers. May install miscellaneous materials integral to concrete structure or paving. May work with power tools. Performs other related duties.

Roller Operator, Pneumatic, Self-Propelled

Operates a self-propelled machine with either steel wheels pneumatic tires, which is used to compact and smooth all bituminous materials. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Roller Operator, Steel Wheel, Flat Wheel/Tamping

Operates a self-propelled machine with either steel wheels or pneumatic tires which is used to compact earth fills, subgrade, flexible base and all other types of materials except bituminous. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related

Roller Operator, Steel Wheel, Plant Mix Pavement

Operates a self-propelled machine with either steel wheels pneumatic tires, which is used to compact and smooth all bituminous materials. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Scraper Operator

Operates a self-contained wheeled tractor scraper both self loading or assisted by crawler tractors or other scrapers. Used to excavate and transport earth or other materials. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Servicer

Drives a truck, which carries various fuels, oils, greases and filters. Must have knowledge of and is responsible for the correct oiling and greasing and changing of filters on equipment according to the manufacturers' specifications. Uses compressed air grease guns, wrenches and other tools. May make adjustments to clutches, brakes and other mechanical items. Keeps record of service preventive maintenance records. May have laborer assisting him. May require CDL if driving truck on public highways. Performs other related duties.

Sign Installer (PGM)

Sets forms, reinforcing steel, anchor bolts and pours concrete for Sign foundations. Fabricates and erects pipe and angle Frameworks by bolting, welding or other means prior to installation of signs that are normally prefabricated. Works from plans in location and drilling holes for proper location and alignment of signs. May direct hoisting of signs into place. Fastens signs to framework by bolting and other means. Locates and sets lighting brackets. May perform other work associated with signing projects. Supervises sign erector helper. Performs other related duties.

Slip Form Machine Operator

Cleans and seals joints requiring a hot or cold sealing compound in concrete paving, sidewalks, driveway and approach slabs. May oil, grease or make necessary repairs adjustments to equipment as needed. Performs other related duties.

Spreader Box operator

Operates spreader box by adjusting hopper and strike off blade so that the gravel, stone or other material may be spread to a specific depth on road surface during seal coat and surface treatment operations. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Structural Steel Worker

Works from plans to lay out and install reinforcing steel within forms or in mats of concrete paving. May direct unloading of material. Determines rigging required to complete work. Gives direction to reinforcing steel worker or common or utility laborers. May install miscellaneous materials integral to concrete structure or paving. May work with power tools. Performs other related duties.

Tractor operator, Crawler Type

Operates a crawler tractor with a bulldozer mounted in front of chassis to level, distribute and push earth or other material. May operate a ripper attachment to break up rock or other hard material. May use a push block on front of tractor to push load scrapers. May oil, grease, or otherwise service and make minor repairs to equipment as needed. Performs other related duties.

Tractor Operator, Pneumatic

CITY OF HOUSTON
STANDARD DOCUMENT

WAGE SCALE AND PAYROLL REQUIREMENTS
FOR ENGINEERING CONSTRUCTION

Operates a gasoline or diesel powered agricultural tractor that tows compaction rollers, plow, disc, water tanks, scrapers and other similar operations. May use other miscellaneous attachments. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Traveling Mixer Operator

Drives a gasoline or diesel truck upon which is mounted a concrete mixer. Operates concrete mixer and dumps concrete on the grade, into forms or into concrete pumps or buckets. Cleans mixer drum. May require CDL license for on highway use. May service and make necessary adjustments for proper operation of equipment. Performs other related duties.

Truck driver, lowboy-Float

Drives a heavy-duty diesel-powered truck to which is attached a trailer upon which heavy equipment is hauled. Driver is often required to operate heavy equipment to load or unload the lowboy. May require CDL license for on highway use. May service and make necessary adjustments for proper operation of equipment. Performs other related duties.

Truck driver, Single Axle, Heavy

Drive a light capacity truck for transporting loads of construction material. The truck is of single rear axle type, may have various kinds of beds attached, such as dump, flat bed, tank, etc. May require CDL license for driving on highway. May service and make necessary adjustments for proper operation of equipment. Performs other related duties.

Truck driver, Single Axle-Light

Drive a light capacity truck for transporting loads of construction material. The truck is of single rear axle type, may have various kinds of beds attached, such as dump, flat bed, tank, etc. May require CDL license for driving on highway. May service and make necessary adjustments for proper operation of equipment. Performs other related duties.

Truck Driver, Tandem Axle, Semi-Trailer

Drives a diesel-powered tractor pulling a semi trailer hauling materials. Hauls dirt, rock, aggregates or other material. May require CDL license for driving on highway. May service and make necessary adjustments for proper operation of equipment. Performs other related duties.

Work Zone Barricade Servicer

Fabricates, erects and maintains temporary traffic control devices, including arrow boards, signs, barricades, channelizing devices, barrels and all message boards. May operate a truck during traffic control operations.

Welders - Receives rate for craft being performed to which welding is incidental.

EXHIBIT "B"

CERTIFICATE FROM CONTRACTOR APPOINTING OFFICER OR EMPLOYEE TO
SUPERVISE PAYMENT OF EMPLOYEES

Project Name _____

Project WBS#: _____ Date _____

Email Address: _____

(I) (We) hereby certify that (I am) (we are) the **Prime Contractor** for _____

(specify type of job)

in connection with construction of the above-mentioned Project, and that (I) (we) have appointed _____, whose signature appears below, to supervise the payment of (my) (our) employees beginning _____, 20____; that he/she is in a position to have full knowledge of the facts set forth in the payroll documents and in the statement of compliance required by the Copeland Act and the City of Houston, which he/she is to execute with (my) (our) full authority and approval until such time as (I) (we) submit to the City of Houston a new certificate appointing some other person for the purposes hereinabove stated.

(Identifying Signature of Appointee) Phone: _____

Attest: _____
(Name of Firm or Corporation)

By: _____ By: _____
(Signature) (Signature)

(Title) (Title)

NOTE: This certificate must be executed by an authorized officer of a corporation or by a member of a partnership, and shall be executed prior to and be submitted with the first payroll. Should the appointee be changed, a new certificate must accompany the first payroll for which the new appointee executes a statement of compliance required by the Copeland Act and the City of Houston.

CITY OF HOUSTON
STANDARD DOCUMENT

WAGE SCALE AND PAYROLL REQUIREMENTS
FOR ENGINEERING CONSTRUCTION

EXHIBIT "C"

CERTIFICATE FROM SUBCONTRACTOR APPOINTING OFFICER OR EMPLOYEE TO SUPERVISE
PAYMENT OF EMPLOYEES

Project Name _____

Project WBS#: _____ Date _____

Email Address: _____

(I) (We) hereby certify that (I am) (we are) the **Sub Contractor** for _____

(specify type of job)

in connection with construction of the above-mentioned Project, and that (I) (we) have appointed _____, whose signature appears below, to supervise the payment of (my) (our) employees beginning _____, 20____; that he/she is in a position to have full knowledge of the facts set forth in the payroll documents and in the statement of compliance required by the Copeland Act and the City of Houston, which he/she is to execute with (my) (our) full authority and approval until such time as (I) (we) submit to the City of Houston a new certificate appointing some other person for the purposes hereinabove stated.

(Identifying Signature of Appointee) Phone: _____

Attest: _____
(Name of Firm or Corporation)

By: _____ By: _____
(Signature) (Signature)

(Title) (Title)

NOTE: This certificate must be executed by an authorized officer of a corporation or by a member of a partnership, and shall be executed prior to and be submitted with the first payroll. Should the appointee be changed, a new certificate must accompany the first payroll for which the new appointee executes a statement of compliance required by the Copeland Act and the City of Houston.

END OF DOCUMENT

EXHIBIT “I”
PROJECT SCHEDULE

EXHIBIT J
FEDERAL CONTRACT PROVISIONS
AIP FUNDED PROFESSIONAL SERVICES AGREEMENT

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

I. ACCESS TO RECORDS AND REPORTS

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

II. GENERAL CIVIL RIGHTS PROVISIONS

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

III. TITLE VI CLAUSES COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

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

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

- b. Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
- 4. Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5. Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
- a. Withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- 6. Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions

including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

IV. TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

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

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
 - a. 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);
 - b. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - c. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
 - d. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
 - e. 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);
 - f. 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);
 - g. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§

12131 — 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

- h. The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- i. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- j. 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);
- k. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

**V. NOTICE OF REQUIREMENT FOR AFFIRMATIVE
ACTION to ENSURE EQUAL
EMPLOYMENT OPPORTUNITY**

The Design Build Contractor's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

1. During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to abide by and comply with the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein the goals and timetables for minority and female participation set out below.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Design Build Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables Goals for minority participation for each trade: 27%

These goals are applicable to all of the contractor's construction work (whether or not it is Federal or federally-assisted) performed in the covered area. If the Design Build Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

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

3. The Design Build Contractor's shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is the State of Texas, Harris County and City of Houston.

VI. e CONSERVATION REQUIREMENTS

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

VII. FEDERAL FAIR LABOR STANDARDS ACT

Fair Labor Standards Act. The U.S. Department of Labor (DOL) Wage and Hour Division administers the Fair Labor Standards Act (FLSA). This act prescribes federal standards for basic minimum wage, overtime pay, record keeping, and child labor standards.

1. Contract Types — Per the Department of Labor, all employees of certain enterprises having workers engaged in interstate commerce; producing goods for interstate commerce; or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by the FLSA.

2. All consultants, sub-consultants, contractors, and subcontractors employed under this federally assisted project must comply with the FLSA.

3. Professional Services — 29 CFR § 213 exempts employees in a bona fide executive, administrative or professional capacity. Because professional firms employ individuals that are not covered by this exemption, the sponsor's agreement with a professional services firm must include the FLSA provision.

VIII. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

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

IX. TRADE RESTRICTION CERTIFICATION

Consultant by entering into the Agreement certifies that:

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

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

Consultant must provide immediate written notice to the City if the Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. Consultant must require subcontractors provide immediate written notice to Consultant if at any time it learns that its certification was erroneous by reason of changed circumstances. Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to Consultant or subcontractor:

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

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

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

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

X. VETERAN'S PREFERENCE

1. In the employment of labor (excluding executive, administrative, and supervisory positions), Consultant and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans,

Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

XI. SEISMIC SAFETY

1. Consultant agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the City a "certification of compliance" that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

2. The Contractor agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.

XII. TEXTING WHEN DRIVING

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

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

XIII. EQUAL OPPORTUNITY CLAUSE

Any reference to "contractor" in this contract clause shall refer to and mean the Design Build Contractor.

During the performance of this contract, the contractor agrees as follows:

- a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identify or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive

Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- g. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

XIV. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

Any reference to "contractor" in this contract clause shall refer to and mean the Design Build Contractor.

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
2. "Minority" includes:
 - a. Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);
 - b. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
 - c. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

- d. American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- 3. Whenever Consultant, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- 4. If Consultant is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- 5. The contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
- 6. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the contractor has a collective bargaining agreement to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.

7. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the contractor during the training period and the contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.
8. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the contractor may have taken.
 - d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or female sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.
 - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs

relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and

encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the contractor's EEO policies and affirmative action obligations.

9. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

10. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally,) the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

11. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

12. The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

13. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

14. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

15. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

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

XV. PROHIBITION of SEGREGATED FACILITIES

1. Consultant agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. Consultant agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

2. "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
3. Consultant shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

XVI. TERMINATION FOR CONVENIENCE

1. The City may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the City, the Contractor must immediately discontinue all services affected. Upon termination of the Agreement, the Consultant must deliver to the City all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete. City agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.
2. City further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

XVII. TERMINATION FOR DEFAULT

1. Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach. The terminating party must provide the breaching party **7** days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.
 - a) **Termination by City:** The City may terminate this Agreement in whole or in part, for the failure of the Consultant to:
 - a. Perform the services within the time specified in this contract or by City approved extension;

- b. Make adequate progress so as to endanger satisfactory performance of the Project;
- c. Fulfill the obligations of the Agreement that are essential to the completion of the Project. Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the City all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

City agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

City further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the City determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the City issued the termination for the convenience of the City.

b) **Termination by Consultant:** The Consultant may terminate this Agreement in whole or in part, if the City:

- 1. Defaults on its obligations under this Agreement;
- 2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
- 3. Suspends the Project for more than [180] days due to reasons beyond the control of the Consultant. Upon receipt of a notice of termination from the Consultant, City agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If City and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the City's breach of the contract.

In the event of termination due to City breach, the Engineer is entitled to invoice City and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. City agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

XVIII. CERTIFICATION OF CONSULTANT REGARDING DEBARMENT

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

XIX. CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

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

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

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

XX. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

Any reference to "contractor" in this contract clause shall refer to and mean the Design Build Contractor.

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) of this clause, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the

United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or the City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this clause.

4. Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

XXI. CERTIFICATION REGARDING LOBBYING

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

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

connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

XXII. BREACH OF CONTRACT TERMS

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

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

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

XXIII. CLEAN AIR AND WATER POLLUTION

CONTROL

Consultant agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Consultant agrees to report any violation to the City immediately upon discovery. The City assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration. Consultant must include this requirement in all subcontracts that exceeds \$150,000.

XXIV. PROCUREMENT OF RECOVERED MATERIALS

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use of products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- a. The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or,
- b. The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at
www.epa.gov/epawaste/consERVE/tools/cpg/products/.

XXV. DISADVANTAGED BUSINESS ENTERPRISE

1. **Contract Assurance §26.13 (b)** The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City, deems appropriate, which may include, but is not limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages; and/or
- d. Disqualifying the contractor from future bidding as non-responsible.

2. **Prompt Payment (§26.29)**

Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 10 days after the Contractor has received a partial payment. The City must ensure prompt and full payment of retainage from Contractor to the subcontractor within 10 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the City. When the City has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed. Any delay or postponement of payment from the above reference time frame may occur only for good cause and following written approval of the City.

XXI

COPELAND "ANTI-KICKBACK" ACT

1. Contractor must comply with the requirements of the Copeland "Anti-Kickback" Act (18 USC 874 and 40 USC 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the City, a weekly statement on the wages paid to each employee performing on covered work during the prior week. The City must report any violations of the Act to the Federal Aviation Administration.

XXII

DAVIS-BACON REQUIREMENTS

1. Minimum Wages.
 - a. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.
 - b. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under

plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

- c. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - i. The work to be performed by the classification requested is not performed by a classification in the wage determination;
 - ii. The classification is utilized in the area by the construction industry; and
 - iii. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- d. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- e. In the event the Contractor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification

and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- f. The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- g. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

h. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: Provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding.

- a. The Federal Aviation Administration or the sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the Contractor, Sponsor, Applicant, or the City, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and Basic Records.

- a. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and that show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- b. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, Sponsor, or the City, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at www.dol.gov/whd/forms/wh3471nstr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Federal Aviation

Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, sponsor, or the City, as the case may be, for transmission to the Federal Aviation Administration, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or the City).

- c. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - d. The payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;
 - e. Each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;
 - f. Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
 - g. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.
- h. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
- i. The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the sponsor, the Federal Aviation Administration, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or

subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, Sponsor, applicant, or the City, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

- a. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- b. Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work

performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- c. Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- d. Compliance with Copeland Act Requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.
- e. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.
- f. Contract Termination: Debarment. A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment 13.10.8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related

Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

- g. Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

5. Certification of Eligibility.

- a. By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001, as a contractor and a subcontractor as provided in 29 CFR 5.12.

XXIII

**CERTIFICATION OF DESIGN BUILD CONTRACTOR REGARDING TAX
DELINQUENCY AND FELONY CONVICTIONS.**

The Design Build Contractor agrees that it will incorporate this provision for certification in all lower tier subcontracts.

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

The applicant represents that it is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

XXIV

TERMINATION FOR CONVENIENCE (CONSTRUCTION & EQUIPMENT CONTRACTS).

13.24.1 The City may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of the City. Upon receipt of a written notice of termination, except as explicitly directed by the City, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

13.24.1.1 Contractor must immediately discontinue work as specified in the written notice.

13.24.1.2 Terminate all subcontracts to the extent they relate to the work terminated under the notice.

13.24.1.3 Discontinue orders for materials and services except as directed by the written notice.

13.24.1.4 Deliver to the City all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work, and as directed in the written notice.

13.24.1.5 Complete performance of the work not terminated by the notice.

13.24.1.6 Take action as directed by the City to protect and preserve property and work related to this contract that City will take possession.

13.24.2 City agrees to pay Contractor for:

13.24.2.1 completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;

13.24.2.2 documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;

13.24.2.3 reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and

13.24.2.4 reasonable and substantiated expenses to the Contractor directly attributable to City's termination action.

13.24.3 City will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the City's termination action.

13.24.4 The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract.

**CERTIFICATION OF DESIGN BUILD CONTRACTOR REGARDING
DEBARMENT**

By submitting a bid/proposal under this solicitation, the Design Build Contractor certified that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

Exhibit K
Intellectual Property Confidentially Agreement

SUBCONTRACTOR’S ASSIGNMENT OF COPYRIGHT

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

1. Design Consultant has entered into a Contract with the **CITY OF HOUSTON, TEXAS** (“City”) to provide _____

_____ as well as related support and consulting services (“Services”).

2. Subcontractor is or will be providing services for Design Consultant related to its Contract with the City.

3. In the course of Subcontractor’s work for Design Consultant related to the provision of Services to the City, Contract Documents and other work products will be produced by Subcontractor for the benefit of the City for which Subcontractor will be compensated by Design Consultant.

4. Contract Documents include but are not limited to reports, charts, analyses, maps, letters, tabulations, computer programs, exhibits, notes, models, photographs, the original transparencies of all drawings, all graphic and written information prepared or assembled by Subcontractor and all other work products obtained or prepared by Subcontractor as part of its services for Design Consultant.

5. For and in consideration of the foregoing, the Subcontractor shall grant and assign and hereby does grant and assign to the City all right, title, interest and full ownership worldwide in and to any work, invention and all Contract Documents, or any modifications or improvements to them, and the copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights therein, that are discovered, conceived, developed, written or produced by the Subcontractor, its agents and employees pursuant to its contract with Design Consultant (collectively "Works"), to have and to hold the same unto the City absolutely.

6. The Subcontractor agrees that neither it nor any of its agents and employees shall have any right to assert or establish a claim or exercise any of the rights embodied in any copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights related to the Works.

If requested by the Design Consultant, the Subcontractor shall place a conspicuous notation upon any such Works which indicates that the copyright, patent, trademark or trade secret thereto is owned by the City of Houston.

7. The Subcontractor shall execute all documents required by the Design Consultant and the Director of the Houston Airport System (“Director”) to further evidence such assignment and ownership. The Subcontractor shall cooperate with the Design Consultant and the City in registering, creating or enforcing any copyrights, patents, trademarks, trade secrets or other possessory or proprietary rights arising hereunder. If any assistance by the Subcontractor is requested and rendered pursuant to this Section, the City shall reimburse the Subcontractor for all out-of-pocket expenses incurred by the Subcontractor in rendering such assistance, subject to the availability of funds. On termination of the Subcontractor’s contract with Design Consultant or upon request by the Director, the Subcontractor shall deliver all Works to the City. The Subcontractor agrees that its agents and employees performing work hereunder are bound by the terms of this Exhibit.

IN WITNESS HEREOF, Subcontractor has executed this Assignment as of this _____ day of _____, 20_____.

Subcontractor

By:
Title:

“Exhibit L” Drug Quality Compliance Agreement

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

 (Name of Company) (Consultant)

have personal knowledge and full authority to make the following declarations:

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

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

“Exhibit M” Design Consultant’s Certification of NO Safety Impact Positions in Performance
of a City Contract

I, _____,
(Name) (Title)

as an owner or officer of _____
(Design Consultant) (Name of Company)

have authority to bind the Design Consultant with respect to its bid, and hereby certify that Architect/Engineer 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 Consultant agrees and covenants that it shall immediately notify the City of Houston Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

“Exhibit N” Drug Policy Compliance Declaration

DRUG POLICY COMPLIANCE DECLARATION

I, _____ as an owner or

(Name) (Print/Type) (Title)
officer of _____ (Consultant) (Name of Company), have personal knowledge and full authority to make the following declarations:

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

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

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

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

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

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

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

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

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