



CITY OF HOUSTON

Sylvester Turner

Mayor



HOUSTON AIRPORT SYSTEM

George Bush Intercontinental ~ William P. Hobby ~ Ellington Airport

Mario C. Diaz
Director of Aviation

March 22, 2022

SUBJECT: Letter of Clarification No. 3

REFERENCE: Request for Qualification (RFQ) for HJA-TWYFED-2022-011 for the Design-Build-Taxiway L and Runway 4-22 Shoulders Construction at Ellington Airport (EFD)

To: All Prospective Respondents

This Clarification is issued to respond to the following questions:

1. **Question:** What is the estimated construction Cost?

Response: Total budget for this project is \$117.7M.

2. **Question:** Are union bids required?

Response: No, please refer to the RFQ for requirements.

3. **Question:** Are all firms that participated in documents included in Attachment B- Basis of Design Taxiway L conflicted from participation or a proposer's Design. Build Team? If the answer is to this is "not all", then:

- a. Are firms included in creating Attachment B - Basis of Design Taxiway L, Section I Basis of Design Narrative conflicted from participation on a proposer's Design/Build team?
- b. Are firms included in creating Attachment B - Basis of Design Taxiway L, Section II Asphalt Shoulder Pavement Design Report conflicted from participation on a proposer's Design/Build team?
- c. Are firms included in creating Attachment B - Basis of Design Taxiway L, Section III Taxiway L Pavement Design Memorandum conflicted from participation on a proposer's Design/Build team?
- d. Are firms included in creating Attachment B - Basis of Design Taxiway L, Section IV 30% Drawings (prepared by HNTB) conflicted from participation on proposer's Design/Build team?
- e. Are firms included in creating Attachment B - Basis of Design Taxiway L, Section V List of Construction Specifications conflicted from participation on proposer's Design/Build team?

Response: RFQ, Section 15.0 Attachment D shows the three prohibited firms; HNTB, Gunda Corporation and Atkins.

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4. **Question:** In reviewing the Sample Contract, we noticed that Exhibit "C" - Document 700 - General Conditions (Design Build) was not included. Question: Are you going to issue this for review as part of the RFQ?

Response: Please see attached Doc 00700 – General Conditions.

5. **Question:** Minimum Required Experience - Pass/Fail.

a. At least one (1) similar taxiway project at an operating airport under any delivery method in excess of \$50M in contract value. Question: We have a \$70M PCCP Apron CMAR at an operating airport, will this be accepted for this qualification?

b. At least one (1) similar project under a Design Build delivery method are in progress or completed in the last 10 years. Question: Will our recently completed Phase 1 Infrastructure for the Houston Spaceport Design Build project be accepted for this qualification?

Response: The answer to both questions is Yes.

6. **Question:** Conflict of language or lack of clarity concerning GMP.

Exhibit O (RFP Cost Proposal Form) depicts that lump sum pricing is to be provided for Phases 1-4 (one for each Component) and a total that reads, "MAXIMUM CONTRACT PRICE".

Exhibit P has the statement "The undersigned agrees that this COST PROPOSAL constitutes a valid offer to perform and complete the Contract described above, which cannot be withdrawn for one hundred eighty (180) consecutive calendar days from the due date of this COST PROPOSAL."

The above statements depict that the pricing provided in Exhibit O are binding amounts for all phases and are to be submitted on 3/31/2022.

This is in conflict with the language used later in the RFQ and in the sample agreement. In the RFQ (5.2.1.1) the text for Phase 1 – CGMP for Pre-Engineering/Design/Preconstruction/Enabling Work states that [pricing is] "in accordance with accepted COST PROPOSAL for Phase 1 Services." Whereas all subsequent statements for Phases 2-4 do not reference "In accordance with the accepted COST PROPOSAL."

In Attachment C – Sample Agreement (5.3) the CGMP Submittal process is outlined and states that "... without any increase in the Preconstruction Phase Services Fee, [DESIGN BUILDER] shall promptly take all necessary rectification action, making multiple re-submittals, if required." Article 5 further defines the CGMP submittal process (5.3), Negotiation (5.4) and Pricing (5.6) which combined depict that estimates with agreed markups will be

presented to HAS for approval during the preconstruction phase. The language used in the agreement is consistent with an industry standard CGMP process that would include a lump sum for Phase 1 (Pre-engineering/Design/Preconstruction/Enabling work) and non-binding indicative pricing for the Phases 2-4 at the proposal phase submitted on Exhibit O. If the price submitted (Exhibit O) is binding for all phases, then the language in Attachment C – Sample Agreement Article 5 regarding CGMP submittals and approvals is contradictory.

Question, please confirm that Phase 1 Pre-Engineering/Design/Preconstruction/Enabling Work pricing as submitted on Exhibit O on 03/31/2022 (Step Two) is lump sum and binding pricing and pricing provided for Phase 2-4 is indicative and that final CGMP pricing will be negotiated in accordance with

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Attachment C – Sample Agreement. (Reference sections: RFQ .2.1.1; RFQ Exhibits O and P, Sample agreement, article 5.)

Engineering/Design/Preconstruction/Enabling Work pricing as submitted on Exhibit O on 03/31/2022 (Step Two) is lump sum and binding pricing and pricing provided for Phase 2-4 is indicative and that final CGMP pricing will be negotiated in accordance with Attachment C – Sample Agreement.

Response: Lump Sum is synonymous with CGMP.

7. **Question:** The question was asked at the pre-submittal conference, “Will HAS supply the electronic drawing and surface files used by HAS for the preliminary design(s)?”

Response: Not at the SOQ phase, but it will be provided to short-listed firms.

8. **Question:** Will HAS make these available? If yes, please provide a date they will be available and where proposers can access them?

Response: Please refer to response provided in Question #7.

9. **Question:** It was stated at the pre-Submittal conference that all pricing will be negotiated after submittal of the RFP but prior to the issuance of NTP 1. Can the City please confirm this is still, correct?

Response: Yes.

10. **Question:** Per the RFQ Instructions, Exhibit M, Attachment A is required upon submission of Proposer's SOQ. Completing this form is difficult at this stage as it asks for dollar amounts and the amount of our total bid which are not yet completed. For the SOQ the proposer could instead provide a list of potential DBE subs, their scopes and a commitment to reach the goal. We would need a different form to do that. We request that the City remove Exhibit M, Attachment A from the SOQ requirements or modify it to remove dollars amounts, percentages, and total bids?

Response: For the sake of this submission; time does not permit to submit a newly created document. That very lengthy process involves legal final approval on a newly created bid template. As stated in the presentation at the Pre-Bid, you are only responsible at this time to list the DBE and the scope. Just put a cross line through the dollar and percentage "blocks". This will be required during Step 2.

11. **Question:** The Basis of Design provided by HAS includes a HJV Technical Report. In that report a pavement section for the 4-22 asphalt shoulders was provided based on the Aviles Geotech report. Will HAS accept design liability for that design they provided?

Response: Yes, however, any innovative/ cost saving ideas meeting FAA/State, and HAS standards are welcome.

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12. **Question:** Attachment B - Basis of Design (BOD) does not address HAS' paving standards that require temperature/crack control reinforcement in the top of the concrete pavement. Please confirm if temperature/crack control rebar be required?

Response: Attachment A, Section 5.G shows the HAS Design Criteria. All HAS standards should be followed.

13. Subsection 9.5.2 of the RFQ (Statement of Qualifications Format and Content) states the "Document text should be in ARIAL 10-point font and, must be consistent throughout the document." Please clarify if this applies to Headers/Sub-headers, Captions and Covers/Tabs?

Response: It applies to all text.

14. **Question:** Per Subsection 9.5.2 of the RFQ (Statement of Qualifications Format and Content) "Pages shall be no larger than letter-size (8½" by 11") or folded to that dimension, twice letter size (11"x17)". Can the City confirm if 11"x17" pages will be counted as 1 page or 2?

Response: They will be counted as one page.

15. **Question:** Please clarify if the "Design Build Contractor Project Manager" noted in the table in Section 4.2 of Attachment A listing Project Roles and Responsibilities is the same as the required "Project Lead" position listed in the RFQ.

Response: They are all the same.

16. **Question:** Per Subsection 9.5.2 of the RFQ (Statement of Qualifications Format and Content) "Pages shall be no larger than letter-size (8½" by 11") or folded to that dimension, twice letter size (11"x17)". Can the City confirm if there is a maximum number of 11" x 17" allowed?

Response: There is no maximum number of 11" by 17".

17. **Question:** Per Subsection 9.7.1.2.1 of the RFQ, Proposer's are to "provide a copy of the table of contents only from the prime firms QA/QC plan or policy, or similar, manual." Which is typically 5 or more pages in length. Can the City please confirm that the requested "copy of the table of contents only from the prime firms QA/QC plan or policy, or similar, manual" can be provided as an attachment or appendix and is not included in the page count?

Response: It will not be included in the page count.

18. **Question:** The Bridging Document Exhibit Proposed Work at Ellington Airport Exhibit C shows a 418-foot-long x 75-foot-wide access road. Please confirm that HAS will provide design and construction details for this feature and will assume design responsibility.

Response: This is a wooden/composite mat roadway. HAS will provide expected loading conditions from the Spaceport tenants but will not assume design responsibility.

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19. **Question:** The Bridging Document Exhibit Proposed Work at Ellington Airport Exhibit C shows a 418-foot-long x 75-foot-wide access road. Please confirm that completion of the construction of this access road providing Axiom access will fulfill the June 1, 2023, Access obligations.

Response: It will fulfill the access obligations.

20. **Question:** The Bridging Document Exhibit Proposed Work at Ellington Airport Exhibit C shows a 418 foot long x 75 foot wide access road. Please confirm that HAS will provide the Designed surfacing materials to the Design Builder to incorporate into the road.

Response: HAS will not provide the surfacing materials. HAS will approve proposed surfacing materials from the Design Builder.

21. **Question:** Regarding drainage system, we can only find the information on Basis of Design Plan, Grading and Drainage Plans (CG01 through CG08) by HNTB. We were not able to find the written description of the drainage design concepts or references in the RFQ package. May be we just missed it. Can you provide the Drainage Report for the Basis of Design?

Response: There is detention capacity on site.

22. **Question:** Our specific Question regarding the drainage concept are: a) What is the stormwater mitigation plan for the increased flow and the floodplain fill and how much storage volume is required?

Response: Please refer to response provided in Question #21.

23. **Question:** Our specific Question regarding the drainage concept are: b) Has the hydrology & hydraulic (H&H) modeling analysis been performed to check the water ponding depth in each of the in-field basins between Runway 4-22 and Taxiway L based on Atlas 14 rainfall? And No-Impact to Horsepen Bayou? If so, will the H&H model be available for the awarded team? What software was used for the H&H modeling analysis?

Response: Please refer to response provided in Question #21.

24. **Question:** Our specific Question regarding the drainage concept are: c) North portion of the Taxiway L drains directly into the existing HCFCD detention pond B504-04, has the analysis included this detention pond?

Response: Please refer to response provided in Question #21.

25. **Question:** Our specific Question regarding the drainage concept are: If a detention pond facility is proposed for the south portion of the drainage system, what is the Basis of Design concept to convey the flow from the proposed ditch (graded ditch along the east boundary of Taxiway L) into the detention pond? Or there is other arrangement not shown on the plan?

Response: Please refer to response provided in Question #21.

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26. **Question:** The NOTES #2 on the Demolition Plans (CD01 through CD09) shows: "The Design Assumes Existing Utilities under Pavement to be Removed are to Remain and be Protected in Place." Does this apply to the following existing storm sewer pipes? Are these 3 lines to be abandoned in place? Or to remain in function?

- a. 12" STM near Taxiway L Centerline Station 113+00
- b. 18" STM near 116+00
- c. 10" STM near 122+00

Response: This will be part of the Design-Build (DB) team evaluation scope.

27. **Question:** A proposed 12" RCP near Taxiway L Station 144+50 running under and across the Taxiway L. Is this size acceptable? Or need to be 24" minimum?

Response: Per FAA Advisory Circular and Standards.

28. **Question:** The plan shows an existing 48" STM near Taxiway L Station 138+50 to be replaced with a proposed 30" RCP. Is this correct?

Response: Please refer to response provided in Question #27.

29. **Question:** Section 9.6.5 states "Exhibit M - Attachment A - Schedule of DBE Participation" is required and will be evaluated as a part of the pass/fail minimum qualifications of the Statement of Qualifications. Regarding submission of Exhibit M; it is not possible at the RFQ stage to determine which DBE subcontractors and agreed prices will be utilized. The form, as it currently stands, would require a more detailed design advancement, along with a more complete cost proposal being developed. Please defer submission of this form to be included as part of the Cost Proposal (Step 2).

Response: This will be required from the short-listed firms.

30. **Question:** Can the required submission forms be provided in word format?

Response: No.

31. **Question:** Section 7.7.3 and 8.2.1 Please define "partnership." More specifically, would a dedicated sub or consultant be considered a key team member that is precluded from being on multiple teams at the RFQ step?

Response: Please use the ordinary meaning of the word "partnership" and refer to the RFQ for applicable information regarding Partnerships and Joint Ventures. A firm may not participate in more than one joint venture or participate as a prime contractor on more than one team who is submitting a Response to the RFQ.

32. **Question:** Is the respondent required to provide cost information based only on the information provided in the RFQ?

Response: Yes.

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33. **Question:** There are three (3) full strength taxiway pavement sections and two (2) different shoulder pavement sections provided by the RFQ documents. Which section should be used to develop the cost for the project?

Response: DB team to come up with recommended design section.

34. **Question:** Can HAS provide the existing and proposed 3-D models? The surface information would allow significantly more accurate estimations of excavations of excavation/fill quantities and costs.

Response: No.

35. **Question:** Can HAS provide CADD files of taxiway layout? This would allow for accurate estimations on pavement construction items.

Response: No.

36. **Question:** Please clarify construction phasing and sequencing requirements. The phasing information provided in the Gunda Assoc. report appears to be different from the phasing information provided in the HNTB 30% plans.

Response: The phasing plan provided by Gunda Corporation is the correct phasing plan.

37. **Question:** Are there any periods when RW 4/22 must be available for operations?

Response: While construction of RW 4/22 shoulders, lighting and stub taxiways within the RSA, no operations will occur.

38. **Question:** When does the RW 4/22 shoulder work need to be completed? Can the runway be closed to allow construction of the shoulders? If so, how long can the runway be closed?

Response: 180 calendar days as shown for Phase 2-CGMP work in Section 5.2.1.1 of the RFQ.

39. **Question:** Please specify the required width of the RW 4/22 shoulders. Gunda Assoc report indicates 35-ft width and HNTB plans show 30-ft width.

Response: RW 4/22 shoulders shall be 35' wide. The HNTB plans only show taxiway shoulders. RW shoulders are not shown in the HNTB plans.

40. **Question:** Has a Categorical Exclusion (CatX) been submitted for the RW 4/22 shoulders or for TW-L?

Response: Yes, City of Houston has submitted CatX, and awaiting FAA approval.

41. **Question:** Can HAS provide information on the electrical vault?

Response: Assume all new infrastructure.

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42. **Question:** What is the existing equipment layout?

Response: Equipment layout will be provided to the short-listed firms.

43. **Question:** What are demands on regulators, what is available capacity of existing regulators?

Response: Assume no available capacity.

44. **Question:** Our financial statements are considered confidential and sensitive. According to Section 13.14 of the RFQ, we should not submit confidential or sensitive information since it is subject to the Texas Open Records Act. Please clarify.

Response: Information submitted to the City in Response to the RFQ will be subject to the Texas Public Information Act. If contractors are concerned that certain information may be released to the public in Response to a public information request, contractors may discuss the matter with their legal counsel.

45. **Question:** The form letter for the Surety Letter of Intent (Exhibit I), states Guaranteed Maximum Price will be established at the completion of the Design Development documents. This implies the GMP pricing is due after completion of Phase 1 services. Please clarify.

Response: This is correct.

46. **Question:** To provide the City with the best price and technical proposal, please consider extending the Technical and Cost Proposals to April 24th.

Section 13.4.3 requires that Exhibit M, (Attachment A) are due at the time of the statement of qualifications submission. Attachment A requires the (Agree Price) be included on the form. At the time of the submission for the SOQ, the (Agree Price) will not be known because that process occurs in the RFP. Please confirm that DBE subcontractor/supplier pricing will not be required for the SOQ. Please specify how many teams will be shortlisted

Response: Please refer to LOC No. 2 dated 02/21/2022.

47. **Question:** Has HAS designated a specific area for the concrete batch plant location on the property?

Response: There is not a designated area. There will be an area on the airport property.

48. **Question:** Please confirm that Hire Houston First criteria do not apply to this project.

Response: HHF does not apply to this project as this is a federally funded project. HHF only applies to locally funded projects.

49. **Question:** Please furnish the supplemental conditions as part of the RFQ documents.

Response: Supplementary Conditions will only be provided if there is a change to the General Conditions.

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50. **Question:** Will HAS allow access to the project off of Space Center Blvd?

Response: No.

51. **Question:** Will HAS allow the excess dirt generated from the project to be stockpiled in a designated area within the Ellington Field property?

Response: It will depend on the volume.

52. **Question:** Please provide Existing and Proposed Detention Pond information (Drainage).

Response: Please refer to response provided in Question #21.

53. **Question:** Please clarify the intent of the Cost Proposal Form. The RFQ section 10.4.6 stated that the lowest "bidder" will be allocated the maximum points for the cost proposal with the other bidders allocated points proportionally based on the ratio of their bids to the low bidder. However, section 10.4.6.2 indicates that HAS will then negotiate the price for the project. Are the bid prices indicated on the Cost Proposal Form (Exhibit O) binding for the selected contractor? if so, will HAS entertain alternate concepts that could impact these cost proposals?

Response: HAS reserves the right to negotiate if it's in their best interest to do so.

54. **Question:** Why does Exhibit O specify cost proposal by phase?

Response: Each phase required a maximum price.

55. **Question:** Will the Preconstruction and Design Phase follow the milestone submittal requirements outlined in the HAS System Design Manual Section 1.13.5?

Response: Yes.

56. **Question:** Will the HAS review durations outlined in HAS System Design Manual Section 1.13.6 be followed for this project?

Response: Yes.

57. **Question:** Is HAS open to an Early Release for Construction process for a CGMP or for subparts of a CGMP?

Response: Yes.

58. **Question:** Will external agency reviews of design development, such as FAA, be coincident with HAS review milestones? Can the duration of external agency reviews be outlined for scheduling purposes?

Response: Yes.

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59. **Question:** The Basis of Design documents do not contemplate or outline the requirements for the on-site detention and the additional flow that will be generated by and increase in impervious area associated with the Taxiway or with the future Spaceport. Please describe whether or not the DB team will have to account for this in design, permitting, and CGMP.

Response: Please refer to response provided in Question #21.

60. **Question:** RFQ Section 9.5 requires submittal to include hard copies. Will HAS consider an all-electronic submittal process?

Response: No, requirements remain as stated.

61. **Question:** In the RFQ, Exhibit J - "SOQ Required Submittal Checklist" found on page 51 of 60 identifies Item 25 as "Exhibit M" - Schedule of DBE Participation". Which is located on Page 54 of 60. The required exhibit has fields to be completed for specific DBE Subcontractors, along with the "Agree Price" for each Subcontractor. Further in the exhibit is a field that requires a percentage of "DBE Participation Amount" along with a "Total Bid amount". This exhibit cannot be completed during the RFQ stage because there is no pricing component required in the offerors SOQ. If this document is not removed, please provide directions on how to complete this document during Step One.

Response: Please refer to response provided in Question #10.

62. **Question:** We respectfully request detailed inclusion/exclusion requirements for each scope of work to be performed on this project. We have searched the documents for such a document and have been unsuccessful in finding one. If one exists, please direct us to that location. If one does not exist, without this complete scope document from HAS, it will be near impossible for HAS to evaluate prices from the Respondents to ensure they are fair, complete and comparable. As an example, the 30% grading and drainage drawings contained in Attachment B – Basis of Design do not show any retention ponds that will be required to discharge drainage into other entities (City of Clear Lake, Harris County Flood Control District, etc.) waterways/bayous. If one Respondent doesn't include the retention ponds and only prices the scopes shown on the 30% drawings, their price will be based on an incomplete scope which will produce a lower price. They will be better positioned to pick up all of points of the Cost Proposal score. Other Respondents that include the retention ponds will be penalized in terms of the Cost Proposal score since their price will be higher. The same example can be run for other major scopes such as electrical. It seems that the absence of the requested detailed inclusion/exclusion document defining what is to be included in the price for each scope of work will create inequities and confusion for the HAS, FAA and Respondents.

Response: Use the scope of work as outlined in the RFQ documents.

63. **Question:** Please provide clarification of how the Maximum Contract Price on Respondent's Exhibit O form will be evaluated and scored as mentioned in RFQ document 10.5.2 which references the scoring of the cost in 10.4.6.1. (10.4.6.1 states the "Lowest proposed cost receives the maximum points.") Understanding HAS intended to use the Maximum Contract Price from each Respondent's Form O as the number to calculate the Respondent's total Cost Proposal points, how will HAS be able to ensure a complete apples-to-apples comparison between the Respondents will be conducted in

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a transparent, fair process? Specifically, we are requesting clarification of how HAS will analyze each Respondent's total Maximum Contract Price to ensure they are complete and comparable.

Response: The process is shown within the Step 2 process.

64. **Question:** RFQ Section 9.6.3.1 requires experience validated in a reference letter from the owner. Federal owners such as the USACE, do not issue reference letters. They use a system called Contractor Performance Assessment Reporting System (CPARS). Please confirm that a Contractor Performance Assessment Report (CPAR) will be acceptable in lieu of the required reference letter.

Response: It will be acceptable.

65. **Question:** Please clarify if the Lump Sum total contained on Exhibit O are to include only preconstruction phase services or if the intent is to include preconstruction and construction cost.

Response: Includes preconstruction and construction cost.

66. RFQ Exhibit O, submitted in Step Two, has a field to complete titled "Maximum Contract Price". Is this Maximum Contract Price synonymous with the term "Guaranteed Maximum Price (GMP)" used in Article 5 in Attachment C Sample Agreement? If not, please explain the relationship between these two numbers.

Response: Yes.

67. **Question:** RFQ Exhibit O, submitted in Step Two, has a field to complete titled "Maximum Contract Price". Is this Maximum Contract Price synonymous with the term "maximum amount payable" used in Article 9.1.2 in Attachment C Sample Agreement? If not, please explain the relationship between these two numbers.

Response: Yes.

68. **Question:** RFQ Exhibit O, submitted in Step Two, has a field to complete titled "Maximum Contract Price". Is this Maximum Contract Price synonymous with the term "Not-To-Exceed amount of \$125,000,000.00" used in RFQ Exhibit I? If not, please explain the relationship between these two numbers.

Response: Yes.

69. **Question:** There appears to be a discrepancy in Attachment C - Sample Agreement between Articles 9.1.2 and 9.4.1 in the usage of the term "Cost of Work". The formula in 9.1.2 shows the DESIGN BUILDER CONTRACTOR'S Fee percentage as a component of the Agreed Cost of the Work. The last sentence in 9.4.1 states "Cost of Work does not include the DESIGN BUILDER's Fee". Please clarify.

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Response: There is no discrepancy between the referenced sections. Consider reviewing the contract. Specifically, 9.1.2, which primarily addresses the "price" and section 9.4.1, which primarily addresses the "Cost of Work".

70. **Question:** Attachment C - Sample Agreement, Article 9.4.8, uses the term "Appropriated Funds". Please define this term, the funding sources anticipated to be used for compensation to the DESIGN BUILD CONTRACTOR and the anticipated Engineer's Estimate of Cost for this project.

Response: The contract will not identify the City's funding source(s). The term "Appropriated Funds" is defined in section 9.7.3 of the Sample Agreement. Please refer to response in Question #1 for the Engineer's Cost Estimate for this project.

71. **Question:** We respectfully request the missing dollar values for the liquidated damages in Attachment C, Article 7.2 for missed milestones.

Response: Liquidated Damages will be addressed during negotiations with the contractor that has been selected by the City.

72. **Question:** We respectfully request the missing dollar value for the liquidated damages in Attachment C, Article 7.3 "High Sulfur Diesel Fuel Usage", as well as the statute specifics with the level of sulfur content allowed in the diesel fuel.

Response: The values for that section will be provided to the selected contractor. The city will not provide additional information regarding section 7.3.

73. **Question:** In the case of a conflict, we respectfully request a hierarchical listing of all Owner-Supplied documents.

Response: Exhibit A and Article 2 of the sample agreement address interpretation of the Contract Documents, however, the contract language provided is a sample and subject to change.

74. **Question:** Due to the announced short procurement time frame between the shortlist announcement and cost/technical proposal submission, can the general and supplemental conditions please be released immediately?

Response: General Conditions are provided to short listed firms. There are no supplemental conditions to release at this time.

75. **Question:** When will the best value proposer be determined? (It is not shown on the procurement schedule)

Response: Best value will be determined after evaluating the technical proposals from the short-listed firms.

76. **Question:** The stated contract type for this project is Design-Build, however, there are many elements, such as section 6.6 Design to Budget, that indicate more of a Construction Manager at Risk or even

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Progressive Design Build approach. Can the stated contract type and corresponding contractual requirements be more closely aligned?

Response: As stated at the pre-submittal meeting, this method was approved by the FAA.

77. **Question:** To better understand and be able to provide a comprehensive technical and cost proposal, will HAS consider having confidential one-on-one meetings with shortlisted proposers? These meetings prove fruitful in a design-build pursuits to better establish and ensure the proposals submitted reflect the expectations of HAS.

Response: No.

78. **Question:** As stated at the pre-submittal conference, respondents are to advance design as part of the pricing effort, however, we are not yet shortlisted, and this can be a costly endeavor with no guarantee of shortlist or stipend. Please consider revising procurement schedule to allow more time at the Technical and Cost Proposal stage.

Response: At this time the original schedule will be followed.

79. **Question:** Please clarify the exact scope of work to be priced out as part of the cost proposal.

Response: Cost should be based on RFQ package.

80. **Question:** Please clarify how the cost proposal will be evaluated. Will points be awarded based on which team has the lowest prices or will it be which team has the most complete scope?

Response: Scoring will be done as shown in Step 2.

81. **Question:** Please clarify if we are supposed to provide a fee structure to execute the work or a complete project price for the cost proposal.

Response: Please provide a complete fee structure.

82. **Question:** Please clarify the durations for each phase. The durations stated in Section 5.2.1.1 of the RFQ are in conflict with the durations shown on Sheet G03 of the Basis of Design.

Response: Phase duration will be based on section 5.2.1.1 of the RFQ.

83. **Question:** With the City's requirement of the SOQ to be bound using GBC or other semi-permanent binding method, are binders acceptable as other semi-permanent binding method?

Response: No, three-ring binders will suffice.

84. **Question:** NGIP Code 90625 (Design-Build) is not found on the City of Houston Purchasing site in the Product and Service Commodity Code(s). Please confirm this is the correct code.

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Response: Yes, that is the correct code.

85. **Question:** Will Taxiway L require centerline lights?

Response: Yes.

86. **Question:** Can we assume that Taxiway L will require lighted signage for all intersections including runway exits and hold bars?

Response: Yes.

87. **Question:** Will there be any runway guard lights required – either in-pavement or elevated on the new taxiway connectors?

Response: Please refer to response provided in Question #27.

88. **Question:** Is there room in the electrical vault for a new regulator to support the TWY L Lighting?

Response: Information on the electrical vault for another site visit will be provided to the short-listed firms.

89. **Question:** Is there sufficient electrical service to the vault for the additional loads?

Response: Please refer to response provided in Question #88.

90. **Question:** Will the airfield lighting control system need to be upgraded for the lighting modifications?

Response: Yes.

91. **Question:** Can we assume that the new runway edge lights will be installed in all new infrastructure – conduit and base cans? Or will the existing conduit and base cans be re-used and modified?

Response: All new infrastructures.

92. **Question:** Will the regulator for the runway edge lights be replaced?

Response: Yes.

93. **Question:** Will new signs be required for RW 4-22?

Response: No.

94. **Question:** RFQ Conflicts between 10.4. Table and 10.4.5.

10.4 Technical Proposal Response Scoring Criteria contains a table titled STEP 2: Proposal Content, which conflicts with subsequent instructions in subsections 10.4.2 and 10.4.5. Specifically, the fifth

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element of the Step 2 table is labeled “**Conceptual Engineering Design/Comments on Design Criteria Package**”. Section 10.4.2.1 Anticipated Problems (the second technical proposal element) asks the respondent to provide comments on the design criteria package. Section 10.4.5 (the fifth technical element) is labeled Final Engineering Design and asks for concepts for finalizing the design and obtaining all permits.

Response: The scoring criteria as described in the RFQ will be followed as shown.

95. **Question:** The current solicitation schedule will not allow sufficient time to prepare Questions for the RFP portion, react to those Questions and complete our RFP Submission. Please provide a second Question and Answer period for the RFP portion of the project and change the Technical and Cost proposal due date to April 14.

Response: Submittal date was moved to April 8, 2022, at 2 pm.

96. **Question:** With answers to Questions coming late in the SOQ development period, we request a two-week extension of the SOQ due date to March 10.

Response: Submittal date was moved to April 8, 2022, at 2 pm.

97. **Question:** During Preconstruction Period, will a Safety Risk Assessment need to be completed by the Design Build Respondent and their Designer? It has not been addressed in the Scope of Services.

Response: Yes.

98. **Question:** Attachment A Scope of Services 5.4 A.7 states that CAD design elements must conform to HAS' GIS standards. The Design Build Respondent's Designer, who has significant HAS experience, indicates this has not been required on any of their HAS projects to date. Please confirm is this is an actual requirement.

Question: Yes.

99. **Question:** Attachment A Scope of Services Section 8 goes into great detail on conforming the CAD design elements into an HAS specified BIM program. This would be a significant expense to HAS and the data gained is likely not worth the cost for a horizontal asset (Taxiway Lima). BIM is more commonly used for a vertical project, i.e. building elements, mechanical systems, etc., but is not particularly useful on a horizontal project. Please confirm that HAS wants the Design builder to add the cost to produce BIM modeling for Taxiway Lima.

Response: BIM is not required.

100. **Question:** Life Cycle Analysis – 9.3 identifies the need for an LCA. LCA is useful if HAS and the design builder are evaluating options of construction during a process of taking a budget and progressing it to a GMP. Please confirm that HAS intends to work with designer to evaluate design/construction options in a process of progressing a budget to GMP.

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Response: That is correct.

101. **Question:** 9.6.3.1. states “Must have experience as Prime or JV Partner on at least one (1) similar taxiway project at an operating airport...” We request that this be changed to “Taxiway or Runway project”.

Response: Taxiway or Runway will both be accepted.

102. **Question:** 9.6.3.1. states “The experience must be validated in a reference letter from the owner.” Confirm that HAS is requiring one letter that comes from either of the two required projects.

Response: A letter should be submitted for all projects.

103. **Question:** With changing the edge lights to LED, will a new CCR be required?

Response: Yes.

104. **Question:** Currently the bridging docs show conveyance but do not account for capacity. Is there adequate capacity in B104-00-00 for the new impervious improvements?

Response: There is existing detention capacity on site. DB team shall coordinate directing flows to the facility.

105. **Question:** What are the intended improvements for the existing pond at the Spaceport facility?

Response: None as part of this project.

106. **Question:** Has the No Objection Letter already been received from HCFCD?

Response: No.

107. **Question:** Has approval been received from Clear Lake City Water Authority (CLCWA)?

Response: No.

108. **Question:** Please provide direction on the preferred pavement section G08 (HNTB) or C-501 and C-502 (Atkins). Currently the sections contradict each other.

Response: Use the Atkins pavement section or recommended section developed by the DB team.

109. **Question:** Will underdrains be required along the Taxiway? Will underdrains be required for the Runway shoulders? Currently there is no underdrain on the proposed section on Sheet 1 of 3 from Gunda's Exhibit A (Attachment B).

Response: Underdrains will be required along the Taxiway as shown in the HNTB plans. Underdrains will not be required under the Runway shoulders.

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110. **Question:** Please provide clarification on modification to existing lighting and other utilities that will be impacted by the proposed Runway shoulders.

Response: Follow RFQ documents.

111. **Question:** Please provide detail of the section for temporary access to the airfield shown in Exhibit C from Gunda (Attachment B). What is the design aircraft and frequency to be used in the design?

Response: ADG V.

112. **Question:** Has the EA been completed for this project?

Response: City of Houston is coordinating for an EA, and awaiting FAA determination.

113. **Question:** Please clarify the contradiction in phasing between Gunda and HNTB documents.

Response: The Gunda Corporation phasing is the correct phasing plan.

114. **Question:** Is riprap permitted as shown? HAS drainage design standards reference "riprap only allowed in special circumstances as approved by HAS."

Response: It is permitted as shown or as approved by HAS.

115. **Question:** Please clarify channel width as shown in the bridging docs? The HAS design standards reference a larger minimum width.

Response: Per the standards.

116. **Question:** The current plans reference 12" storm drains to be installed. HAS design standards reference a minimum of 24" pipes. Please provide clarification.

Response: Follow latest HAS standards.

117. **Question:** The FAA NAVAID power cable needs to be removed to the next adjacent structure to remain; plans show connection in the middle of conduit. Please provide direction.

Response: To be coordinated with the FAA during project development.

118. **Question:** Typically, all new FAA NAVAID communications cable is not allowed to be spliced, this could result in a significant increase in the quantity of cable to be removed and replaced. Is it HAS's intent to splice the cables or install new runs?

Response: Install new runs.

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119. **Question:** Most FAA NAVAID duct banks are 4-4" with a 1/0 guard wire and warning tape above, the 30% only shows 2-4" and does not indicate a 1/0 guard wire or warning tape. Please advise if HAS's preference is the FAA standard of 4-4" or the 2-4" shown in the 30% plans?

Response: As per the FAA standards.

120. **Question:** Typically, FAA NAVAID structures are 4'x4'x4'; not 2'x3' as indicated on the 30% plans. Please provide direction.

Response: Please refer to response provided in Question #27

121. **Question:** What is the reason for including taxiway centerline lights? The approaches are only CAT I and no other taxiway has centerline lights; this is a significant cost. Are centerline lights to be included?

Response: Yes, please refer to response provided in Question #27.

122. **Question:** The 30% drawings show all the runway lights, cable and conduit for 4-22 to remain, but the scope indicates new shoulders and new LED lights; this will be all new lights, cable and conduit. Please confirm if we are to leave the existing lighting on runway 4-22 or replace with new lights, cables and conduit.

Response: Replace with new lights, cables, and conduit.

123. **Question:** The 2" conduit under the shoulders is indicated to be direct earth buried; the FAA recommends this to be CLSM encased. Please provide direction on HAS's preference.

Response: Please refer to response provided in Question #27.

124. **Question:** The 2" conduit under the full-strength pavement is indicated to be direct earth buried, the FAA requires this to be concrete encased. Please provide HAS's requirement for this scope.

Response: Please refer to response provided in Question #27.

125. **Question:** Since we were not taken to the vault during the site visit on January 20th, we will need detailed scope requirements on what the Respondent is to include for vault modifications to accommodate the new airfield lighting equipment.

Response: Information on the electrical vault for another site visit will be provided to the short-listed firms.

126. **Question:** For airfield control system, please provide information on the kind of existing alcms.

Response: Information for another site visit will be provided to the short-listed firms.

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127. **Question:** Is there an FAA reimbursable agreement in place for the NAVAIDs? If so, please provide direction of what is included in this agreement.

Response: HAS is in the process of a Reimbursement Agreement with the FAA.

128. **Question:** We request RFQ Exhibit M – Attachment A form to be removed from the Step One submittal list due to its impossibility to complete in full during Step One. If RFQ Exhibit M - Attachment A form remains in the required documents to be submitted in Step One, please provide direction on how we are to complete the following fields:

1. Name of DBE Subcontractor – There are only 5 lines. We see a possibility of a total DBE participation of 10 or more DBE firms. How do we add more firms to this document? Would it be acceptable to provide a listing of all of our proposed DBE firms on a separate attachment to this Exhibit?
2. Agree Price – There will not be a pricing component during Step One
3. Total \$ - There will not be a pricing component during Step One
4. DBE Participation Amount - There will not be a pricing component during Step One
5. Total Bid Amount - There will not be a pricing component during Step One

Response: Exhibit M should be submitted during Step 2 of the process by shortlisted firms.

129. **Question:** At the Pre-Submittal meeting held on January 20th, the speaker pointed out Respondents are required to submit a DBW Participation plan during Step One, which has no pricing component. The construction industry usually decides on which firms will be included in their DBE participation plan during the pricing stage, which in this pursuit is Step Two. It was stated that DBE firms provided in the DBE plan in Step One can be changed without penalty later in the process. The documents supplied by HAS are silent to this ability to make these changes. Please confirm that it is the intent of HAS to have Respondents submit a DBE plan during Step One. Please also confirm that any and all names of DBE firms on that list may be changed later without penalty to the Respondents evaluation.

Response: You are correct. It is difficult to identify the DBE's pricing etc. during Step 1. The verbal presentation did reveal that the primes are only required to submit the name of the DBE and the scope. Nothing else is required in Step 1.

130. **Question:** Please provide direction on how we are to obtain the DBE firms certification number. Is there a location that Respondents have access to that provides this required number or do Respondent need to get that number directly from the DBE firm?

Response: It is not necessary to obtain the certification number. Our office will review each submitted participation plan consisting of all listed DBE's to ensure they are currently certified for the intended scope the contractor has identified.

131. **Question:** Will there be any existing Topographic Survey(s) / Surface Model(s) available to prospective bidders?

Response: No, follow PDD.

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132. **Question:** Is it HAS's intention for the successful bidder to perform a professional Topographic Survey and Surface Model as part of the Enabling Phase?

Response: Yes.

133. **Question:** Can HAS provide the existing geotechnical reports and findings to the prospective bidders?

Response: Yes, included in the RFQ package.

134. **Question:** Can HAS provide the "pavement conditions" report(s) for Runway 4/22 (EFD) for the full length and width?

Response: Yes.

135. **Question:** Please confirm if the existing windstocks are to be removed and replaced in a new area, or are to be removed, stored, and relocated into a new area.

Response: Remove and relocate.

136. **Question:** Is there any other existing equipment in the field that has been identified to be relocated, removed or replaced?

Response: No.

137. **Question:** Are there any LIDAR surveys or data maps available for review for the prospective bidders?

Response: No.

138. **Question:** Is there an HAS-owned wetland mitigation bank available that is away from the airport field and will not impact air operations with bird(s) attraction/strikes?

Response: Environmental Assessment pending.

139. **Question:** Will the new Taxiway L require guard lights?

Response: Please refer to response provided in Question #27

140. **Question:** Will the temporary taxiway require lighting while in service?

Response: No.

141. **Question:** Part II of the RFQ (page 6) states that "portions of this project may be funded" using federal grant money. Is there a definitive decision on whether federal funds will be used for the proposed project?

Response: Federal funds will be used for this project.

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142. **Question**: Will the expansion be paid by the City of Houston, or will there be federal funds involved?

Response: There will be federal funds involved.

143. **Question**: What FAA involvement will there be in the project?

Response: Design and construction.

144. **Question**: Will the project require the approval of the FAA?

Response: Yes.

145. **Question**: Is there a federal lead agency on this project?

Response: FAA.

146. **Question**: Will the project require National Environmental Policy Act (NEPA) documentation such as a Categorical Exclusion (CE) or Environmental Assessment (EA)?

Response: Yes.

147. **Question**: Are there any previous environmental studies (CE, EA, wetland delineation or archeological studies) completed for the proposed project area that are available for bidders, or the successful bidder, to review?

Response: Yes.

148. **Question**: Does HAS still anticipate the need for a detention pond, or is an expansion of the existing detention pond anticipated?

Response: The selected DB team shall evaluate the need for detention requirements.

149. **Question**: Are outfalls to Horsepen Bayou anticipated to accommodate drainage on the site?

Response: No.

150. **Question**: Can we assume that the relocated wind cones will be replaced with new internally lighted LED wind cones or are they already LED and only need to be relocated?

Response: Please refer to response provided in Question #27

151. **Question**: Will the shoulder reconstruction include the blast pads?

Response: No.

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152. **Question:** Will there be any impacts to the FAA systems including any existing or proposed FAA duct banks?

Response: None anticipated.

153. **Question:** Is it anticipated that the new HIRL's are LED or incandescent?

Response: LED

154. **Question:** Can we assume that new runway exit signs are required?

Response: No.

155. **Question:** Will any of the existing runway exit signs need to be replaced?

Response: No.

156. **Question:** Are the power distribution duct banks noted in the RFQ only related to the airfield lighting modifications or are there additional power requirements to the area?

Response: Only related airfield lighting modifications.

157. **Question:** Are the technology and communication duct banks to connect the electrical vault into the comm duct bank at the EFD tenant site development area or are there other connections required?

Response: Design communication ducts to the south generator building and over to the spaceport manhole system.

158. **Question:** Does the electrical vault have a back-up generator? If so, is it sized for the additional loads? If not, is one needed?

Response: No.

159. **Question:** Per Section 9.5.2, we may use 11 X 17 pages in the SOQ. **Question:** Will that count as one (1) page or two (2) pages for each 11 X 17 page used?

Response: One page.

160. **Question:** Can you provide an exhibit that shows the access gates the Design Build Contractor is to use to access the Airfield?

Response: HAS will provide to the short-listed teams.

161. **Question:** Is there a location on site for the contractor to set up a batch plant? Can you provide an exhibit showing the locations?

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Response: Yes. HAS will provide to the short-listed teams.

162. **Question:** At the Pre-Submittal Meeting, it was mentioned that HAS had a solution for temporary access to Axiom's Apron from Runway 4-22. Will HAS provide more information on this? Can you provide: type of material and width?

Response: HAS wants to use a 75-foot wide wooden/composite mat material as approved by HAS. The DB team shall submit a material type for approval by HAS.

163. **Question:** Will the final electronic files and surface models generated during the Basis of Design development be provided?

Response: No.

164. **Question:** The Basis of Design report and Bridging Documents differ on the proposed taxiway pavement section. Will this final section be provided, or will the DB team design the final?

Response: Use the Atkins pavement section or design an alternate section, DB team may come up with their approaches.

165. **Question:** Will the survey and Geotech boring information be provided for final design?

Response: DB team to perform their own survey however Geotech boring information is provided in the RFQ

166. **Question:** Will the survey electronic site files be provided?

Response: No.

167. **Question:** How long can RW 4-22 be closed?

Response: 180 calendar days or as approved by HAS.

168. **Question:** Section 9.7.1.1.2 requests a description of how the work needed to allow access to Runway 4-22 for Spaceport tenants by June 2023 will be delivered on time. Please clarify whether this request is for the DB Team to provide access via the proposed 75' wide Temporary Construction Access Road depicted in RFQ Attachment B, Exhibit-C or if this request is for the completion of permanent portions of Taxiway L, L-4 and L-3 depicted on RFQ Attachment B, Exhibit-B.

Response: Temporary access road.

169. **Question:** Which CGMP should the construction of the proposed 75' Temporary Construction Access Road be included?

Response: Phase 1 Construction.

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170. **Question:** The proposed 35' wide shoulders for Runway 4-22 are not identified to be constructed in any of the construction phases delineated on RFQ Attachment B, Exhibit A or B and are not specified in any of the CGMPs listed in RFQ Section 5.2.1.1. Which CGMP and which construction phase should the construction of the proposed 35' wide shoulders for Runway 4-22 be included?

Response: Phase 2 - CGMP for Phase 1 Construction

171. **Question:** RFQ Attachment B, Basis of Design Narrative calls for "all work within the RSA for Runway 4-22 must be completed in the same construction phase..." This work description does not match Exhibit-A and Exhibit-B and does not match the written descriptions outlined in RFQ Section 5.2.1.1. Please identify which Phase of construction and which CGMP "all" work within the RSA should be included. Including but not limited to, Runway 4-22 shoulders, LED lighting upgrades, and wind cones.

Response: Please refer to response provided in Question #170.

172. **Question:** RFQ Attachment B, Exhibit-A and Exhibit-B depict the Phases 1-3 Construction, which does not match the written descriptions outlined in RFQ Section 5.2.1.1. In addition, it appears certain scopes of work required to complete the project are not identified. To ensure compliance with the proposal requirements, please clarify more specifically what phases of construction work are to be included in each CGMP.

Response: Please see attached revised page 5 of 60, RFQ Section 5.2.1.1.

173. **Question:** Can the DB team propose alternate phasing that may be advantageous to HAS and overall constructability of the project, while meeting the requirements of providing access to the Spaceport tenant and completion of construction within the phase durations outlined in the RFQ?

Response: Yes.

174. **Question:** Please provide some description of the "Hung Gun Area" of the Project site, what effort is expected to disposition this area of the project, and whether there are scopes of design, coordination or construction work that the DB Team must account for.

Response: This will go away after the Taxiway L is complete.

175. **Question:** It is expected that proposers are required to address Special Flood Hazard Area (100-yr flood plain) Impacts. In order to understand the design and construction impacts, can HAS provide preliminary Basis of Design information for proposers to understand potential cost and schedule impacts? It is expected that Harris County Flood Control (HCFCD) will have review requirements. Will HCFCD review processes be followed for this contract? Which CGMP should include any projected construction costs related to flood control?

Response: Regulations concerning the floodplain shall be followed for all applicable agencies. HCFCD review processes will be followed. The costs should be included in the phases of work that are inside the floodplain.

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176. **Question:** Attachment A - Basis of Design - This section of the scope calls for the "Designer" to produce an Estimate of Construction Cost and Construction Schedule. It is expected on a Design Build contract the DB Contractor will produce these scopes of work. Please clarify this scope requirement.

Response: Follow the RFQ requirements.

177. **Question:** Attachment A Section 5.3.C.10 - Budget, Schedule and Risk - Will the City add an indemnity to protect the Design-Builder's designer from the City's future use of the designer's work product that the City is taking ownership of through this procurement. An example of such a provision is: "If the City uses the Design-Builder's work product on any other project, including future changes to this project, the City agrees that it shall do so at its sole risk and without liability or legal exposure to the Design-Builder or the Design-Builder's design professional. The City further agrees that it shall defend, indemnify and hold harmless the Design-Builder and the Design-Builder's design professional from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from such use of the Work Product."

Response: The City will not consider modifications to contract language at this time. Short-listed Contractors will be able to list exceptions.

178. **Question:** Article 5.2.3 of the RFQ, and Articles 4.6, 5.10, and 13.3 in the Sample Contract Can the language be modified to allow Design-Builder to rely on the information provided by the City and to make a claim for additional compensation/time-relief to the extent any errors/omissions caused the Design-Builder verifiable damages/delay. The language as it currently sits will necessarily increase the cost of the project as bidders cannot reasonably price this risk. By making the requested change, the City will ensure that it is only paying for such an increase in the event that the City provided information is actually wrong and leads to verifiable damages.

Response: Please refer to response provided in Question #177.

179. **Question:** Article 3.3 of the Sample Contract. Please consider modifying the language by adding the phrase "Subject to the standard of care as defined in Article 6.3 of this Contract,..." at the beginning of the second sentence in the Article. As currently drafted, professional liability insurance will not cover this obligation.

Response: Please refer to response provided in Question #177.

180. **Question:** Article 4.4 of the Sample Contract Please consider modifying "sole discretion" to "reasonable discretion".

Response: Please refer to response provided in Question #177.

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181. **Question:** Throughout the Sample Contract. Please consider modifying the language by adding the following sentence at the end of the Article: “Notwithstanding anything contained herein, the obligations in this Article shall not be read as to require the Design-Builder Contractor to warrant its professional services, including but not limited to its design services, to any extent greater than the standard of care as defined in Article 6.3 of this Contract.”

Response: Please refer to response provided in Question #177.

182. **Question:** Article 6.8 of the Sample Contract - Please consider modifying the obligations of the Design-Builder Contractor to flow down the obligations and responsibilities to its subcontractors, including professional service providers, to only the technical obligations and responsibilities contained with the Sample Contract.

Response: Please refer to response provided in Question #177.

183. **Question:** Article 6.12 of the Sample Contract - Please consider modifying the language by inserting the word “negligent” before the word “acts.” As currently drafted, professional liability insurance will not cover this obligation.

Response: Please refer to response provided in Question #177.

184. **Question:** Article 6.15 of the Sample Contract
Please consider modifying the language by deleting the phrase “and consequential” from the second to last sentence in the provision. Alternatively, please add language that confirms the recovery of any such actual, direct, and consequential damages is subject to the same cap as proposed in Article 7.2.5.

Response: Please refer to response provided in Question #177.

185. **Question:** The City will not consider modifications to contract language at this time. Short listed Contractors will be able to list exceptions.

Response: Please refer to response provided in Question #177.

186. **Question:** Article 9.1.2.3 of the Sample Contract Please consider modifying the language by deleting this entire provision as it is not appropriate for this particular procurement model.

Response: Please refer to response provided in Question #177.

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187. **Question:** Article 9.2.4 of the Sample Contract. Please consider replacing the obligation to provide any insurance policy with the obligation to provide a certificate of insurance evidencing the requisite insurance.

Response: Please refer to response provided in Question #177.

188. **Question:** Articles 12.2 and 12.6 of the Sample Contract. In addition to the caps on liability drafted in Article 7.2, please consider adding an overall aggregate cap on liability.

Response: Please refer to response provided in Question #177.

189. **Question:** Articles 12.2 and 12.6 of the Sample Contract Sample. In addition to the caps on liability drafted in Article 7.2, please consider adding a mutual waiver of consequential damages.

Response: Please refer to response provided in Question #177.

190. **Question:** Drawing E03 of the 30% drawings, show an existing duct bank connecting to the new 6W2 duct bank which will serve the new taxiway L Centerline Lights, Edge Lights, and Signs. Are these circuits existing at the existing Manhole shown on E03 where the new 6W2 duct bank connects to the existing duct bank, or is the contractor required to install these circuits all the way back to the existing Electrical Airfield Lighting Vault?

Response: New Ducts will be needed.

191. **Question:** If new circuits are required for Taxiway L, are there any existing spare regulators in the circuits? If not is the Contractor to provide design and pricing for the new regulators.

Response: No. Contractor should provide design and pricing for new regulators.

192. **Question:** Will the existing homerun for the RW 4-22 Edge Lights require replacement back to the existing Electrical Airfield Lighting Vault with new L-842C cable or connect back to the existing homerun in the manhole.

Response: To the homerun in the manhole.

193. **Question:** Will the existing Airfield Lighting Remote Control System (ALRCS) modifications need to be included in the scope of this project?

Response: Yes.

194. **Question:** Will Guard Lights be required for this project?

Response: No.

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195. **Question:** Will there be a Lay down yard provided for this project to stage material?

Response: Yes.

196. **Question:** Can Subcontractors provide pricing to multiple teams?

Response: Yes.

197. **Question:** Is the Wage Scale provided in the RFQ, Exhibit "R" the correct Wage Scale to use for this project?

Response: Yes; it is the correct prevailing wage schedule.

198. **Question:** Should the Lighting Fixtures and Signs be designed as LED or Quartz lamps?

Response: LED.

199. **Question:** Will another site visit be scheduled for contractors to access the Electrical Airfield Lighting Vault?

Response: No.

200. **Question:** Will the basis of design include any communication duct bank from an existing location to the Space Port Area? If so, please provide additional information of what this scope of work will be.

Response: Design communication ducts to the south generator building and over to the spaceport manhole system.

201. **Question:** Please provide KMZ file of the basis of design layout.

Response: Will not be provided.

202. **Question:** Please provide electronic design files of the basis of design.

Response: Please refer to response provided in Question #201.

203. **Question:** Specifications – Which Construction Specifications are we going to use? (We cannot find the Schedule specification listed below...)

Attachment A - Design-Build Contractor Scope of Service under Section 6.5 Preliminary Schedule. A. The DB shall coordinate the requirements of this Section with Specification Section 01 32 16. Project Schedules and Progress Reporting.

Response: Use the latest FAA, City of Houston and HAS specifications.

March 22, 2022

RFQ for Design-Build Taxiway L and Runway 4-22 Shoulders Construction at Ellington Airport (EFD)

Solicitation No. HJA-TWYEFD-2022-011

Project No. 707

204. **Question:** Does the Conflict of Interest **Questionnaire** need to be updated? The one on the link is revised as of 1/1/2021. The one provided in the RFQ is dated 06/29/2007.

Response: This is the link to get the updated Conflict of Interest Questionnaire.
<https://www.ethics.state.tx.us/data/forms/conflict/CIQ.pdf>

205. **Question:** The RFQ states "The Respondent shall not delete, modify, or supplement the printed matter on the City required forms, or make substitutions thereon." Exhibit K does not allow for enough space for a primary contact, secondary contact as well as the six required key personnel. Please provide a new form.

Response: Use the same form provided as Exhibit K for your additional key contact personnel directory.

When issued, LOC(s) shall automatically become part of the solicitation documents and shall supersede any previous specification(s) and/or provision(s) in conflict with these LOC(s). LOC(s) will be incorporated into the Agreement as applicable. It is the responsibility of the respondent(s) to ensure that it has obtained all such LOC(s). By submitting a statement of qualification on this project, respondent(s) shall be deemed to have received all LOC(s) and to have incorporated them into their statement of qualification.

If further clarification is needed regarding this solicitation, please contact Jorge Ardines, Sr. Procurement Specialist, via email at jorge.ardines@houstontx.gov.

DS

10

DocuSigned by:

Cathy Vander Plaats

02232028DE99414

Cathy Vander Plaats
Procurement Officer
Houston Airport System

CVP/ja

Attachment(s):

1. Doc 00700 – General Standards
2. RFQ revised page 5 of 60

Cc: Alfredo Oracion
Dallas Evans
Solicitation File

Document 00700

GENERAL CONDITIONS

March 7, 2022 EDITION

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ARTICLE 1 - GENERAL PROVISIONS

1.1 DEFINITIONS

1.1.1 Agreement: Document signed by the Parties and binding the Parties, containing the name of Contractor, title and location of the Project, Original Contract Time, Original Contract Price, enumeration of documents included in the Contract, and other provisions.

1.1.2 Bonds: Performance Bond, Payment Bond, Maintenance Bond, and other Surety instruments executed by Surety. When in singular form, refers to individual instrument.

1.1.3 Business Enterprise: Any business entity registered in a program authorized by 49 C.F.R. § 26 (where applicable) or City Code of Ordinances, Chapter 15, Article II, relating to Equal Opportunity Employment and taking affirmative action to ensure that applicants are employed and employees are treated without regard to race, religion, color, sex, national origin, or age. The term "Business Enterprise" may include any Disadvantaged Business Enterprise ("DBE"), Minority Business Enterprise ("MBE"), Woman Business Enterprise ("WBE"), Small Business Enterprise ("SBE"), Person with Disability Enterprise ("PDBE"), and any Historically Underutilized Business ("HUB").

1.1.4 Business Enterprise Policy: Contract documents and applicable policies relating to Business Enterprises and authorized under 49 C.F.R. § 26 or City Code of Ordinances, Chapter 15, Article V.

1.1.5 Cash Allowance: An estimated sum of money to be used only for a limited class of expenditures such as utility relocation costs, fees for special licenses or permits, or other "pass-through" costs that would be the same for any contractor. Cash Allowances may not be used to purchase goods or services that are not specified in the Contract. The unspecified items must be purchased according to the terms of Article 7.

1.1.6 Change Order: Written instrument prepared by the City and signed by City Engineer and Contractor, specifying the following:

- 1.1.6.1 a change in the Work;
- 1.1.6.2 a change in Contract Price, if any; and
- 1.1.6.3 a change in Contract Time, if any.

The value of a Change Order is the net amount after offsetting all deductions against all additions effected by the Change Order.

1.1.7 City: The City of Houston, a home rule municipality located principally within Harris County, Texas, including its successors and its authorized representatives.

1.1.8 City Engineer: The City Engineer, or the City employee representing the City Engineer, designated in the Agreement and authorized to represent the City, or successors.

1.1.9 Claim: Written demand or written assertion by one Party seeking adjustment of the Contract, payment of money, extension of time, or other relief under the Contract and includes, but is not limited to, claims for materials, labor, equipment, delay, changes, adjustments, substitutions, fees and third party claims. The Party making the Claim has the responsibility to substantiate the Claim.

1.1.10 Conditions of the Contract: General Conditions and Supplementary Conditions.

1.1.11 Construction Manager: Person or firm under contract with the City as its authorized representative to oversee and administer construction of the Work, and who may perform the role of Project Manager and Inspector, as designated by City Engineer in writing.

1.1.12 Contract: The Agreement; documents enumerated in and incorporated into the Agreement, Modifications, and amendments.

1.1.13 Contract Price: The monetary amount stated in the Agreement adjusted by Change Order, and increases or decreases in Unit Price Quantities, if any.

1.1.14 Contract Time: The number of days stated in the Agreement to substantially complete the Work, plus days authorized by Change Order.

1.1.15 Contract Year: a twelve (12) month period during the term of the contract commencing on the Effective Date of this Agreement and each anniversary thereof.

1.1.16 Contractor: Person or firm identified as such in the Agreement including its successors and its authorized representatives.

1.1.17 Date of Commencement of the Work: Date established in Notice to Proceed on which Contract Time will commence. This date will not be changed by failure of Contractor, or persons or entities for whom Contractor is responsible, to act.

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1.1.18 Date of Substantial Completion: Date that construction, or portion thereof designated by City Engineer, is certified by City Engineer to be substantially complete.

1.1.19 Design Consultant: Person or firm, under contract with the City, to provide professional services during construction and its authorized representatives. If a Design Consultant is not employed for services during construction, Project Manager will perform duties of Design Consultant designated in the Contract in addition to usual duties of Project Manager.

1.1.20 Drawings: Graphic and pictorial portions of the Contract that define the character and scope of the Work.

1.1.21 Extra Unit Price: Unit Prices, which may be required for completion of the Work. These Unit Prices and Unit Price Quantities are in the Contract and are included in Original Contract Price.

1.1.22 Furnish: To supply, pay for, deliver to the site, and unload.

1.1.23 General Requirements: The sections of Division 01 Specifications that specify administrative and procedural requirements and temporary facilities required for the Work.

1.1.24 Inspector: City's employee or agent authorized to assist with inspection of the Work.

1.1.25 Install: Unpack, assemble, erect, place, anchor, apply, work to dimension, finish, cure, clean, protect, and similar operations.

1.1.26 Legal Holiday: Day established by the City Council as a holiday.

1.1.27 Major Unit Price Work: An individual Unit Price item,

1.1.27.1 whose value is greater than five percent of Original Contract Price,

1.1.27.2 whose value becomes greater than five percent of Original Contract Price as the result of an increase in quantity, or

1.1.27.3 whose value is \$100,000, whichever is least.

1.1.28 Mayor's Office of Business Opportunity: any reference to, or use of, the "Office of Affirmative Action" shall mean the Mayor's Office of Business Opportunity, or any such future name to which it is changed.

1.1.29 Minor Change in the Work: A written change in the Work, ordered by City Engineer, that does not change Contract Price or Contract Time, and that is consistent with the general scope of the Contract.

1.1.30 Modification: Change Order, Work Change Directive, or Minor Change in the Work.

1.1.31 Notice of Noncompliance: A written notice by City Engineer to Contractor regarding defective or nonconforming work that does not meet the Contract requirements, and that establishes a time by which Contractor shall correct the defective or nonconforming work.

1.1.32 Notice to Proceed: A written notice by City Engineer to Contractor establishing Date of Commencement of the Work.

1.1.33 Original Contract Price: The monetary amount originally stated in the Agreement.

1.1.34 Parties: Contractor and the City. When in singular form, refers to Contractor or the City.

1.1.35 Pollutant: Any materials subject to the Texas Solid Waste Disposal Act.

1.1.36 Pollutant Facility: Any facility regulated by the State of Texas to protect the health and environment from contamination by Pollutants, including without limitation, landfills, oil and gas production and storage facilities, wastewater facilities, waste injection wells, and storage tanks (including drums).

1.1.37 Product: Materials, equipment, or systems incorporated into the Work or to be incorporated into the Work.

1.1.38 Product Data: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Contractor to illustrate a Product.

1.1.39 Project: Total construction, of which the Work performed under the Contract may be the whole or a part, and which may include construction by the City or by separate contractors.

1.1.40 Project Manager: City Engineer's authorized representative for administration of the Work. Titles used within the City's departments may be different than those used in this definition.

1.1.41 Provide: Furnish and Install, complete, ready for intended use.

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1.1.42 Samples: Physical examples that illustrate Products, or workmanship, and establish standards by which the Work is judged.

1.1.43 Shop Drawings: Drawings, diagrams, schedules, and other data specially prepared for the Work by Contractor, Subcontractor or Supplier, to illustrate a portion of the Work.

1.1.44 Specifications: Divisions 01 through 16 of the documents that are incorporated into the Agreement, consisting of written General Requirements and requirements for Products, standards, and workmanship for the Work, and performance of related services.

1.1.45 Stipulated Price: Single lump sum amount stated in the Contract for completion of the Work, or for designated portion of the Work.

1.1.46 Subcontractor: Person or firm that has direct or indirect contract with Contractor or with another Subcontractor to perform a portion of the Work and its authorized representatives.

1.1.47 Superintendent: Employee of Contractor having authority and responsibility to act for and represent Contractor.

1.1.48 Supplementary Conditions: Part of Conditions of the Contract that amends or supplements General Conditions.

1.1.49 Supplier: Manufacturer, distributor, materialman, or vendor having a direct agreement with Contractor or Subcontractor for Products, or services and its authorized representatives.

1.1.50 Surety: Corporate entity that is bound by one or more Bonds, and is responsible for completion of the Work, including the correction period, and for payment of debts incurred in fulfilling the Contract. Surety shall include co-surety or reinsurer, as applicable.

1.1.51 Underground Facilities: Pipes, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments and encasements containing such facilities that exist below ground level.

1.1.52 Unit Price: An amount stated in the Contract for an individual, measurable item of work, which, when multiplied by actual quantity incorporated into the Work, amounts to full compensation for completion of the item, including work incidental to it.

1.1.53 Unit Price Quantities: Quantities indicated in the Contract that are approximations made by the City for contracting purposes.

1.1.54 Work: Entire construction required by the Contract, including all labor, Products, and services provided by Contractor to fulfill Contractor's obligations. The Work may constitute the whole or a portion of the Project.

1.1.55 Work Change Directive: A written change in the Work, ordered by City Engineer, that is within the general scope of the Contract and consisting of additions, deletions, or other revisions. A Work Change Directive will state proposed basis for adjustment, if any, in Contract Price or Contract Time, or both.

1.2 EXECUTION, CORRELATION, AND INTENT

1.2.1 Execution of the Contract by Contractor is conclusive that Contractor has visited the Work site, become familiar with local conditions under which the Work will be performed, and fully informed itself as to conditions and matters which can affect the Work or costs. Contractor further agrees that it has carefully correlated personal observations with requirements of the Contract.

1.2.2 The Contract and Modifications have been read and carefully considered by Contractor, who understands and agrees to their sufficiency for the Work. The Contract may not be more strongly construed against the City than against Contractor and Surety.

1.2.3 Contractor shall include all items necessary for proper execution and completion of the Work.

1.2.4 Reference to standard specifications, manuals, or codes of a technical society, organization, or association, or to laws or regulations of a governmental authority, whether specific or implied, mean the latest edition in effect as of date of receipt of bids, except as may be otherwise specifically stated in the Contract.

1.2.5 No provision of any referenced standard, specification, or manual changes the duties and responsibilities of the City, City Engineer, Contractor, or Design Consultant from those set forth in the Contract. Nor do these provisions assign to Design Consultant any duty or authority to supervise or direct performance of the Work or any duty or authority to undertake any actions contrary to provisions of the Contract.

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1.2.6 Organization of Specifications into divisions, sections, and articles and arrangement of Drawings does not control Contractor in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.

1.2.7 Unless otherwise defined in the Contract, words which have well-known construction industry technical meanings are used in the Contract in accordance with these recognized meanings.

1.3 **OWNERSHIP AND USE OF DOCUMENTS**

1.3.1 Drawings, Specifications, and other documents prepared by the City or by Design Consultant are instruments of service through which the Work to be executed by Contractor is described. Contractor may retain one Contract record set.

1.3.2 Neither Contractor, Subcontractor, nor Supplier will own or claim a copyright to documents contained in the Contract or any part of the Contract.

1.3.3 Documents contained in the Contract, prepared by the City or by Design Consultant, and copies furnished to Contractor, are for use solely with respect to the Work. They may not be used by Contractor, Subcontractor or Supplier on other projects or for additions to the Work, outside the scope of the Work, without the specific written consent of City Engineer, and Design Consultant, when applicable.

1.3.4 Contractor, Subcontractors, and Suppliers are granted a limited license to use and reproduce applicable portions of the Contract appropriate to and for use in execution of their work under the Contract.

1.4 **INTERPRETATION**

1.4.1 Specifications are written in an imperative streamlined form and are directed to Contractor, unless noted otherwise. When written in this form, words "shall be" are included by inference where a colon (:) is used within sentences or phrases.

1.4.2 In the interest of brevity, the Contract frequently omits modifying words such as "all" and "any" and articles such as "the" and "an", but an absent modifier or article is not intended to affect interpretation of a statement.

ARTICLE 2 - THE CITY

2.1 ***LIMITATIONS OF THE CITY'S OFFICERS AND EMPLOYEES***

2.1.1 No officer or employee of the City may authorize Contractor to perform an act or work contrary to the Contract, except as otherwise provided in the Contract.

2.2 ***DUTIES OF THE CITY***

2.2.1 If a building permit is required, the City will process an application for, and Contractor shall purchase the building permit before Date of Commencement of the Work.

2.2.2 The City will make available to Contractor a reproducible set of Drawings. Additional copies will be furnished, on Contractor's request, at the cost of reproduction.

2.2.3 When necessary for performance of the Work, the City will provide surveys describing physical characteristics, legal limitations, legal description of site, and horizontal and vertical control adequate to lay out the Work.

2.2.4 Information or services that the City is required to provide under the Contract will be provided by the City with reasonable promptness to avoid delay in orderly progress of the Work.

2.2.5 The Contract imposes no implied duty on the City. The City does not warrant any plans or specifications associated with the Contract.

2.2.6 Except as expressly stated in this Article, the City owes no duty to the Contractor or any subcontractor.

2.3 ***AVAILABILITY OF LAND AND USE OF SITE***

2.3.1 The City will furnish, as indicated in the Contract, rights-of-way, land on which the Work is to be performed, and other land designated in the Contract for use by Contractor unless otherwise provided in the Contract.

2.3.2 Contractor shall confine operations at site to those areas permitted by law, ordinances, permits, and the Contract, and may not unreasonably encumber site with materials or equipment.

2.3.3 In addition to land provided by the City under Section 2.3, Contractor shall provide all land and access to land that may be required for use by

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Contractor for temporary construction facilities or for storage of materials and equipment, and shall indemnify the City during its use of the land as stated in Section 3.25.

2.4 *THE CITY'S RIGHT TO STOP THE WORK*

2.4.1 If Contractor fails to carry out the Work in accordance with the Contract, or fails to correct work which is not in accordance with requirements of the Contract as required in Sections 12.1 and 12.2, the City may, by Notice of Noncompliance, order Contractor to stop the Work or any portion of the Work until the cause for the order has been eliminated. However, the right of the City to stop the Work will not give rise to a Claim for delay or to a duty on the part of the City to exercise this right for the benefit of Contractor or any other person or entity, except to the extent required by Section 6.2. If Contractor corrects the defective or nonconforming work within the time established in Notice of Noncompliance, City Engineer will give written notice to Contractor to resume performance of the Work.

2.5 *THE CITY'S RIGHT TO CARRY OUT WORK*

2.5.1 If Contractor fails to carry out work in accordance with the Contract, and fails within the period established in a Notice of Noncompliance to correct the nonconforming work, the City may, after expiration of the required period, correct the deficiencies without prejudice to other remedies the City may have, including rights of the City under Section 14.1.

2.5.1.1 When the City corrects deficiencies, City Engineer will issue an appropriate Change Order and deduct from payments then or thereafter due Contractor the cost of correcting the deficiencies, including compensation for Design Consultant's and Construction Manager's additional services and expenses made necessary by such default, neglect, or failure. This action by the City and amounts charged to Contractor are both subject to prior approval of City Engineer. If payments, then or thereafter due Contractor, are not sufficient to cover these amounts, Contractor shall pay the difference to the City.

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

ARTICLE 3 - CONTRACTOR

3.1 *RESPONSIBILITIES*

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

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

3.2 *REVIEW OF CONTRACT AND FIELD CONDITIONS BY CONTRACTOR*

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

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

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

3.3 *SUPERVISION AND CONSTRUCTION PROCEDURES*

3.3.1 Contractor shall supervise, direct, and inspect the Work competently and efficiently, devoting the attention and applying the skills and expertise as necessary to perform the Work in accordance with the Contract. Contractor is solely responsible and has control over construction

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means, methods, techniques, sequences, and procedures of construction; for safety precautions and programs in connection with the Work; and for coordinating all work under the Contract.

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

3.4 *SUPERINTENDENT*

3.4.1 Contractor shall employ a competent Superintendent and necessary assistants who shall be present at the site during performance of the Work. Communications given to Superintendent are binding on the Contractor.

3.4.2 Contractor shall notify City Engineer in writing of its intent to replace the Superintendent. Contractor may not replace the Superintendent if City Engineer makes a reasonable objection in writing.

3.5 *LABOR*

3.5.1 Contractor shall provide competent, qualified personnel to survey and lay out the Work and perform construction as required by the Contract. The City may, by written notice, require Contractor to remove from the Work any employee of Contractor or Subcontractors to whom City Engineer makes reasonable objection.

3.5.2 Contractor shall comply with the applicable Business Enterprise Policy set out in this Agreement and in the Supplementary Conditions, as set out in Chapter 15, Article V of the City of Houston Code of Ordinances.

3.5.3 When Original Contract Price is greater than \$1,000,000, Contractor shall make Good Faith Efforts to award subcontracts or supply agreements in at least the percentages set out in the Supplementary Conditions for Business Enterprise Policy ("Stated MWBE goal"). If the Contractor is a certified MBE or WBE, Contractor may count toward goals the work that it commits to perform with its own work force, capped at 50% of the total advertised goal. Contractor acknowledges that it has reviewed the requirements for Good Faith Efforts on file with the City's Office of Business Opportunity and shall comply with them.

3.5.3.1 Contractor shall require written subcontracts with Business Enterprises and shall submit all disputes with Business Enterprises to voluntary mediation. Business Enterprise subcontracts complying with City Code of Ordinances Chapter 15, Article II must contain the terms set out in Subparagraph 3.5.3.2. If Contractor is an individual person, as distinguished from a corporation, partnership, or other legal entity, and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

3.5.3.2 Contractor shall ensure that subcontracts with Business Enterprise firms are clearly labeled **"THIS CONTRACT MAY BE SUBJECT TO MEDIATION ACCORDING TO THE TEXAS ALTERNATIVE DISPUTE RESOLUTION ACT"** and contain the following terms:

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

3.5.3.2.2 Within five business days of execution of this subcontract, Contractor and (Business Enterprise) shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of the agent.

3.5.3.3 If the term of this Agreement exceeds one Contract Year and Contractor's MWBE participation level in a Contract Year is less than the Stated MWBE goal, then within 30 calendar days of the end of each Contract Year, Contractor must provide a written detailed explanation to both the

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Director and OBO Director of the following: (1) the discrepancy between Contractor's MWBE participation level and the Stated MWBE goal, (2) the reason for the discrepancy, and (3) Contractor's good faith efforts (in accordance with the City's policy) towards achieving the Stated MWBE goal. As part of the good faith efforts assessment, the OBO Director may consider Contractor's failure to timely submit the notice or explanation required by this provision and the OBO Director may impose sanctions or other penalties on Contractor for said failures in accordance with Chapter 15 of the Code of Ordinances, OBO's policies and procedures, and the City's good faith efforts policy.

3.5.4 The requirements and terms of the City of Houston Pay or Play Program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into the Contract for all purposes. Contractor has reviewed Executive Order 1-7 and shall comply with its terms and conditions. IF CONTRACTOR DOES NOT PAY IN ACCORDANCE WITH THE PAY OR PLAY PROGRAM WITHIN 30 DAYS OF THE DATE CITY ENGINEER SENDS CONTRACTOR WRITTEN NOTIFICATION, CITY CONTROLLER MAY DEDUCT FUNDS UP TO THE AMOUNT OWED FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS CONTRACT, AND CONTRACTOR WAIVES ANY RECOURSE.

3.6 *PREVAILING WAGE RATES*

3.6.1 Contractor shall comply with governing statutes providing for labor classification of wage scales for each craft or type of laborer, worker, or mechanic.

3.6.2 Prevailing wage rates applicable to the Work may be one or a combination of the following wage rates identified in Division 00:

- 3.6.2.1 Federal Wage Rate General Decisions
 - 3.6.2.1.1 Highway Rates
 - 3.6.2.1.2 Building Rates
 - 3.6.2.1.3 Heavy Construction Rates
 - 3.6.2.1.4 Residential Rates
- 3.6.2.2 City Prevailing Wage Rates
 - 3.6.2.2.1 Building Construction Rates
 - 3.6.2.2.2 Engineering Construction Rates
 - 3.6.2.2.3 Asbestos Worker Rates

3.6.3 Each week Contractor shall submit to the City's Mayor's Office of Business Opportunity certified copies of payrolls showing classifications and wages paid by Contractor, Subcontractors, and Suppliers for each employee under the Contract, for any day included in the Contract.

3.7 *LABOR CONDITIONS*

3.7.1 In the event of labor disputes affecting Contractor or Contractor's employees, Contractor shall utilize all possible means to resolve disputes in order that the Work not be delayed to any extent. These means will include seeking injunctive relief and filing unfair labor practice charges, and any other action available to Contractor.

3.7.2 When Contractor has knowledge that any actual or potential labor dispute is delaying or is threatening to delay timely performance of the Work, Contractor shall immediately notify City Engineer in writing. No Claims will be accepted by City Engineer for costs incurred as a result of jurisdictional or labor disputes.

3.8 *DRUG DETECTION AND DETERRENCE*

3.8.1 It is the policy of the City to achieve a drug-free work force and to provide a workplace that is free from the use of illegal drugs and alcohol. It is also the policy of the City that manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on the City's premises is prohibited. By executing the Contract, Contractor represents and certifies that it meets and will comply with all requirements and procedures set forth in the Mayor's Policy on Drug Detection and Deterrence, City Council Motion No. 92-1971 ("Mayor's Policy") and the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31, (Revised) ("Executive Order"). Mayor's Policy is on file in the office of the City Secretary. Copies of Executive Order may be obtained at the location specified in the Advertisement for Bids.

- 3.8.1.1 The Executive Order applies to the City's contracts for labor or services except the following:
 - 3.8.1.1.1 contracts authorized by Emergency Purchase Orders,
 - 3.8.1.1.2 contracts in which imposition of requirements of the Executive Order would exclude all potential bidders or proposers, or would eliminate meaningful competition for the Contract,

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

3.9 *MATERIALS & EQUIPMENT*

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

3.9.1.1 Contractor, Subcontractors, and Suppliers shall use Ultra Low Sulfur Diesel Fuel in all diesel operating vehicles and motorized equipment utilized in performing the Work. Ultra Low Sulfur Diesel Fuel is defined as diesel fuel having 15 ppm or the applicable standard set by state or federal law or rules and regulations of the Texas Commission on Environmental Quality, or the Environmental Protection Agency, whichever is less in sulfur content. Off-road Ultra Low Sulfur Diesel Fuel may be used in lieu of on-road Ultra Low Sulfur Diesel Fuel. Contractor shall provide, upon request by City Engineer, proof that Contractor, Subcontractors, and Suppliers are using Ultra Low Sulfur Diesel Fuel.

3.9.2 Contractor shall provide Products that are:

- 3.9.2.1 new, unless otherwise required or permitted by the Contract, and
- 3.9.2.2 of specified quality.

If required by City Engineer, Contractor shall furnish satisfactory evidence, including reports of required tests, as to kind and quality of Products.

3.9.3 Contractor shall store Products in a safe, neat, compact, and protected manner. Contractor shall also store Products delivered during the work, along the right-of-way:

- 3.9.3.1 so as to cause the least inconvenience to property owners, tenants, and general public; and
- 3.9.3.2 so as not to block access to, or be closer than, three feet to any fire hydrant.

Contractor shall protect trees, lawns, walks, drives, streets, and other improvements that are to remain, from damage. If private or public property is damaged by Contractor, Contractor shall, at its sole expense, restore the damaged property to at least its original condition.

3.9.3.1 Contractor shall obtain City Engineer's approval for storage areas used for Products for which payment has been requested under Paragraph 9.6.1.

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Contractor shall provide the City access to the storage areas for inspection purposes. Products, once paid for by the City, become the property of the City and may not be removed from place of storage, without City Engineer's written permission except for a movement to the site. Contractor's Installation Floater, required under Section 11.2, shall cover all perils, including loss or damage to Products during storage, loading, unloading, and transit to the site.

3.10 **PRODUCT OPTIONS AND SUBSTITUTIONS**

3.10.1 For Products specified by reference standards or by description only, Contractor may provide any Product meeting those standards or description.

3.10.2 For Products specified by naming one or more manufacturers with provision for substitutions or equal, Contractor may submit a request for substitution for any manufacturer not named.

3.10.3 City Engineer will consider requests for substitutions only within the first 15 percent of Contract Time, or first 90 days after date of Notice to Proceed, whichever is less.

3.10.4 Contractor shall document each request for substitution with complete data substantiating compliance of proposed substitution with the Contract.

3.10.5 A request for substitution constitutes a representation that Contractor:

3.10.5.1 has investigated the proposed Product and determined that it meets or exceeds the quality level of the specified Product;

3.10.5.2 shall provide the same warranty for the substitution as for the specified Product;

3.10.5.3 shall coordinate installation of the proposed substitution and make changes to other work which may be required for the Work to be completed, with no additional cost or increase in time to the City;

3.10.5.4 confirms that cost data is complete and includes all related costs under the Contract;

3.10.5.5 waives Claim for additional costs or time extensions that may subsequently become apparent; and

3.10.5.6 shall provide review or redesign services by a design consultant with appropriate professional license and shall obtain re-approval and permits from authorities.

3.10.6 City Engineer will not consider and will not approve substitutions when:

3.10.6.1 they are indicated or implied on Shop Drawing or Product Data submittals without separate written request; or

3.10.6.2 acceptance will require revision to the Contract.

3.10.7 City Engineer may reject requests for substitution, and his decision will be final and binding on the Parties.

3.11 **CASH ALLOWANCES**

3.11.1 Contract Price includes Cash Allowances as identified in the Contract.

3.11.2 The City will pay the actual costs of Cash Allowance item exclusive of profit, overhead or administrative costs. If actual costs exceed the Cash Allowance, City Engineer must approve a Change Order for the additional costs.

3.12 **WARRANTY**

3.12.1 Contractor warrants to the City that Products furnished under the Contract are:

3.12.1.1 free of defects in title;

3.12.1.2 of good quality; and

3.12.1.3 new, unless otherwise required or permitted by the Contract.

If required by the City Engineer, Contractor shall furnish satisfactory evidence as to kind, quality and title of Products, and that Products conform to requirements of the Contract.

3.12.2 In the event of a defect in a Product, either during construction or warranty period, Contractor shall take appropriate action with manufacturer of Product to assure correction or replacement of defective Product with minimum delay.

3.12.3 Contractor warrants that the Work is free of defects not inherent in the quality required or permitted, and that the Work does conform with the requirements of the Contract. Contractor further warrants that the Work has been performed in a thorough and workmanlike manner.

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3.12.4 Contractor warrants that the Work is free of concentrations on polychlorinated biphenyl (PCB) and other substances defined as hazardous by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or any other applicable law or regulation.

3.12.5 Work not conforming to requirements of Section 3.12, including substitutions not properly approved and authorized, may be considered nonconforming work.

3.12.6 Contractor's warranty excludes remedy for damage or defect caused by:

- 3.12.6.1 improper or insufficient maintenance by the City;
- 3.12.6.2 normal wear and tear under normal usage; or
- 3.12.6.3 claim that hazardous material was incorporated into the Work, if that material was specified in the Contract.

3.12.7 Contractor warrants that title to all work covered by Contractor's request for payment passes to the City upon incorporation into the Work or upon Contractor's receipt of payment, whichever occurs first. The Contractor further warrants that the title is free of all liens, claims, security interests or other interests ("Encumbrances"). If not, upon written demand from City Engineer, Contractor shall immediately take legal action necessary to remove Encumbrances.

3.13 TAXES

3.13.1 Contractor shall pay all sales, consumer, use, and similar taxes, which are in effect or scheduled to go into effect on or before bids are received, related to work provided by Contractor.

3.13.2 Contractor shall obtain, and require Subcontractors and Suppliers to obtain, necessary permits from the state and local taxing authorities to perform contractual obligations under the Contract, including sales tax permits.

3.13.3 The City is exempt from the Federal Transportation and Excise Tax. Contractor shall comply with federal regulations governing the exemptions.

3.13.4 Products incorporated into the Work are exempt from state sales tax according to provisions of the TEX. TAX CODE ANN. CH. 151, Subsection H.

3.14 PERMITS, FEES, AND NOTICES

3.14.1 Unless otherwise provided in the Contract, Contractor shall secure and pay for all construction permits, licenses, and inspections:

- 3.14.1.1 necessary for proper execution and completion of the Work; and
- 3.14.1.2 legally required at time bids are received.

3.15 CONSTRUCTION SCHEDULES

3.15.1 On receipt of Notice to Proceed, Contractor shall promptly prepare and submit construction schedule for the Work for City Engineer's review. The schedule must reflect the minimum time required to complete the Work not to exceed Contract Time.

3.15.2 Contractor shall give 24-hour written notice to City Engineer before commencing work or resuming work where work has been stopped. Contractor shall also give the same notice to inspectors.

3.15.3 Contractor shall incorporate milestones specified in Summary of Work Specification into the construction schedule. Contractor's failure to meet a milestone, as determined by City Engineer, may be considered a material breach of the Contract.

3.15.4 Each month, Contractor shall submit to City Engineer a copy of an updated construction schedule indicating actual progress, incorporating applicable changes, and indicating courses of action required to assure completion of the Work within Contract Time.

3.15.5 Contractor shall keep a current schedule of submittals that coordinates with the construction schedule, and shall submit the initial schedule of submittals to City Engineer for approval.

3.16 DOCUMENTS AND SAMPLES AT THE SITE

3.16.1 Contractor shall maintain at the site, and make available to City Engineer, one record copy of Drawings, Specifications, and Modifications. Contractor shall maintain the documents in good order and marked currently to record changes and selections made during construction. In addition, Contractor shall maintain at the site, approved Shop Drawings, Product Data, Samples, and similar submittals, which will be delivered to City Engineer prior to final inspection as required in Paragraph 9.11.4.

3.16.2 Contractor shall maintain all books, documents, papers, accounting records, and other

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relevant documentation pursuant to the Work and shall make the books, documents, papers, and accounting records available to representatives of the City for review and audits during the Contract term and for the greater of three years following Date of Substantial Completion or until all litigation or audits are fully resolved.

3.16.3 Contractor shall provide to City Attorney all documents and records that City Attorney deems necessary to assist in determining Contractor's compliance with the Contract, with the exception of those documents made confidential by federal or state law or regulation.

3.17 *MANUFACTURER'S SPECIFICATIONS*

3.17.1 Contractor shall handle, store, and Install Products and perform all work in the manner required by Product manufacturer. Should the Contract and manufacturer's instructions conflict, Contractor shall report conflict to City Engineer for resolution prior to proceeding with the affected work.

3.17.2 References in the Contract to the manufacturer's specifications, directions, or recommendations, mean manufacturer's current published documents in effect as of date of receipt of bids, or in the case of a Modification, as of date of Modification.

3.18 *SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES*

3.18.1 Shop Drawings, Product Data, and Samples are not part of the Contract. The purpose of Contractor submittals is to demonstrate, for those portions of the Work for which submittals are required, the way Contractor proposes to conform to information given and design concept expressed in the Contract.

3.18.2 Contractor shall submit to Project Manager for review the Shop Drawings, Product Data, and Samples, which are required by the Contract. Review by Project Manager is subject to limitations of Paragraph 4.1.4. Contractor shall transmit the submittals to the Project Manager with reasonable promptness and in a sequence, so as to cause no delay in the Work or in activities of the City or of separate contractors. Contractor shall transmit submittals in time to allow a minimum of 30 days for Project Manager's review prior to date Contractor needs reviewed submittals returned. This time may be shortened for a particular job requirement if approved by Project Manager in advance of submittal.

3.18.3 Contractor shall certify that the content of submittals conforms to the Contract without exception by affixing Contractor's approval stamp and signature. By certifying and submitting Shop Drawings, Product Data, and Samples, Contractor represents, and Contractor's stamp of approval shall state, that Contractor has determined and verified materials, quantities, field measurements, and field construction criteria related to the submittal, and has checked and coordinated information contained within the submittals with requirements of the Contract.

3.18.4 Contractor may not perform any work requiring submittal and review of Shop Drawings, Product Data, or Samples until the submittal has been returned with appropriate review decision by the Project Manager. Contractor shall perform work in accordance with the review.

3.18.5 If Contractor performs any work requiring submittals prior to review and acceptance of the submittals by Project Manager, such work is at Contractor's risk and the City is not obligated to accept work if the submittals are later found to be unacceptable.

3.18.6 If, in the opinion of Project Manager, the submittals are incomplete, or demonstrate an inadequate understanding of the Work or lack of review by the Contractor, then submittals may be returned to the Contractor for correction and resubmittal.

3.18.7 Contractor shall direct specific attention in writing and on the resubmitted Shop Drawings, Product Data, or Samples to any additional proposed revisions, other than those revisions requested by Project Manager on previous submittals.

3.18.8 Contractor is not relieved of responsibility for deviations from requirements of the Contract by Project Manager's review of Shop Drawings, Product Data, or Samples unless Contractor has specifically informed Project Manager in writing of the deviation at the time of the submittal, and Project Manager has given written approval of the deviation.

3.18.9 When professional certification of performance criteria of Products is required by the Contract, the City may rely upon accuracy and completeness of the calculations and certifications.

3.18.10 For Product colors or textures to be selected by the City, Contractor shall submit all

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samples together to allow preparation of a complete selection schedule.

3.18.11 Contractor shall submit informational submittals, on which Project Manager is not expected to take responsive action, as required by the Contract.

3.18.12 Submittals made by Contractor which are not required by the Contract may be returned to Contractor without action.

3.19 CULTURAL RESOURCES AND ENDANGERED SPECIES

3.19.1 Contractor may not remove or disturb, or cause to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, vestiges, remains, or objects of antiquity. If Contractor discovers one of these items, Contractor shall immediately notify City Engineer and further comply with the requirements of 13 Tex. Admin. Code Chs. 25 and 26 (2002), or successor regulation. Contractor shall protect site and cultural resources from further disturbance until professional examination can be made or until clearance to proceed is authorized in writing by City Engineer.

3.19.2 Should either threatened or endangered plant or animal species be encountered, Contractor shall cease work immediately in the area of encounter and notify City Engineer.

3.20 CUTTING AND PATCHING

3.20.1 Contractor is responsible for necessary cutting, fitting, and patching to accomplish the Work and shall suitably support, anchor, attach, match, and trim or seal materials to work of other contractors. Contractor shall coordinate the Work with work of other contractors to minimize conflicts, as provided in Article 6.

3.20.2 Contractor may not endanger work by cutting, digging, or other action, and may not cut or alter work of other contractors except by written consent of City Engineer and affected contractor.

3.21 CLEANING

3.21.1 Contractor shall perform daily cleanup of all dirt, debris, scrap materials and other disposable items resulting from Contractor's operations, whether on-site or off-site. Unless otherwise authorized in writing by City Engineer, Contractor shall keep all streets, access streets, driveways, areas of public access, walkways, and other designated areas clean and open at all times.

3.21.2 Failure of Contractor to maintain a clean site, including access streets, is the basis for City Engineer to issue a Notice of Noncompliance. Should compliance not be attained within the time period in the Notice of Noncompliance, City Engineer may authorize necessary cleanup to be performed by others and the cost of the cleanup will be deducted from monies due Contractor.

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

3.22 SANITATION

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

3.23 ACCESS TO WORK AND TO INFORMATION

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

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

3.24 TRADE SECRETS

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

3.25 INDEMNIFICATION

3.25.1 CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE

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

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

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

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

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

3.25.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE LIABILITY OF CONTRACTOR FOR THE CITY'S CONCURRENT NEGLIGENCE SHALL NOT EXCEED \$1,000,000.

3.26 **RELEASE AND INDEMNIFICATION – PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT**

3.26.1 UNLESS OTHERWISE SPECIFICALLY REQUIRED BY THE CONTRACT, CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST

THE CITY BY ANY PARTY, INCLUDING CONTRACTOR, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THE CONTRACT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

3.26.2 CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, OR PRODUCT WITHOUT THE CITY ENGINEER'S PRIOR WRITTEN CONSENT.

3.26.3 UNLESS OTHERWISE SPECIFICALLY REQUIRED BY THE CONTRACT, WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER:

3.26.3.1 OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, OR PRODUCT, OR

3.26.3.2 IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS.

IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR PRODUCT, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

3.27 **INDEMNIFICATION PROCEDURES**

3.27.1 **Notice of Indemnification Claims:** If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other Party within 10 days. The notice must include the following:

3.27.1.1 a description of the indemnification event in reasonable detail,

3.27.1.2 the basis on which indemnification may be due, and

3.27.1.3 the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that

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indicated in the initial notice. If the City does not provide this notice within the 10-day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

3.27.2 Defense of Indemnification Claims:

3.27.2.1 Assumption of Defense:

Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnified loss.

3.27.2.2 Continued Participation:

If Contractor elects to defend the claim, the City may retain separate counsel to participate in, but not control, the defense and to participate in, but not control, any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it:

3.27.2.2.1 would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City;

3.27.2.2.2 would require the City to pay amounts that Contractor does not fund in full; or

3.27.2.2.3 would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

3.28 CONTRACTOR DEBT

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY CITY CONTROLLER IN WRITING. IF CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, IT SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, CITY CONTROLLER MAY

DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THE CONTRACT.

3.29 PRESERVATION OF CONTRACTING INFORMATION

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

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

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

ARTICLE 4 - ADMINISTRATION OF THE CONTRACT

4.1 *CONTRACT ADMINISTRATION*

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

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

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

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

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

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

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

review of a specific item does not indicate approval of an assembly of which the item is a component.

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

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

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

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

4.1.11 When City Engineer considers it necessary to implement the intent of the Contract, City Engineer may require additional inspection or testing of work in accordance with Paragraphs 13.6.3 and 13.6.4, whether such work is fabricated, Installed, or completed.

4.2 *COMMUNICATIONS IN ADMINISTRATION OF THE CONTRACT*

4.2.1 Except as otherwise provided in the Contract or when authorized by City Engineer in writing, Contractor shall communicate with Project Manager. Contractor shall communicate with Design Consultant, Design Consultant's subconsultants, and separate contractors through Project Manager. The City will communicate with Subcontractors and Suppliers through Contractor.

4.3 *CLAIMS AND DISPUTES*

4.3.1 *Documentation by Project Manager:* Contractor shall submit Claims, including those alleging an error or omission by Project Manager or Design Consultant, to Project Manager for documentation and recommendation to City Engineer.

4.3.2 *Decision of City Engineer:* Upon submission of Claim by Project Manager or Contractor, City Engineer will resolve Claims in accordance with Section 4.4.

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4.3.3 *Time Limits on Claims:* Claims by Contractor must be made within 90 days after occurrence of event giving rise to the Claim.

4.3.4 *Continuing the Contract Performance:* Pending final resolution of a Claim including referral to non-binding mediation, unless otherwise agreed in writing, Contractor shall proceed diligently with the performance of the Contract and the City will continue to make payments in accordance with the Contract.

4.3.4.1 Pending final resolution of a Claim including referral to non-binding mediation, Contractor is responsible for safety and protection of physical properties and conditions at site.

4.3.5 *Claims for Concealed or Unknown Conditions:* Concealed or unknown physical conditions include utility lines, other man-made structures, storage facilities, Pollutants and Pollutant Facilities, and the like, but do not include conditions arising from Contractor operations, or failure of Contractor to properly protect and safeguard subsurface facilities. Concealed conditions also include naturally-occurring soil conditions outside the range of soil conditions identified through geotechnical investigations, but do not include conditions arising from groundwater, rain, or flood.

4.3.5.1 If conditions are encountered at the site which are Underground Facilities or otherwise concealed or unknown conditions which differ materially from:

4.3.5.1.1 those indicated by the Contract; or

4.3.5.1.2 conditions which Contractor could have discovered through site inspection, geotechnical testing, or otherwise;

then Contractor will give written notice to City Engineer no later than five days after Contractor's first observation of the condition and before condition is disturbed. Contractor's failure to provide notice constitutes a waiver of a Claim.

4.3.5.2 City Engineer will promptly investigate concealed or unknown conditions. If City Engineer determines that conditions at the site are not materially different and that no change in Contract Price or Contract Time is justified, City Engineer will notify Contractor in writing, stating reasons. If City Engineer determines the conditions differ materially and cause increase or decrease in Contractor's cost or time required for performance of part of the

Work, City Engineer will recommend an adjustment in Contract Price or Contract Time, or both, as provided in Article 7. Opposition by a Party to the City Engineer's determination must be made within 21 days after City Engineer has given notice of the decision. If the Parties cannot agree on adjustment to Contract Price or Contract Time, adjustment is subject to further proceedings pursuant to Section 4.4.

4.3.6 *Claims for Additional Cost:* If Contractor wishes to make a Claim for increase in Contract Price, Contractor shall give written notice before proceeding with work for which Contractor intends to submit a Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

4.3.6.1 Contractor may file a Claim in accordance with Section 4.4 if Contractor believes it has incurred additional costs, for the following reasons:

4.3.6.1.1 written interpretation of City Engineer;

4.3.6.1.2 order by City Engineer to stop the Work when Contractor is not at fault;

4.3.6.1.3 suspension of the Work by City Engineer;

4.3.6.1.4 termination of the Contract by City Engineer; or

4.3.6.1.5 The City's non-compliance with another provision of the Contract.

4.3.6.2 No increase in Contract Price is allowed for delays or hindrances to the Work, except for direct and unavoidable extra costs to Contractor caused by failure of the City to provide information and services, or to make land and materials available, when required of the City under the Contract. Any increase claimed is subject to the provisions of Section 4.4 and Article 7.

4.3.6.3 The City is not liable for Claims for delay when Date of Substantial Completion occurs prior to expiration of Contract Time.

4.3.7 *Claims for Additional Time:* If Contractor wishes to make a Claim for an increase in Contract Time, Contractor shall give written notice as provided in Section 8.2. In case of continuing delay, only one Claim is necessary.

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4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 City Engineer will review Claims and take one or more of the following preliminary actions within 30 days of receipt of Claim:

- 4.4.1.1 submit a suggested time to meet and discuss the Claim with City Engineer;
- 4.4.1.2 reject Claim, in whole or in part, stating reasons for rejection;
- 4.4.1.3 recommend approval of the Claim by the other Party;
- 4.4.1.4 suggest a compromise; or
- 4.4.1.5 take other actions as City Engineer deems appropriate to resolve the Claim.

4.4.2 City Engineer may request additional supporting data from claimant. Party making Claim shall, within 10 days after receipt of City Engineer's request, submit additional supporting data requested by City Engineer.

4.4.3 At any time prior to rendering a written decision regarding a Claim, City Engineer may refer Claim to non-binding mediation. If Claim is resolved, City Engineer will prepare and obtain all appropriate documentation. If Claim is not resolved, City Engineer will take receipt of Claim and begin a new review under Section 4.4.

4.4.4 If Claim is not referred to or settled in non-binding mediation, City Engineer may conduct a hearing and will render a written decision, including findings of fact, within 75 days of receipt of Claim, or a time mutually agreed upon by the Parties in writing. City Engineer may notify Surety and request Surety's assistance in resolving Claim. City Engineer's decision is final and binding on the Parties.

4.5 CONDITION PRECEDENT TO SUIT; WAIVER OF ATTORNEY FEES AND INTEREST

4.5.1 A final decision by the City Engineer is a condition precedent to file suit in any jurisdiction for a claim made in connection with this Contract.

4.5.2 Neither the City nor Contractor may recover attorney fees for any claim brought in connection with this Contract.

4.5.3 Neither the City nor the Contractor may recover interest for any damages claim brought in connection with this Contract except as allowed by TEXAS LOCAL GOVERNMENT CODE Chapter 2251.

4.6 INTERIM PAYMENT WAIVER & RELEASE

4.6.1 In accordance with section 4.3, the Contractor shall use due diligence in the discovery and submission of any Claim against the City related to the Contractor's work.

4.6.2 The Contractor shall submit any Claim to the City not later than the 90th day after the occurrence of the event giving rise to the Claim.

4.6.3 Any failure to timely comply with the requirements of section 4.6.2 waives and releases any Claim when the Contractor submits an application for payment after the 90th day.

4.6.4 This waiver does not cover any retainage. In case of any conflict of law, this language shall be revised to the minimum extent necessary to avoid legal conflict. This waiver is made specifically for the benefit of the City.

ARTICLE 5 - SUBCONTRACTORS AND SUPPLIERS

5.1 AWARD OF SUBCONTRACTS OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.1.1 Contractor may not contract with a Subcontractor, Supplier, person, or entity that City Engineer has made a reasonable and timely objection to.

5.1.2 If City Engineer has a reasonable objection to person or entity proposed by Contractor, Contractor shall propose another with whom City Engineer has no reasonable objection.

5.1.3 Contractor shall execute contracts with approved Subcontractors, Suppliers, persons, or entities before the Subcontractors or Suppliers begin work under the Contract. All such contracts must be executed and sent to the OBO Director and Contracting Department within 30 days after the date of the Notice to Proceed and must include provisions set forth in Articles 3 and 5 of this Document.

5.1.4 Contractor shall notify City Engineer in writing of any proposed change of Subcontractor, Supplier, person, or entity previously accepted by the City.

5.1.5 Contractor shall make timely payments to Subcontractors and Suppliers for performance of

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the Contract. Contractor shall protect, defend, and indemnify the City from any claim or liability arising out of Contractor's failure to make the payments. Disputes relating to payment of Business Enterprise Subcontractors or Suppliers will be submitted to arbitration in same manner as other disputes under Business Enterprise subcontracts. Failure of Contractor to comply with decisions of arbitrator may be determined by City Engineer a material breach leading to termination of the Contract.

5.2 CONTRACTOR RESPONSIBILITY FOR SUBCONTRACTORS

5.2.1 Contractor is responsible to the City, as may be required by laws and regulations, for all acts and omissions of Subcontractors, Suppliers, and other persons and organizations performing or furnishing any of the Work under direct or indirect contract with Contractor.

5.2.2 Contractor shall make available to each proposed Subcontractor, prior to execution of subcontract, copies of the Contract to which Subcontractor is bound by this Section 5.2. Contractor shall notify Subcontractor of any terms of proposed subcontract which may be at variance with the Contract.

5.2.3 The City's approval of Subcontractor or Suppliers does not relieve Contractor of its obligation to perform, or to have performed to the full satisfaction of the City, the Work required by the Contract.

5.2.4 Unless there is a contractual relationship between Contractor and a Subcontractor or Supplier to the contrary, Contractor shall withhold no more retainage from Subcontractors or Suppliers than City withholds from Contractor under this Agreement. However, once a Subcontractor or Supplier completes performance, Contractor shall release all retainage to that Subcontractor or Supplier regardless if City continues to retain under this Agreement.

5.2.5 Prior to a Subcontractor or Supplier commencing performance for Contractor, Contractor shall meet with that Subcontractor or Supplier to provide instructions on invoicing procedures, dispute resolution procedures, and statutory rights, such as claim filing procedures under the McGregor Act. Subcontractors and Suppliers must certify to the City Engineer that Contractor has fulfilled the requirements of this Section.

ARTICLE 6 - CONSTRUCTION BY THE CITY OR BY SEPARATE CONTRACTORS

6.1 THE CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 The City may perform on-site construction operations related to the Work and as part of the Project with the City's workforce or with separate contractors.

6.2 COORDINATION

6.2.1 The City will coordinate activities of the City's workforce and of each separate contractor with work of Contractor, and Contractor shall cooperate with the City and separate contractors.

6.2.1.1 Contractor shall participate with other separate contractors and the City in reviewing their construction schedules when directed to do so by the Project Manager. Contractor shall make revisions to construction schedule and Contract Price deemed necessary after joint review and mutual agreement. Construction schedules shall then constitute schedules to be used by Contractor, separate contractors, and the City, until subsequently revised.

6.2.2 Contractor shall afford to the City and to separate contractors reasonable opportunity for introduction and storage of their materials and equipment, and for performance of their activities.

6.2.3 If part of Contractor's work depends on proper execution of construction or operations by the City or a separate contractor, Contractor shall, prior to proceeding with that portion of the Work, inspect the other work and promptly report to City Engineer apparent discrepancies or defects in the other construction that would render it unsuitable for the proper execution of the Work. Failure of Contractor to report apparent discrepancies or defects in the other construction shall constitute acknowledgment that the City's or separate contractor's completed or partially completed construction is fit and proper to receive Contractor's work, except as to discrepancies or defects not then reasonably discoverable.

6.3 MUTUAL RESPONSIBILITY

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

6.3.2 Contractor shall promptly remedy damage caused by Contractor to completed or

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partially completed construction or to property of the City or separate contractor.

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

6.4 *THE CITY'S RIGHT TO CLEAN UP*

6.4.1 If dispute arises among Contractor, separate contractors, and the City as to responsibility under their respective contracts for maintaining premises and surrounding area free from waste materials and rubbish as described in Section 3.21, the City may clean up and allocate cost among those responsible, as determined by City Engineer.

ARTICLE 7 - CHANGES IN THE WORK

7.1 *CHANGES*

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

- 7.1.1.1 Change Order;
- 7.1.1.2 Work Change Directive; or
- 7.1.1.3 Minor Change in the Work.

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

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

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

Nothing in this Section is intended to permit an increase of the Contract Price in excess of

the limit set out in TEX. LOC. GOV'T CODE ANN. §252.048 or its successor statute.

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

7.2 *WORK CHANGE DIRECTIVES*

7.2.1 A Work Change Directive cannot change Contract Price or Contract Time, but is evidence that the Parties agree that a change, ordered by directive, will be incorporated in a subsequently issued Change Order as to its effect, if any, on Contract Price or Contract Time.

7.2.2 Failure by Contractor to commence work identified in a Work Change Directive within the time specified by City Engineer, or to complete the work in a reasonable period of time, may be determined by City Engineer to be a material breach of Contract.

7.2.3 A Work Change Directive is used in the absence of total agreement of the terms of a Change Order. Interim payments are made in accordance with Paragraph 9.6.1.

7.2.4 If Contractor signs a Work Change Directive, then Contractor agrees to its terms including adjustment in Contract Price and Contract Time or method for determining them. Agreement by the Parties to adjustments in Contract Price and Contract Time are immediately recorded as a Change Order.

7.2.5 City Engineer, by Work Change Directive, may direct Contractor to take measures as necessary to expedite construction to achieve Date of Substantial Completion on or before expiration of Contract Time. When the Work is expedited solely for convenience of the City and not due to Contractor's failure to prosecute timely completion of the Work, then Contractor is entitled to an adjustment in Contract Price equal to actual costs determined in accordance with Article 7.

7.3 *ADJUSTMENTS IN CONTRACT PRICE*

7.3.1 Adjustments in Contract Price are accomplished by Change Order and are based on one of the following methods:

- 7.3.1.1 mutual acceptance of fixed price, properly itemized and supported by sufficient data to permit evaluation;
- 7.3.1.2 unit prices stated in the Contract or subsequently agreed upon;

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- 7.3.1.3 cost to be determined in a manner agreed upon by the Parties and mutually acceptable fixed or percentage fee; or
7.3.1.4 as provided in Paragraph 7.3.2.

7.3.2 If Contractor does not agree with a change in Contract Price or Contract Time or the method for adjusting them specified in the Work Change Directive within 21 days from date of the Work Change Directive's issuance, method and adjustment are determined by City Engineer. If Project Manager or Contractor disagree with City Engineer's determination they then may file a Claim in accordance with Section 4.4.

- 7.3.2.1 If City Engineer determines a method and adjustment in Contract Price under Paragraph 7.3.2, Contractor shall provide, in a form as City Engineer may prescribe, appropriate supporting data for items submitted under Paragraph 7.3.2. Failure to submit the data within 21 days of request for the data by City Engineer shall

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

constitute waiver of a Claim.

- 7.3.2.2 Unless otherwise provided in the Contract, costs for the purposes of this Paragraph 7.3.2 are limited to the following:
7.3.2.2.1 costs of labor, including labor burden as stated below for social security, unemployment insurance, customary and usual fringe benefits required by agreement or custom, and Workers' Compensation insurance;
7.3.2.2.1.1 the maximum labor burden applied to costs of labor for changes in the Work is 55 percent;
7.3.2.2.2 costs of materials, supplies, and equipment, including cost of

- transportation, whether incorporated or consumed;
7.3.2.2.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from Contractor or others, with prior approval of City Engineer;
7.3.2.2.4 costs of premiums for Bonds and insurance and permit fees related to the change in the Work;
7.3.2.2.5 additional costs of direct supervision of work and field office personnel directly attributable to the change; and
7.3.2.2.6 allowances for overhead and profit as stated below.
7.3.2.2.6.1 the maximum allowances for overhead and profit on increases due to Change Orders:
7.3.2.2.6.2 for changes in the Work performed by Contractor and Subcontractors, allowance for overhead and profit are applied to an amount equal to cost of all additions less cost of all deletions to the Work. Allowance for overhead to Contractor and first tier Subcontractors on changes performed by Subcontractors are applied to an amount equal to the sum of all increases to the Work by applicable Subcontractors.

7.3.3 If the City deletes or makes a change, which results in a net decrease in Contract Price, the City is entitled to a credit calculated in accordance with Paragraphs 7.3.1 and 7.3.2 and Subparagraphs 7.3.2.1, and 7.3.2.2.1 through 7.3.2.2.5. When both additions and credits covering related work or substitutions are involved in a change, allowance for overhead and profit is figured on the basis of a net increase, if any, with respect to that change in accordance with Subparagraph 7.3.2.2.6.

7.3.4 When Contractor agrees with the determination made by City Engineer concerning adjustments in Contract Price and Contract Time, or the Parties otherwise reach agreement upon the adjustments, the agreement will be immediately recorded by Change Order.

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7.4 MINOR CHANGES IN THE WORK

7.4.1 A Minor Change in Work is binding on the Parties. Contractor shall acknowledge, in a written form acceptable to City Engineer, that there is no change in Contract Time or Contract Price and shall carry out the written orders promptly.

ARTICLE 8 - TIME

8.1 PROGRESS AND COMPLETION

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

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

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

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

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

8.1.6 Except in connection with safety or protection of persons or the Work or property at the site or adjacent to the site, and except as otherwise indicated in the Contract, all the Work at the site will be performed Monday through Saturday between the hours of 7:00 a.m. and 7:00 p.m. Contractor

may not perform work between 7:00 p.m. and 7:00 a.m., on a Sunday, or on a Legal Holiday, without giving City Engineer 24-hour prior written notice and receiving written consent of City Engineer.

8.2 DELAYS AND EXTENSIONS OF TIME

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

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

8.2.2 For any reason other than those listed in Section 4.3.6.2, if the Contractor's work is delayed in any manner or respect, the Contractor shall have no claim for damages and shall have no right of additional compensation from the City by reason of any delay or increased expense to the Contractor's work, except for an extension of time as provided in this provision.

8.2.3 Contractor may request an extension of Contract Time for delay only if:

- 8.2.3.1 delay is caused by failure of Subcontractor or Supplier to perform or make progress; and
- 8.2.3.2 cause of failure is beyond control of both Contractor and Subcontractor or Supplier.

8.2.4 Claims relating to Contract Time must be made in accordance with Paragraph 4.3.7.

8.2.5 Claims for extending or shortening Contract Time are based on written notice promptly delivered by the Party making Claim to other Party. Claim must accurately describe occurrence generating Claim, and a statement of probable effect on progress of the Work.

8.2.6 Claims for extension of Contract Time are considered only when a Claim is filed within the time limits stated in Paragraph 4.3.3.

- 8.2.6.1 Notwithstanding paragraph 4.3.3, an extension of time for delays under this paragraph may be granted only upon

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written application by the Contractor within 48 hours from the claimed delay.

8.2.7 Written notice of Claim must be accompanied by claimant's written statement that adjustment claimed is entire adjustment to which claimant is entitled as a result of the occurrence of the event. When the Parties cannot agree, Claims for adjustment in Contract Time are determined by City Engineer in accordance with Section 4.4.

8.2.8 Adjustments to Contract Time are accomplished by Change Order.

ARTICLE 9 - PAYMENTS AND COMPLETION

9.1 *UNIT PRICE WORK*

9.1.1 Where the Contract provides that all or part of the Work is based on Unit Prices, the Original Contract Price includes, for all Unit Price work, an amount equal to the sum of Unit Prices times Unit Price Quantities for each separately identified item of Unit Price work.

9.1.2 Each Unit Price includes an amount to cover Contractor's overhead and profit for each separately identified item.

9.1.3 The Contractor may not make a Claim against the City for excess or deficiency in Unit Price Quantities provided in the Contract, except as provided in Subparagraph 9.1.4. Payment at the prices stated in the Contract is in full for the completed work. Contractor is not entitled to additional payment for materials, supplies, labor, tools, machinery and all other expenditures incidental to satisfactory completion of the Work.

9.1.4 City Engineer may increase or decrease quantities of the Work within limitations stated in Paragraph 7.1.2. Contractor is entitled to payment for actual quantities of items provided at Unit Prices set forth in the Contract.

9.1.5 Where the final quantity of work performed by Contractor on Major Unit Price Work item differs by more than 25 percent from quantity of the item stated in the Contract, a Party may request an adjustment in Unit Price, for the portion that differs by more than 25 percent, by a Change Order under Section 7.3.

9.2 *ESTIMATES FOR PAYMENT, UNIT PRICE WORK*

9.2.1 Following the day of each month indicated in the Contract, Project Manager will

prepare a Certificate for Payment for the preceding monthly period based on estimated units of work completed. Prior to preparing Certificate of Payment, Contractor shall have submitted to City Engineer, on a form approved by the Director of the Office of Business Opportunity, evidence satisfactory to the City Engineer of payments made to Subcontractors and Suppliers for the month preceding the month for which the Certificate for Payment is prepared, including evidence of electronic submission of certified payrolls.

9.2.2 Before final completion, City Engineer will review and confirm with Contractor the actual final installed Unit Price quantities. City Engineer's determination of actual final installed Unit Price quantities will be included in the final Certificate for Payment and any previous underpayments and overpayments will be reconciled with the actual final Unit Price quantities. Contractor shall file written notice of intent to appeal, if any, City Engineer's determination within 10 days of receipt of final Certificate for Payment. Upon expiration of the 10-day period, City Engineer's decision is final and binding on the Parties. If Contractor submits notice within the 10-day period, Contractor shall submit a Claim in accordance with Section 4.4.

9.3 *STIPULATED PRICE WORK*

9.3.1 For work contracted on a Stipulated Price basis, 10 days before submittal of first Application for Payment, Contractor shall submit to City Engineer a Schedule of Values allocated to various portions of the Work, prepared in the form and supported by the data as City Engineer may require to substantiate its accuracy. This schedule, as approved by City Engineer, is used as a basis for approval of Contractor's Applications for Payment.

9.4 *APPLICATIONS FOR PAYMENT, STIPULATED PRICE WORK*

9.4.1 For work contracted on a Stipulated Price basis, Contractor shall submit Applications for Payment to City Engineer each month on a form acceptable to City Engineer in accordance with Schedule of Values. Application must indicate percentages of completion of each portion of the Work listed in Schedule of Values as of the end of the period covered by the Application for Payment.

9.4.2 Applications for Payment must be supported by substantiating data as City Engineer may require and must reflect retainages as provided below. Evidence satisfactory to the City Engineer of payments made to Subcontractors and Suppliers for the month preceding the month for which the Application for Payment is submitted must

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accompany each Application for Payment on a form approved by the Director of the Office of Business Opportunity. Evidence of electronic submission of certified payrolls must be included. Application must be sworn and notarized.

9.5 **CERTIFICATES FOR PAYMENT**

9.5.1 City Engineer will, within 10 days after the date specified in the Contract for Unit Price work, or upon receipt of Contractor's Application for Payment for Stipulated Price work, issue a Certificate for Payment for work based on amount which City Engineer determines is properly due, with copy to Contractor.

9.5.2 Unless otherwise provided in the Contract, payment for completed work and for properly stored Products is conditioned upon compliance with procedures satisfactory to City Engineer to protect the City's interests. Procedures will include applicable insurance, storage, and transportation to site for materials and equipment stored off-site. Contractor is responsible for maintaining materials and equipment until Date of Substantial Completion.

9.5.3 Contractor shall document its use of Ultra Low Sulfur Diesel Fuel by providing invoices and receipts evidencing Contractor's use.

9.6 **COMPUTATIONS OF CERTIFICATES FOR PAYMENT**

9.6.1 Subject to the provisions of the Contract, the amount of each Certificate for Payment is calculated as follows:

9.6.1.1 that portion of Contract Price allocated to completed work as determined by:

9.6.1.1.1 multiplying the percentage of completion of each portion of the Work listed in the Schedule of Values by the value of that portion of the Work, or

9.6.1.1.2 multiplying Unit Price quantities Installed times the Unit Prices listed in the Contract;

9.6.1.2 plus progress payments for completed work that has been properly authorized by Modifications;

9.6.1.3 less retainage of five percent;

9.6.1.4 plus actual costs, properly substantiated by certified copies of invoices and freight bills, of non-perishable materials and equipment delivered and properly stored, if approved in advance by Project Manager, less 15 percent;

9.6.1.5 less any previous payments by the City.

9.7 **DECISIONS TO WITHHOLD CERTIFICATION**

9.7.1 City Engineer may decline to certify payment and may withhold payment in whole or in part to the extent reasonably necessary to protect the City if, in City Engineer's opinion, there is reason to believe that:

9.7.1.1 nonconforming work has not been remedied;

9.7.1.2 the Work cannot be completed for unpaid balance of Contract Price;

9.7.1.3 there is damage to the City or another contractor;

9.7.1.4 the Work will not be completed within Contract Time and that unpaid balance will not be adequate to cover actual and liquidated damages;

9.7.1.5 probable evidence that third party claims will be filed in court, in arbitration, or otherwise;

9.7.1.6 Contractor has failed to make payments to Subcontractors or Suppliers for labor, material, or equipment; or

9.7.1.7 Contractor has persistently failed to carry out work in accordance with the Contract.

9.7.1.8 Contractor has not paid Subcontractors or Suppliers because of a payment dispute; or

9.7.1.9 Contractor has failed to provide satisfactory evidence described in Paragraphs 9.2.1, 9.4.2, and 9.8.2.

9.7.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.7.3 City Engineer may decline to certify payment and may withhold request for payment in whole or in part upon failure of Contractor to submit initial construction schedule or monthly schedule updates, as required in Paragraphs 3.15.1 and 3.15.3.

9.8 **PROGRESS PAYMENTS**

9.8.1 The City will make payment, in an amount certified by City Engineer, within 20 days after City Engineer has issued a Certificate for Payment.

9.8.2 The City has no obligation to pay or to facilitate the payment to a Subcontractor or Supplier, except as may otherwise be required by law. Contractor shall comply with the prompt payment requirements of Chapter 2251 of the Government Code. State law requires payment of Subcontractors and Suppliers by Contractor within 7

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calendar days of Contractor's receipt of payment from the City, unless there is a payment dispute between Contractor and a Subcontractor or Supplier evidenced on a form approved by the Director of Mayor's Office of Business Opportunity and submitted to the City Engineer each month with Application for Payment or Estimate for Payment. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.**

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

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

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

9.9 *DATE OF SUBSTANTIAL COMPLETION*

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

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

9.9.2 Upon receipt of Contractor's punch list, Project Manager will inspect the Work, or designated portion thereof, to verify that the punch list contains all items needing completion or correction. If Project Manager's inspection discloses items not on Contractor's punch list, the items must be added to the punch list of items to be completed or corrected. If Project Manager's inspection reveals that Contractor is not yet substantially complete,

Contractor shall complete or correct the deficiencies and request another inspection by Project Manager. The City may recover the costs of re-inspection from Contractor.

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

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

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

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

9.9.4.1 Date of Substantial Completion;

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

9.9.4.3 fixed time within which Contractor shall complete all items on punch list of items to be corrected accompanying the certificate.

9.9.5 Warranties required by the Contract shall commence on the Date of Substantial Completion unless otherwise provided by City Engineer in Certificate of Substantial Completion. Warranties may not commence on items not substantially completed.

9.9.6 After Date of Substantial Completion and upon application by Contractor and approval by City Engineer, the City may make payment, reflecting adjustment in retainage, if any, as follows:

9.9.6.1 with the consent of Surety, the City may increase payment to Contractor to 96 percent of Contract Price, less value of items to be completed and accrued liquidated damages.

9.9.7 Contractor shall complete or correct the items in Paragraph 9.9.2 within the time period set out in the Certificate of Substantial Completion. If

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Contractor fails to do so, the City may issue a Notice of Noncompliance and proceed according to Section 2.5.

9.10 *PARTIAL OCCUPANCY OR USE*

9.10.1 The City may occupy or use any completed or partially completed portion of the Work at any stage, provided the occupancy or use is consented to by Contractor and Contractor's insurer and authorized by public authorities having jurisdiction over the Work. Consent of Contractor to partial occupancy or use may not be unreasonably withheld.

9.10.2 Immediately prior to the partial occupancy or use, Project Manager and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record condition of the Work.

9.10.3 Partial occupancy or use of a portion of the Work does not constitute acceptance of work not in compliance with requirements of the Contract.

9.11 *FINAL COMPLETION AND FINAL PAYMENT*

9.11.1 Contractor shall review the Contract and inspect the Work prior to Contractor notification to City Engineer that the Work is complete and ready for final inspection. Contractor shall submit affidavit that the Work has been inspected and that the Work is complete in accordance with requirements of the Contract.

9.11.2 Project Manager will make final inspection within 15 days after receipt of Contractor's written notice that the Work is ready for final inspection and acceptance. If Project Manager finds the Work has been completed in accordance with the Contract, Contractor shall submit items set out in Paragraph 9.11.4 and, for stipulated price contracts, a final Application for Payment. City Engineer will, within 10 days, issue Certificate of Final Completion stating that to the best of City Engineer's knowledge, information, and belief, the Work has been completed in accordance with the Contract, and will recommend acceptance of the Work by City Council.

9.11.3 Should work be found not in compliance with requirements of the Contract, City Engineer will notify Contractor in writing of items of noncompliance. Upon inspection and acceptance of the corrections by Project Manager, compliance with all procedures of Paragraph 9.11.2, and Contractor's submission of the items set out in Paragraph 9.11.4,

the City Engineer will issue Certificate of Final Completion to Contractor as provided in Paragraph 9.11.2.

9.11.4 Contractor shall submit the following items to City Engineer before City Engineer will issue a Certificate of Final Completion:

9.11.4.1 affidavit that payrolls, invoices for materials and equipment, and other indebtedness of Contractor connected with the Work, less amounts withheld by the City, have been paid or otherwise satisfied. If required by City Engineer, Contractor shall submit further proof including waiver or release of lien or claims from laborers or Suppliers of Products;

9.11.4.2 certificate evidencing that insurance required by the Contract to remain in force after final payment is currently in effect, will not be canceled or materially changed until at least 30 days written notice has been given to the City;

9.11.4.3 written statement that Contractor knows of no substantial reason that insurance will not be renewable to cover correction and warranty period required by the Contract;

9.11.4.4 consent of Surety to final payment; and

9.11.4.5 copies of record documents, maintenance manuals, tests, inspections, and approvals.

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

9.11.5 If Contractor fails to submit required items in Paragraph 9.11.4 within 10 days of Project Manager's inspection of the Work under Paragraph 9.11.2 or Paragraph 9.11.3, City Engineer may, but is not obligated to:

9.11.5.1 deduct liquidated damages accrued from monies held;

9.11.5.2 proceed to City Council for acceptance of the Work, minus some or all of the items Contractor fails to submit under Paragraph 9.11.4; and,

9.11.5.3 upon acceptance by City Council of the portion of the Work completed, make final payment as set out in Paragraph 9.11.8.

9.11.6 If final completion is materially delayed through no fault of Contractor, or by issuance of Change Orders affecting date of final completion, and City Engineer so confirms, the City may, upon

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application by Contractor and certification by City Engineer, and without terminating the Contract, make payment of balance due for that portion of the Work fully completed and accepted.

9.11.7 If remaining balance due for work not corrected is less than retainage stipulated in the Contract, Contractor shall submit to City Engineer written consent of Surety to payment of balance due for that portion of the Work fully completed and accepted, prior to certification of the payment. The payment is made under terms governing final payment, except that it does not constitute waiver of Claims.

9.11.8 The City will make final payment to Contractor within 30 days after acceptance of the Work by City Council, subject to limitations, if any, as stated in the Contract.

9.11.9 Acceptance of final payment by Contractor shall constitute a waiver of all Claims, whether known or unknown, by Contractor, except those previously made in writing and identified by Contractor as unsettled at the time of final payment.

9.12 LIQUIDATED DAMAGES

9.12.1 Contractor, Surety, and the City agree that failure to complete the Work within Contract Time will cause damages to the City and that actual damages from harm are difficult to estimate accurately. Therefore, Contractor, Surety, and the City agree that Contractor and Surety are liable for and shall pay to the City the amount stipulated in Supplementary Conditions as liquidated damages, and that the amount of damages fixed therein is a reasonable forecast of just compensation for harm to the City resulting from Contractor's failure to complete the Work within Contract Time. The amount stipulated will be paid for each day of delay beyond Contract Time until Date of Substantial Completion.

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

ARTICLE 10 - SAFETY PRECAUTIONS

10.1 SAFETY PROGRAMS

10.1.1 Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performance of the Contract. Contractor shall submit a safety program to City Engineer prior to mobilizing for the Work, and

is solely responsible for safety, efficiency, and adequacy of ways, means, and methods, and for damage which might result from failure or improper construction, maintenance, or operation performed by Contractor.

10.2 POLLUTANTS AND POLLUTANT FACILITIES

10.2.1 If Contractor encounters material on-site which it reasonably believes to be a Pollutant or facilities which it reasonably believes to be a Pollutant Facility, Contractor shall immediately stop work in affected area and immediately notify City Engineer, confirming the notice thereafter in writing.

10.2.2 If City Engineer determines that the material is a Pollutant or facility is a Pollutant Facility, work in affected area may not be resumed except by Modification, and only if the work would not violate applicable laws or regulations.

10.2.3 If City Engineer determines that the material is not a Pollutant or a facility is not a Pollutant Facility, work in affected area will be resumed upon issuance of a Modification.

10.2.4 Contractor is not required to perform, unless authorized by Change Order, work relating to Pollutants or Pollutant Facilities except for that work relating to Pollutants or Pollutant Facilities specified in the Contract.

10.3 SAFETY OF THE ENVIRONMENT, PERSONS, AND PROPERTY

10.3.1 Contractor shall take reasonable precautions for safety and shall provide reasonable protection to prevent damage, injury, or loss from all causes, to:

10.3.1.1 employees performing work on-site, and other persons who may be affected thereby;

10.3.1.2 work, including Products to be incorporated into the Work, whether in proper storage, under control of Contractor or Subcontractor; and

10.3.1.3 other property at or adjacent to the site, such as trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal or replacement in course of construction.

10.3.2 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons, property, or environment.

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10.3.2.1 Contractor shall comply with requirements of Underground Facility Damage Prevention and Safety Act TEX. UTIL. CODE ANN. Ch. 251 (Vernon Supp. 2002).

10.3.2.2 Contractor shall comply with all safety rules and regulations of the Federal Occupational Health and Safety Act of 1970 and subsequent amendments (OSHA).

10.3.3 Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection of persons and property, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

10.3.4 Contractor shall designate responsible member of Contractor's organization at site whose duty is prevention of accidents. This person will be Contractor's Superintendent unless otherwise designated by Contractor in writing to City Engineer.

10.3.5 Contractor shall prevent windblown dust and may not burn or bury trash debris or waste products on-site. Contractor shall prevent environmental pollution, including but not limited to particulates, gases and noise, as a result of the Work.

10.3.6 When use or storage of hazardous materials or equipment, or unusual methods are necessary for execution of the Work, Contractor shall exercise utmost care and carry on the activities under supervision of properly qualified personnel.

10.3.7 Contractor shall promptly remedy damage and loss to property referred to in Subparagraphs 10.3.1.2 and 10.3.1.3, caused in whole or in part by Contractor, or Subcontractors, which is not covered by insurance required by the Contract. Contractor is not required to remedy damage or loss attributable to the City, Design Consultant, or other contractors.

10.4 **EMERGENCIES**

10.4.1 In emergencies affecting safety of persons or property, Contractor shall act at Contractor's discretion to prevent imminent damage, injury, or loss. Additional compensation or extension of time claimed by Contractor because of emergencies are determined as provided in Article 7.

ARTICLE 11 - INSURANCE AND BONDS

11.1 **GENERAL INSURANCE REQUIREMENTS**

11.1.1 With no intent to limit Contractor's liability under indemnification provisions set forth in Paragraphs 3.25 and 3.26, Contractor shall provide and maintain in full force and effect during term of the Contract and all extensions and amendments thereto, at least the following insurance and available limits of liability.

11.1.2 If any of the following insurance is written as "claims made" coverage and the City is required to be carried as additional insured, then Contractor's insurance shall include a two-year extended discovery period after last date that Contractor provides any work under the Contract.

11.1.3 Aggregate amounts of coverage, for purposes of the Contract, are agreed to be amounts of coverage available during fixed 12-month policy period.

11.2 **INSURANCE TO BE PROVIDED BY CONTRACTOR**

11.2.1 *Risks and Limits of Liability:* Contractor shall maintain the insurance coverages in the listed amounts, as set out in Table 1.

11.2.2 If Limit of Liability for Excess Coverage is \$2,000,000 or more, Limit of Liability for Employer's Liability may be reduced to \$500,000.

11.2.3 *Insurance Coverage:* At all times during the term of this Contract and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the Contract requirements. Prior to beginning performance under the Contract, at any time upon the Director's request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Contractor shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Contractor waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Contractor shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be

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commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

11.2.4 *Form of insurance:* The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Contract. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide. Each insurer is subject to approval by City Engineer in City Engineer's sole discretion as to conformance with these requirements.

11.2.5 *Required Coverage:* The City shall be an Additional Insured under this Contract, and all policies except Professional Liability and Worker's Compensation must name the City as an Additional Insured. Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Contract. If professional liability coverage is written on a "claims made" basis, Contractor shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Contract with a duration of two years after substantial completion.

11.2.6 *Deductibles:* Contractor assumes and bears any claims or losses to extent of deductible amounts and waives any claim it may ever have for same against the City, its officers, agents, or employees.

11.2.7 *Notice:* **CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the 30-day period, Contractor shall provide other suitable policies in order to maintain the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.

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

11.2.9 *Endorsement of Primary Insurance:* Each policy, except Workers' Compensation policies, must contain an endorsement that the policy is primary insurance to any other insurance available to additional insured with respect to claims arising hereunder.

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

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

11.2.12 Definitions:

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

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

11.2.12.3 *Persons providing services for the Work (Subcontractor in Texas Labor Code § 406.096):* includes all persons or entities performing all or part of services Contractor has undertaken to perform on the Work, regardless of whether that person contracted directly with Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of the entity, or employees of entity which furnishes persons to provide services on the Work. Services include, without

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limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to the Work. Services do not include activities unrelated to the Work, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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

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

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

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

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

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

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

11.2.18 Contractor shall notify City Engineer in writing by certified mail or personal delivery, within 10 days after Contractor knew or should have known, of any change that materially affects provision of coverage of any person providing services on the Work.

11.2.19 Contractor shall post on-site a notice, in text, form and manner prescribed by Texas Workers' Compensation Commission, informing all persons providing services on the Work that they are

required to be covered, and stating how person may verify coverage and report lack of coverage.

11.2.20 Contractor shall contractually require each person with whom it contracts to provide services on the Work to:

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

11.2.20.2 provide to Contractor, prior to that person's beginning work on the Work, a Certificate of Coverage showing that coverage is being provided for all employees of the person providing services on the Work, for the duration of the Work;

11.2.20.3 provide Contractor, prior to the end of the coverage period, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current Certificate of Coverage ends during the duration of the Work;

11.2.20.4 obtain from each other person with whom it contracts, and provide to Contractor: (1) Certificate of Coverage, prior to other person's beginning work on the Work; and (2) new Certificate of Coverage showing extension of coverage, prior to end of coverage period, if coverage period shown on the current Certificate of Coverage ends during duration of the Work.

11.2.20.5 retain all required Certificates of Coverage on file for the duration of the Work and for one year thereafter;

11.2.20.6 notify City Engineer in writing by certified mail or personal delivery within 10 days after person knew, or should have known, of change that materially affects provision of coverage of any person providing services on the Work; and

11.2.20.7 contractually require each person with whom it contracts to perform as required by Paragraphs 11.2.10.1 through 11.2.10.7, with Certificates of Coverage to be provided to person for whom they are providing services.

11.2.21 By signing the Contract or providing or causing to be provided a Certificate of Coverage, Contractor is representing to the City that all

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employees of Contractor who will provide services on the Work will be covered by Workers' Compensation coverage for the duration of the Work, that coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with appropriate insurance carrier. Contractor is not allowed to self-insure Workers' Compensation. Contractor may be subject to administrative penalties, criminal penalties, civil penalties, or other civil actions for providing false or misleading information.

11.2.22 Contractor's failure to comply with Paragraph 11.2.10 is a breach of the Contract by Contractor, which entitles the City to declare the Contract void if Contractor does not remedy breach within 10 days after receipt of notice of breach from City Engineer.

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

TABLE 1
REQUIRED COVERAGE

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

11.3 PROOF OF INSURANCE

11.3.1 Prior to commencing services and at time during the term of the Contract, Contractor shall furnish City Engineer with Certificates of Insurance, along with Affidavit from Contractor confirming that

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Certificate accurately reflects insurance coverage that is available during term of the Contract. If requested in writing by City Engineer, Contractor shall furnish City Engineer with certified copies of Contractor's actual insurance policies. Failure of Contractor to provide certified copies, as requested, may be deemed, at City Engineer's or City Attorney's discretion, a material breach of the Contract.

11.3.2 Notwithstanding the proof of insurance requirements, Contractor shall continuously maintain in effect required insurance coverage set forth in Paragraph 11.2. Failure of Contractor to comply with this requirement does constitute a material breach by Contractor allowing the City, at its option, to immediately suspend or terminate work, or exercise any other remedy allowed under the Contract. Contractor agrees that the City has not waived or is not estopped to assert a material breach of the Contract because of any acts or omissions by the City regarding its review or non-review of insurance documents provided by Contractor, its agents, employees, or assigns.

11.3.3 Contractor shall provide updated certificates of insurance to the Director upon request. The Contractor shall be responsible for delivering a current certificate of insurance in the proper form to the Director as long as Contractor is required to furnish insurance coverage under Paragraph 11.2.

11.3.4 Every certificate of insurance Contractor delivers in connection with this Contract shall

- 11.3.4.1 be less than 12 months old;
- 11.3.4.2 include all pertinent identification information for the Insurer, including the company name and address, policy number, NAIC number or AMB number, and authorized signature;
- 11.3.4.3 include in the Certificate Holder Box the Project name and reference numbers, contractor's email address, and indicates the name and address of the Project Manager;
- 11.3.4.4 include the Contractor's email address in the Certificate Holder Box;
- 11.3.4.5 include the Project reference numbers on the City address so the Project reference number is visible in the envelope window; and
- 11.3.4.6 be appropriately marked to accurately identify all coverages and limits of the policy, effective and expiration dates, and waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and

Worker's Compensation/Employers' Liability.

11.4 *PERFORMANCE AND PAYMENT BONDS*

11.4.1 For Contracts over the value of \$25,000, Contractor shall provide Bonds on the City's standard forms covering faithful performance of the Contract and payment of obligations arising thereunder as required in the Contract pursuant to Chapter 2253 of the Government Code. The Bonds must be for 100 percent of Original Contract Price and in accordance with conditions stated on standard City Performance and Payment Bond and Statutory Payment Bond forms. Bonds may be obtained from Contractor's usual source and cost for the Bonds are included in Contract Price.

11.5 *MAINTENANCE BONDS*

11.5.1 *One-year Maintenance Bond:* Contractor shall provide Bond on standard City One-year Maintenance Bond form, providing for Contractor's correction, replacement, or restoration of any portion of the Work which is found to be not in compliance with requirements of the Contract during one-year correction period required in Paragraph 12.2. The Maintenance Bond must be for 100 percent of the Original Contract Price.

11.6 *SURETY*

11.6.1 A Bond that is given or tendered to the City pursuant to the Contract must be executed by a surety company that is authorized and admitted to write surety Bonds in the State of Texas.

11.6.2 If a Bond is given or tendered to the City pursuant to the Contract in an amount greater than 10 percent of Surety's capital and surplus, Surety shall provide certification that Surety has reinsured that portion of the risk that exceeds 10 percent of Surety's capital and surplus. The reinsurance must be with one or more reinsurers who are duly authorized, accredited, or trusted to do business in the State of Texas. The amount reinsured by reinsurer may not exceed 10 percent of reinsurer's capital and surplus. The amount of allowed capital and surplus must be based on information received from State Board of Insurance.

11.6.3 If the amount of a Bond is greater than \$100,000, Surety shall:

- 11.6.3.1 also hold certificate of authority from the United States Secretary of Treasury to qualify as surety on

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obligations permitted or required under federal law; or,

11.6.3.2 Surety may obtain reinsurance for any liability in excess of \$100,000 from reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States Secretary of the Treasury to qualify as surety or reinsurer on obligations permitted or required under federal law.

11.6.4 Determination of whether Surety on the Bond or the reinsurer holds a certificate of authority from the United States Secretary of the Treasury is based on information published in Federal Register covering the date on which Bond was executed.

11.6.5 Each Bond given or tendered to the City pursuant to the Contract must be on City forms with no changes made by Contractor or Surety, and must be dated, executed, and accompanied by power of attorney stating that the attorney in fact executing such the bond has requisite authority to execute such Bond. The Bonds must be dated and must be no more than 30 days old.

11.6.6 Surety shall designate in its Bond, power of attorney, or written notice to the City, an agent resident in Harris County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.

11.6.7 Contractor shall furnish information to a payment bond beneficiary as required by TEX. GOV'T CODE ANN. CH. 2253.

11.7 *DELIVERY OF BONDS*

11.7.1 Contractor shall deliver required Bonds to the City within time limits stated in Notice of Intent to Award and prior to Date of Commencement of the Work.

ARTICLE 12 - UNCOVERING AND CORRECTION OF THE WORK

12.1 *UNCOVERING OF THE WORK*

12.1.1 If a portion of the Work has been covered which City Engineer has not specifically requested to observe prior to its being covered, City Engineer may request to see such work and it must be uncovered by Contractor. If such work is in accordance with the Contract, the costs of uncovering and covering such work are charged to the City by Change Order. If such work is not in accordance with the Contract, Contractor shall pay

for uncovering and shall correct the nonconforming Work promptly after receipt of Notice of Noncompliance to do so.

12.2 *CORRECTION OF THE WORK*

12.2.1 Contractor shall promptly correct or remove work rejected by City Engineer or work failing to conform to requirements of the Contract, whether observed before or after Date of Substantial Completion and whether fabricated, Installed, or completed.

12.2.2 Contractor bears costs of correcting the rejected or nonconforming work including additional testing and inspections, and compensation for Design Consultant's services and expenses made necessary thereby.

12.2.3 If within one year after Date of Substantial Completion, or after date for commencement of warranties established under Paragraph 9.9.5 or by other applicable special warranty required by the Contract, whichever is later in time, any of the Work is found not to be in accordance with the requirements of the Contract, Contractor shall correct such work promptly after receipt of Notice of Noncompliance to do so.

12.2.4 One-year correction period for portions of the Work completed after Date of Substantial Completion will begin on the date of acceptance of that portion of the Work. This obligation under this Paragraph survives acceptance of the Work under the Contract and termination of the Contract.

12.2.5 The one-year correction period does not establish a duration for the Contractor's general warranty under Paragraph 3.12. The City retains the right to recover damages from the Contractor as long as may be permitted by the applicable statute of limitations.

12.2.6 If Contractor does not proceed with correction of the nonconforming work within time fixed by Notice of Noncompliance, the City may correct nonconforming work or remove nonconforming work and store salvageable Products at Contractor's expense. Contractor shall pay the costs of correction of nonconforming work and removal and storage of salvageable Products to the City. If Contractor does not pay costs of the correction or removal and storage within 10 days after written notice, the City may sell the Products at auction or at private sale. The City will account for proceeds thereof after deducting costs and damages that would have been borne by Contractor, including compensation for services of Design Consultant and necessary expenses. If the proceeds of sale do not cover costs which Contractor should have borne,

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Contractor shall pay the value of the deficiency to the City.

12.2.7 Contractor bears cost of correcting work originally installed by Contractor, the City, or by separate contractors and damaged by Contractor's correction or removal of Contractor's work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 If City Engineer prefers to accept work which is not in accordance with requirements of the Contract, City Engineer may do so only by issuance of Change Order, instead of requiring its removal and correction. City Engineer will determine Contract Price reduction. The reduction will become effective even if final payment has been made.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW AND VENUE

13.1.1 This Contract shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Contract shall lie exclusively in Harris County, Texas.

13.2 SUCCESSORS

13.2.1 The Contract binds and benefits the Parties and their legal successors and permitted assigns; however, this Paragraph 13.2.1 does not alter the restrictions on assignment and disposal of assets set out in Paragraph 13.3.1. The Contract does not create any personal liability on the part of any officer or agent of the City.

13.3 BUSINESS STRUCTURE AND ASSIGNMENTS

13.3.1 Contractor may not assign the Contract at law or otherwise, or dispose of all or substantially all of its assets without City Engineer's prior written consent. Nothing in this Section, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the assignee and a clear identification of the fees to be paid to the assignee.

13.3.2 Any series, as defined by the TEX. BUS. ORG. CODE ANN., affiliate, subsidiary, or successor to

which Contractor assigns or transfers assets shall join in privity and be jointly and severally liable under this Contract.

13.4 WRITTEN NOTICE

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

13.4.1.1 the date the Notice is actually received;

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

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

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

13.5 RIGHTS AND REMEDIES

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

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

13.6 TESTS AND INSPECTIONS

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

13.6.2 The City will employ and pay for services of an independent testing laboratory to

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perform inspections or acceptance tests required by the Contract except:

- 13.6.2.1 inspections or tests covered by Paragraph 13.6.3;
- 13.6.2.2 those otherwise specifically provided in the Contract; or
- 13.6.2.3 costs incurred in connection with tests or inspections conducted pursuant to Paragraph 12.2.2.

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

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

13.7 INTEREST

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

13.8 PARTIES IN INTEREST

13.8.1 The Contract does not bestow any rights upon any third party, but binds and benefits the Parties only.

13.9 ENTIRE CONTRACT

13.9.1 The Contract merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants, express or implied, or other terms of any kind, exist between the Parties regarding the Contract.

13.10 WRITTEN AMENDMENT

13.10.1 Changes to the Contract that cannot be effected by Modifications, must be made by written amendment, which will not be effective until approved by City Council.

13.11 COMPLIANCE WITH LAWS

13.11.1 Contractor shall comply with the Americans with Disabilities Act of 1990 as amended (ADA) and Texas Architectural Barriers Act and all regulations relating to either statute.

13.11.2 Contractor shall comply with all applicable federal, state, and city laws, rules and regulations.

13.12 SEVERABILITY

13.12.1 If any part of the Contract is for any reason found to be unenforceable, all other parts remain enforceable to the extent permitted by law.

13.13 COMPLIANCE WITH CERTAIN STATE LAW REQUIREMENTS

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

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

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

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

13.14 ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING & RELATED ACTIVITIES

13.14.1 The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive

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Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Agreement's effective date. Contractor shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Contractor or its subcontractors providing services or goods under this Agreement.

**ARTICLE 14 - TERMINATION OR SUSPENSION
OF THE CONTRACT**

**14.1 *TERMINATION BY THE CITY FOR
CAUSE***

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

14.1.1.1 Contractor refuses or fails to supply enough properly skilled workers or proper Products;

14.1.1.2 Contractor disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;

14.1.1.3 Contractor is guilty of material breach of any duty or obligation of Contractor under the Contract, including, but not limited to, failure to submit certified payrolls electronically;

14.1.1.4 Contractor has had any other contract with the City terminated for cause at any time subsequent to the effective date of the Contract as set out in the Agreement; or

14.1.1.5 Contractor fails to utilize Ultra Low Sulfur Diesel Fuel, as required in Paragraph 3.9.1.1.

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

14.1.2.1 request that Surety complete the Work; or

14.1.2.2 take possession of the site and all materials, equipment, tools, and construction equipment and machinery on the site owned by Contractor; and

14.1.2.3 finish the Work by whatever reasonable method City Engineer may deem expedient.

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

14.1.3.1 stop the Work on the date and to the extent specified in the Notice of Termination;

14.1.3.2 place no further orders or subcontracts for Products or services;

14.1.3.3 terminate all orders and subcontracts to the extent that they relate to performance of work terminated;

14.1.3.4 assign to the City, in the manner, at the times, and to the extent directed by City Engineer, all rights, title, and interest of Contractor, under the terminated supply orders and subcontracts. The City may settle or pay claims arising out of termination of the orders and subcontracts;

14.1.3.5 settle all outstanding liabilities and all claims arising out of the termination of supply orders and subcontracts with approval of City Engineer;

14.1.3.6 take action as may be necessary, or as City Engineer may direct, for protection and preservation of property related to the Work that is in possession of Contractor, and in which the City has or may acquire an interest; and

14.1.3.7 secure the Work in a safe state before leaving the site, providing any necessary safety measures, shoring, or other devices.

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

14.1.5 If the unpaid balance of Contract Price exceeds the costs of finishing the Work, including liquidated damages and other amounts due under the Contract, the balance will be paid to Contractor. If the costs of finishing the Work exceed the unpaid balance, Contractor shall, within 10 days of receipt of written notice setting out the amount of the excess costs, pay the difference to the City. The amount to

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be paid to Contractor or the City will be certified by City Engineer in writing, and this obligation for payment shall survive termination of the Contract or termination of Contractor's performance under the Contract. Termination of the Contractor for cause shall not relieve the Surety from its obligation to complete the project.

14.2 TERMINATION BY THE CITY FOR CONVENIENCE

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

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

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

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

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

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

overhead, salaries of employees of Contractor, or litigation costs, including attorneys' fees.

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

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

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

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

14.3 SUSPENSION BY THE CITY FOR CONVENIENCE

14.3.1 City Engineer may, without cause, after giving Contractor and Surety 24-hour prior written notice, order Contractor to suspend, delay, or interrupt the Work in whole or in part for a period of time as City Engineer may determine.

14.3.2 An adjustment will be made in Contract Time equivalent to the time of suspension.

14.3.3 Adjustment will be made to Contract Price for increases in the cost of performance of the Work, including profit on increased cost of performance caused by suspension, delay, or interruption of the Work in accordance with Paragraph 7.3. No adjustment will be made to the extent that:

14.3.3.1 performance was, or would have been, suspended, delayed, or interrupted by another cause for which Contractor is responsible; or

14.3.3.2 adjustment is made or denied under another provision of the Contract.

14.4 TERMINATION BY CONTRACTOR

14.4.1 Contractor may terminate the Contract if the Work is stopped for a period of 30 days through no act or fault of Contractor, directly related to one of these events:

14.4.1.1 issuance of an order of a court or other public authority having jurisdiction;

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14.4.1.2 act of government, such as
a declaration of national emergency which
makes material unavailable; or

14.4.1.3 if repeated suspensions, delays, or
interruptions by the City as described in
Paragraph 14.3 constitute, in the
aggregate, more than 100 percent of the
total number of days scheduled for
completion, or 120 days in any 365-day
period, whichever is less;

No termination will be effective for the above
reasons if Contractor delivers written notice to City
Engineer describing the reason for termination,
giving the proposed termination date, and granting
the City a reasonable opportunity to respond and
cure any City default before termination is effective.

14.4.2 If the Contract is terminated pursuant to
this Paragraph 14.4, Contractor shall comply with
the requirements of Paragraphs 14.2.2 through
14.2.7.

[END OF DOCUMENT]

TAXIWAY L AND RUNWAY 4-22 SHOULDERS CONSTRUCTION AT ELLINGTON AIRPORT RFQ NO.: HJA-TWYEFD-2022-011

- 5.1.2 The City will conduct a Pre-Submittal Conference for this solicitation. Please refer to the procurement schedule for exact details of time and place. At the conference, the City will present an overview of the Project scope, including the procurement process, schedule, and required forms for the Project. Attendance is highly recommended.
- 5.1.3 The SOQs will be reviewed and evaluated in accordance with this RFQ to develop a Shortlist of Qualified Respondents deemed as the most qualified to execute the Design-Build Project on behalf of the City. Shortlisted firms will receive an invitation to proceed to Request for Proposal (RFP), **Step Two** of the process.
- 5.1.4 **Step Two** of the procurement process may also require an oral interview/presentation of the shortlisted firms of which the agenda is later discussed in this Document.
- 5.1.5 Upon determining the Most Qualified Respondent, at the appropriate time, the City shall commence contract negotiations. If the City is unable to negotiate a satisfactory contract with the Respondent, the City shall formally and in writing, end all negotiations and proceed to negotiate with the next Respondent in the order of the selection ranking until a contract is reached or negotiations with all ranked Respondents end.

5.2 **Contracting Approach**

- 5.2.1 The City plans to award the Design-Build Contract to the Respondent with the "Best Value" criteria defined herein utilizing the following Design-Build delivery method:
- 5.2.1.1 The Design-Build firm 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 Phase 3 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.

- 5.2.2 Although the City desires to perform all the work of Phases 2, 3 and 4, the City reserves the