

**SAMPLE CONTRACT – SUBJECT TO CHANGE**

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

PROJECT NO.

**THE STATE OF TEXAS     §**  
  **§**  
**COUNTY OF HARRIS     §**

This **CONTRACT FOR PROFESSIONAL ON-CALL DESIGN SERVICES** ("Contract") is made on the date countersigned by the City Controller ("Effective Date") by and between the **CITY OF HOUSTON, TEXAS** ("City"), a home-rule city principally situated in Harris County, Texas, and  ("Architect/Engineer"), a  authorized to do business in the State of Texas.

The parties agree as follows:

**ARTICLE 1. PARTIES**

**1.1 ADDRESSES.** The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

<b>City</b>	<b>Architect/Engineer</b>
Director, Houston Airport System	<span style="background-color: yellow; border: 1px solid black; display: inline-block; width: 100%; height: 15px;"></span>
or designee	<span style="background-color: yellow; border: 1px solid black; display: inline-block; width: 100%; height: 15px;"></span>
City of Houston	<span style="background-color: yellow; border: 1px solid black; display: inline-block; width: 100%; height: 15px;"></span>
PO Box 60106	<span style="background-color: yellow; border: 1px solid black; display: inline-block; width: 100%; height: 15px;"></span>
Houston, TX 77025-0106	<span style="background-color: yellow; border: 1px solid black; display: inline-block; width: 100%; height: 15px;"></span>

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

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

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

**1.5 SIGNATURES.** The Parties have executed this Contract in multiple copies, each of which is an original. Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract. Each Party represents and warrants to the other that the execution and delivery of this Contract and the performance of such Party's obligations hereunder have been duly authorized and that the Contract is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Contract electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

**[SIGNATURE PAGE FOLLOWS]**

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**[ARCHITECT/ENGINEER]**

**CITY OF HOUSTON, TEXAS**

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

Name:

Title:

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

**ATTEST/SEAL:** (if a corporation)

WITNESS: (if not a corporation)

\_\_\_\_\_

By:

\_\_\_\_\_  
Mayor

**ATTEST/SEAL:**

Signed by:

\_\_\_\_\_

City Secretary

**APPROVED:**

\_\_\_\_\_

Director, Houston Airport System

**COUNTERSIGNED BY:**

\_\_\_\_\_

City Controller

**DATE COUNTERSIGNED:**

\_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_

Assistant City Attorney

L.D. File No.

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### ARTICLE 2. DEFINITIONS

- 2.1 As used in this Contract, the following terms have the meanings given below:
- 2.1.1 "Beneficial Occupancy" means when the City takes possession of and operates the Work (or portions of the Work) for its intended purposes.
  - 2.1.2 "Billing Rate for Principals" means the hourly rate set forth in **Exhibit "C"** for Principle employees of each Architect/Engineer firm to include President, Sr. Vice President, and Vice President providing services under this Contract.
  - 2.1.3 "Construction Cost" means the direct actual cost to the City of all construction contract items for the Project, including labor, materials and equipment required for the Project and reflected by the actual construction contract(s) or if no contract is awarded, the lowest bona fide bid received plus the total value of all labor, material, and equipment purchased or furnished directly by the City for the Project, but excluding:
    - 2.1.3.1 fees or other costs of architecture/engineering, legal and related services;
    - 2.1.3.2 cost of land and rights-of-way;
    - 2.1.3.3 the City's administrative expenses; and
    - 2.1.3.4 any additional exclusions that may be listed in **Exhibit "A"**.
  - 2.1.4 "Construction Documents" mean all of the graphic and written information prepared or assembled by Architect/Engineer or the City for communicating the design and for the bidding and construction of the Project.
  - 2.1.5 "Contract" means this document including all exhibits and amendments by written agreement of the parties.
  - 2.1.6 "Contract Documents" mean the Contractor's contract, Conditions of the Contract, drawings, specifications, addenda, and other Documents listed in the Contractor's Contract and Modifications issued after execution of the Contractor's Contract.
  - 2.1.7 "Contractor" means authorized representatives contracted by the City to execute the Work.
  - 2.1.8 "Direct Labor Multiplier" means all General Administrative costs (home office overhead, indirect labor and travel, insurance [PL, CGL, WC], employers taxes, office expenses, office equipment, field equipment, field vehicles, advertising and hiring expenses, and non-reimbursable printing, copying, paper, and shipping); Employee Benefits costs (vacation, insurance [medical, life, long & short term care, etc.], 401K and other retirement plans, other actual benefits provided to employees, such as company car) and Profit – capped at 10%.

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- 2.1.9 "Director" means the Director of Houston Airport System or any person designated by the Director to perform one or more of the Director's duties under this Contract.
- 2.1.10 "Documents" means all original and non-identical copy of any written, typed, or printed matter, or electronically stored information, of any kind or description; including, but not limited to: agendas, meeting minutes, notes, analyses, manuals, notebooks, plans, computations, databases, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, audio or video recordings, electronic mail (email), drawings and plans, and other work products (and any modifications or improvements to them) that Architect/Engineer prepares, receives, or provides under this Contract.
- 2.1.11 "Employee" means the personnel working under Architect/Engineer's direction and control who are direct employees of Architect/Engineer.
- 2.1.12 "Final Completion" means the full completion of the Work in accordance with the Contract Documents, without limitation, the satisfaction of all outstanding and Punch List Items, and the issuance of a Certificate of Occupancy by all permitting and licensing entities.
- 2.1.13 "HAS" means the Houston Airport System, which is City's department of aviation.
- 2.1.14 "Letter of Authorization" or "LOA" means the documents sent to the Architect/Engineer by the Director authorizing certain services to be performed pursuant to **Section 3.1.2**.
- 2.1.15 "Notice to Proceed" means a written communication from the Director to the Architect/Engineer instructing Architect/Engineer to begin performance under this Contract.
- 2.1.16 "Project" means the services to be performed as authorized by individual Letters of Authorization in accordance with the Contract. The services described in each Letter of Authorization is an individual Project.
- 2.1.17 "Project Schedule" means a schedule of Project activities and events, showing initiation point, duration, and ending points for services in each Letter of Authorization. The schedule indicates time allowed for reviews by the City staff. The Project Schedule is drafted by the Architect/Engineer, in consultation with the City staff. It must be approved in writing by the Project Manager.
- 2.1.18 "Punch List Items" means uncompleted work items that the Contractor must complete in order to achieve Final Completion.
- 2.1.19 "Reimbursable Expenses" mean:
- 2.1.19.1 the reasonable costs of copying and printing (other than for the Architect/Engineer's internal use and the review Documents required under this Contract), postage, message and delivery services, other than for general correspondence, and long-distance telephone charges

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incurred by the Architect/Engineer in the course of its performance under this Contract;

- 2.1.19.2 with prior written approval, the ordinary and reasonable cost of travel to and from points outside of Houston and its extra-territorial jurisdiction by representatives of the Architect/Engineer, not to exceed the amount established under the City's then current travel reimbursement policy for its employees, including automobile mileage reimbursement, common carrier coach or economy fares, ground transportation expenses, and, for overnight trips, the cost of lodging and meals if such travel is reasonably necessary to accomplish a task directly related to the Project, and if reservations are made as far in advance as feasible; and
- 2.1.19.3 sales tax related to the Architect/Engineer's services under this Contract which it is legally required to pay.
- 2.1.20 "Services in General" are defined in **Section 3.1.1** of this Contract and **Section 2** of **Exhibit "A"**.
- 2.1.21 "Services in Particular" are defined in **Section 3.1.2** of this Contract and **Section 3** of **Exhibit "A"**.
- 2.1.22 "Subcontract Cost" means the ordinary and reasonable cost of subcontracts made by the Architect/Engineer and approved in writing in advance by the Director for services rendered by subcontractors under this Contract plus a fixed payment not to exceed 5% of subcontractor labor cost to compensate Architect/Engineer for profit, assumption of responsibility, and performance risk related to the subcontracts. Such fixed payment shall be computed on an LOA by LOA basis and shall not be subject to adjustment unless the LOA's scope of services, with respect to subcontracted services, changes. Architect/Engineer is responsible for the performance and work product of Subcontractors, including, but not limited to, the coordination of design elements published under the Architect/Engineer's design.
- 2.1.23 "Substantial Completion" means the phase in the progress of the Work or designated portion thereof where the Work is sufficiently and suitably complete in accordance with the Contract Documents (i) so that the City, in the Director's sole discretion, can take Beneficial Occupancy, and (ii) the balance of the Work, including all Punch List work can reasonably be expected to be completed within 30 Calendar Days.
- 2.1.24 "Staffing Schedule" means Architect/Engineer's organizational structure and staffing assignments for key positions on the Project as shown in **Exhibit "B"**.
- 2.1.25 "Work" means the entire construction required to be provided by the Construction Documents. The Work may constitute the whole or a part of the Project.

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

**3.1 SCOPE OF SERVICES**

3.1.1 Services in General

3.1.1.1 For and in consideration of the payment specified in this Contract, the Architect/Engineer shall provide all labor, material, and supervision necessary to perform on-call professional architectural and engineering services as set out in this Contract and as specifically described in Letters of Authorization.

3.1.1.2 Architect/Engineer shall perform the following services:

3.1.1.2.1 Provide prompt and efficient professional architectural and engineering services for the planning, design, and construction administration of the Project;

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

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

3.1.1.2.4 Attend meetings with representatives from the City, local, State and federal agencies, and contractors if required by the Director;

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

3.1.1.2.6 Meet the standards prevailing in its profession for architectural and engineering services performed for similar projects in Harris County, Texas;

3.1.1.2.7 Ensure the professional quality, technical accuracy and coordination of all Documents and Services;

3.1.1.2.8 Correct or revise all errors and deficiencies in Documents and services as directed by the Director. No compensation will be paid for corrections or revisions of errors and deficiencies.

3.1.1.3 Subject to the requirements of Construction Administration Services, the Architect/Engineer will not be otherwise responsible for the means,



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

### 3.1.2 Services in Particular

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

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products in a particular manner (including record prints of drawings, etc.);

3.1.2.2.6 Assist the City in obtaining any special licenses or permits which may be required for completion of a Project excluding any licenses or permits required to be obtained under **Section 3.3** and **3.67**. The City shall pay for special licenses or permits;

3.1.2.2.7 If the construction period for a Project exceeds the time stated in the applicable construction contract by more than 30 days due to actions other than the Architect/Engineer's, continue the services required during construction;

3.1.2.2.8 Perform or obtain the services of a Registered Professional Land Surveyor to do any of the following in support of design work such as:

3.1.2.2.8.1 Field surveys and investigations to establish or verify boundaries and monuments;

3.1.2.2.8.2 Topographic surveys;

3.1.2.2.8.3 Route surveys;

3.1.2.2.8.4 Property and easement descriptions;

3.1.2.2.8.5 Associated office work; and

3.1.2.2.8.6 electronic drawings with field notes.

3.1.2.2.9 Perform, or obtain the services of a subcontractor to perform subsurface investigations in support of design work, including test borings, soil samples, and other foundation investigations, laboratory analyses of the samples and engineering analyses. The Architect/Engineer or the subcontractor must prepare a detailed report of all findings and transmit an electronic version of the report, signed and sealed by the registered geotechnical engineer.

3.1.2.2.10 Perform on-site observation to observe site situations and provide advice and consultation on site during design.

3.1.2.2.11 Conduct random, reasonable suspicion and post-accident drug testing necessary to comply with **Section 3.10**.

### 3.1.3 Letters of Authorization

3.1.3.1 In response to Letters of Authorization to be issued periodically by the Director, Architect/Engineer shall perform services as set forth under this Contract. The extent of such assigned work and the payment basis

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will be defined in each LOA in accordance with this Contract (after negotiations with Architect/Engineer have been completed for each LOA). Architect/Engineer agrees that it shall diligently perform all assigned Project tasks and meet the delivery schedules of the Project Schedule established for the Project in each LOA. Architect/Engineer acknowledges that time is of the essence in performing services under this Contract. Architect/Engineer shall not begin services until it receives a signed LOA from the Director.

### 3.1.3.2 LOA's must set forth the following:

3.1.3.2.1 Contract number and Architect/Engineer's name, address and telephone number.

3.1.3.2.2 LOA number and date

3.1.3.2.3 Identity of Architect/Engineer's key personnel.

3.1.3.2.4 A scope of services specifically identifying the services to be performed and the Project deliverables (Documents) to be prepared.

3.1.3.2.5 Project Schedule including the following:

3.1.3.2.5.1 Start and completion dates of the Services in Particular deliverables;

3.1.3.2.5.2 Critical dates of coordination with subcontractors

3.1.3.2.5.3 Review submittal dates and period duration allowed for HAS review;

3.1.3.2.5.4 Scheduled submittals of required reports; and

3.1.3.2.5.5 Meeting schedule including required attendance at scheduled progress meetings

3.1.3.2.6 A breakout to include identification, by line item, of the required personnel to perform the services, the estimated hours, the applicable hourly Billing Rates for principals and actual labor rates for employees and other costs as defined in **Section 4.1** and **Exhibit "C"**, and an extended dollar amount therefor.

3.1.3.2.7 A breakout of all Reimbursable Expenses by line item, to include the estimated quantity of the item required, the unit cost, and an extended "not to exceed" dollar amount therefore.

3.1.3.2.8 Balance of funds remaining in the Contract.

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- 3.1.3.2.9 Identification of the estimated amount of services to be performed by MWBE firms, if applicable.
- 3.1.3.2.10 Such other information required by the Director.
- 3.1.3.2.7 LOA's shall continue to be in effect and performed by Architect/Engineer until such time as all requirements have been met and a written acceptance of the Project performed has been made by the Director or until Architect/Engineer receives written notification from the Director to discontinue services on a particular Project.
- 3.1.3.2.8 LOA's may be amended at any time during the performance in the same manner as they are issued.
- 3.1.3.2.9 LOAs may not alter or amend the terms and conditions set forth in this Contract.
- 3.1.3.2.10 The Director may request Architect/Engineer to engage subcontractors with specialized skills or specific knowledge. Architect/Engineer shall identify subcontractors demonstrating successful work history in the requested area to the satisfaction of the Director. Upon the Director's approval, Architect/Engineer shall be responsible for choosing and contracting with each specialized subcontractor. All specialized subcontractors must make Good Faith Efforts to meet the subcontracting goal set out in **Section 3.8** of this Contract. The Director may request Architect/Engineer to engage subcontractors with specialized skills or specific knowledge. Architect/Engineer shall identify subcontractors demonstrating successful work history in the requested area to the satisfaction of the Director. Upon the Director's approval, Architect/Engineer shall be responsible for choosing and contracting with each specialized subcontractor. All specialized subcontractors must make Good Faith Efforts to meet the subcontracting goal set out in **Section 3.8** of this Contract.

### **3.2 ARCHITECT/ENGINEER'S PERSONNEL**

- 3.2.1 The Architect/Engineer shall perform services under this Contract employing the people listed in its staffing schedule provided in **Exhibit "B"**. The Architect/Engineer may revise its staffing schedule only after obtaining the prior written approval of the Director. Upon the Director's written approval, the revised Staffing Schedule shall replace the existing **Exhibit "B"** without the need of an amendment. The revised Staffing Schedule must include the following information for each professional-level employee proposed for assignment under this Contract:
  - 3.2.1.1 Name of employee;
  - 3.2.1.2 Description of tasks to be performed;
  - 3.2.1.3 Applicable registration;
  - 3.2.1.4 Principal office of employment;
  - 3.2.1.5 Summary of relevant experience; and

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3.2.1.6 Date and expected duration of assignment.

3.2.2 During the existence of this Contract, the Architect/Engineer must obtain, maintain, and pay for all licenses, permits, and certificates, including all professional licenses required by any statute, ordinance, rule or regulation. If the Architect/Engineer does not maintain these professional licenses, the Director may immediately terminate this Contract. The Architect/Engineer must immediately notify the Director of any suspension, revocation, or other negative action against his or her license.

3.2.3 The Director may require removal of any employee of the Architect/Engineer providing services under this Contract whose work product in the Director's sole discretion is unacceptable.

### **3.3 USE OF WORK PRODUCTS**

3.3.1 Architect/Engineer conveys and assigns to the City its entire interest and full ownership worldwide in and to any work, invention, and all Documents, and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively "Proprietary Rights") that Architect/Engineer, its agents, employees, contractors, and subcontractors (collectively "Authors") develop, write, or produce under this Contract (collectively "Works").

3.3.2 The Authors shall not claim or exercise any Proprietary Rights related to the Works. If requested by the Director, Architect/Engineer shall place a conspicuous notation on any Works which indicate that the City owns the Proprietary Rights.

3.3.3 Architect/Engineer shall execute all documents required by the Director to further evidence this assignment and ownership. Architect/Engineer shall cooperate with the City in registering, creating, and enforcing Proprietary Rights arising under this Contract. If Architect/Engineer's assistance is requested and rendered under this Section, the City shall reimburse Architect/Engineer for all out-of-pocket expenses it incurs in rendering assistance, subject to the availability of funds. On termination of this Contract, or if requested by the Director, Architect/Engineer shall deliver all Works to the City. Architect/Engineer shall obtain written agreements from the Authors which bind them to the terms in this Section

3.3.4 All Works developed, written, or produced under this Contract for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, are "works made for hire".

3.3.5 Architect/Engineer may retain copies of the Works for its archives. Architect/Engineer shall not otherwise use, sell, license, or market the Works.

**3.4 CONFIDENTIALITY.** The Architect/Engineer recognizes that all materials to be prepared under this Contract and all City data received by the Architect/Engineer shall be kept in strictest confidence. The Architect/Engineer shall not divulge this information except as approved in writing by the Director or as otherwise required by law.

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**3.5 INSURANCE**

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

<b>COVERAGE</b>	<b>LIMIT OF LIABILITY</b>
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	<ul style="list-style-type: none"> <li>• Bodily Injury by Accident \$100,000 (each accident)</li> <li>• Bodily Injury by Disease \$100,000 (policy limit)</li> <li>• Bodily Injury by Disease \$100,000 (each employee)</li> </ul>
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence, and \$2,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos \$10,000,000 for an auto driven in the Air Operations Area
Professional Liability Coverage	\$2,000,000 per claim/aggregate
Excess Liability Coverage for Commercial General Liability and Automobile Liability	\$1,000,000.00
<b>Aggregate Limits are per 12-month policy period unless otherwise indicated.</b>	

3.5.2 Insurance Coverage. At all times during the term of this Contract and any extensions or renewals, Architect/Engineer shall provide and maintain insurance coverage that meets the requirements of this Contract. Prior to beginning performance under the Contract, at any time upon the Director's request, or each time coverage is renewed or updated, Architect/Engineer shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Architect/Engineer shall be responsible for and pay (i) all premiums and (ii) any claims or losses to the extent of any deductible amounts. Architect/Engineer waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Architect/Engineer shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

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

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- 3.5.4 Required Coverage. The City shall be an Additional Insured under this Contract, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other Contract provisions. Contactor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Architect/Engineer's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Contract. If professional liability coverage is written on a "claims made" basis, Architect/Engineer shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Contract with a duration of two years after substantial completion.
- 3.5.5 Notice. ARCHITECT/ENGINEER SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED. Within the 30-day period, Architect/Engineer shall provide other suitable policies in order to maintain the required coverage. If Architect/Engineer does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Architect/Engineer from any further performance under this Contract and begin procedures to terminate for default.
- 3.6 TAXES, LICENSES, LAWS, RULES.** Architect/Engineer shall pay, before delinquency, all taxes that may be levied, assessed or charged upon Architect/Engineer or the property, real and personal, owned by Architect/Engineer. Architect/Engineer may contest these taxes. Architect/Engineer shall comply with all laws, codes, rules, regulations and ordinances relating to its performance under this Contract, including any which may impose requirements more stringent than, or inconsistent with, this Contract. Nothing in this Contract abrogates or diminishes the regulatory or police powers of the City.
- 3.7 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE.** Architect/Engineer shall comply with the City's Equal Employment Opportunity Ordinance as set out in Section 15-17 of the Code of Ordinances.
- 3.8 ANTI-BOYCOTT OF ISRAEL.** Architect/Engineer certifies that Architect/Engineer is not currently engaged in, and agrees for the duration of this Contract not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.
- 3.9 ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES.** The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Contract for all purposes. Architect/Engineer has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Contract's effective date. Architect/Engineer shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Architect/Engineer or

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its subcontractors providing services or goods under this Contract within seven days of Architect/Engineer becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

**3.10 MINORITY/WOMEN BUSINESS ENTERPRISES**

3.10.1 It is the City’s policy to ensure that Minority and Women Business Enterprises ("MWBEs") have the full opportunity to compete for and participate in City contracts. The objectives of Chapter 15, Article V of the City of Houston Code of Ordinances, relating to City-wide Percentage Goals for contracting with MWBEs, are incorporated into this Contract.

3.10.2 Architect/Engineer shall make good faith efforts to award subcontracts or supply agreements in at least       % of the value of this Contract to MWBEs. The City’s policy does not require Architect/Engineer to in fact meet or exceed this goal, but it does require Architect/Engineer to objectively demonstrate that it has made good faith efforts to do so. To this end, Architect/Engineer shall maintain records showing:

3.10.2.1 Subcontracts and supply agreements with Minority Business Enterprises,

3.10.2.2 Subcontracts and supply agreements with Women Business Enterprises, and

3.10.2.3 Specific efforts to identify and award subcontracts and supply agreements to MWBEs. Architect/Engineer shall submit periodic reports of its efforts under this Section to the Office of Business Opportunities Director ("OBO Director") in the form and at the times he or she prescribes.

3.10.3 Architect/Engineer shall ensure that all subcontracts with MWBE subcontractors and suppliers will permit representatives of the City of Houston, at all reasonable times, to perform (i) audits of the books and records of the subcontractor, and (ii) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

3.10.4 Architect/Engineer shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:

3.10.4.1 \_\_\_\_\_ (MWBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's OBO Director ("the OBO Director").

3.10.4.2 \_\_\_\_\_ (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to



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

3.10.5 Within five business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor 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 such agent.

3.10.6 Any controversy between the parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract may be submitted to the Director. The Director may prescribe procedures to provide dispute resolution by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

**3.11 NON-DISCRIMINATION.** Architect/Engineer shall comply with the applicable non-discrimination provisions required by the United States of America, including but not limited to, the provisions of 49 CFR Part 21. These provisions are inclusive of any amendments which may be made to such regulations. Further, Architect/Engineer shall include the summary of the provisions of 49 CFR Part 21, as may be amended, in subcontracts it enters into under this Contract. This summary is set forth in **Exhibit "D"**.

### **3.12 DRUG ABUSE DETECTION AND DETERRENCE**

3.12.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Architect/Engineer shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Contract and is on file in the City Secretary's Office. For purposes of **Exhibits "E"**, **"F"**, and **"G"**, Architect/Engineer shall be referred to as "Contractor".

3.12.2 Before the City signs this Contract, Architect/Engineer shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

3.12.2.1 a copy of its drug-free workplace policy,

3.12.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in **Exhibit "E"**, together with a written designation of all safety impact positions and,

3.12.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in **Exhibit "F"**.

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- 3.12.3 If Architect/Engineer files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six months during the performance of this Contract or on completion of this Contract if performance is less than six months, a Drug Policy Compliance Declaration in a form substantially similar to **Exhibit "G"**. Architect/Engineer shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each six-month period of performance and within 30 days of completion of this Contract. The first six-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Architect/Engineer begins work under this Contract.
- 3.12.4 Architect/Engineer also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Architect/Engineer's employee work force.
- 3.12.5 Architect/Engineer shall require that its subcontractors comply with the Executive Order, and Architect/Engineer shall secure and maintain the required documents for City inspection.
- 3.13 NON-PARTICIPATION.** Architect/Engineer shall not participate in the bidding process as a bidder and shall not engage in construction of any construction projects emanating from the Project. By written agreement, Architect/Engineer shall require each of its subcontractors to comply with the requirements of this section.
- 3.14 CONFLICTS OF INTEREST.** If an actual or potential conflict arises between the interests of the City and the interests of other clients represented by Architect/Engineer regarding this Project, Architect/Engineer shall immediately notify the Director by email or telephone. If the Director consents to Architect/Engineer's continued representation of these other clients, the Director will notify Architect/Engineer in writing. If the Director does not issue written consent within three business days after receiving Architect/Engineer's notice, Architect/Engineer shall immediately terminate its representation if allowed by the other agreements of the other client whose interests are or may be in conflict with those of the City. If Architect/Engineer does not terminate the other agreements, the Director may terminate this Contract immediately without providing any further opportunity to cure under **Section 5.3**.
- 3.15 PROMPT PAYMENT OF SUBCONTRACTORS.** In accordance with the Texas Prompt Payment Act, Architect/Engineer shall make timely payments in accordance with applicable state and federal law to all persons and entities supplying labor, materials or equipment for the performance of this Contract, including Architect/Engineer's employees. **ARCHITECT/ENGINEER SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF ARCHITECT/ENGINEER'S FAILURE TO MAKE THESE PAYMENTS.** Architect/Engineer shall submit disputes relating to payment of MWBE subcontractors to mediation in the same manner as any other disputes under the MWBE subcontract.
- 3.16 AIRPORT SECURITY**
- 3.16.1 Architect/Engineer shall comply with all HAS, Transportation Security Administration ("TSA"), Federal Aviation Administration ("FAA"), and any other governmental agency security directives, rules and regulations. The FAA

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and/or the TSA may assess fines and/or penalties for Architect/Engineer's non-compliance with the provisions of 49 CFR 1540 and 1542, as amended from time to time, or by other agencies for noncompliance with laws or regulations applicable to Architect/Engineer's operations. Within 15 days after receiving written notice from the FAA, the TSA or other agency of any alleged violation or infraction, the Director shall notify Architect/Engineer in writing and provide a copy of the FAA/TSA/Agency documents pertaining to the violation. Within 10 days of required payment of any fine or penalty by the City, Architect/Engineer shall reimburse the City for any fine or penalty assessed against the City because of Architect/Engineer's non-compliance with 49 CFR 1540 and 1542 or other applicable laws or regulations.

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

### **3.17 ENVIRONMENTAL LAWS**

3.17.1 Architect/Engineer shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), the Texas Commission on Environmental Quality ("TCEQ"), and any other governmental agency with the authority to promulgate environmental rules and regulations ("Environmental Laws"). Architect/Engineer shall promptly reimburse the City for any fines or penalties levied against the City because of Architect/Engineer's failure to comply.

3.17.2 Architect/Engineer shall not possess, use, generate, release, discharge, store, dispose of, or transport any hazardous materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Laws. "Hazardous Materials" mean any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, and local laws, regulations, ordinances, or orders. Architect/Engineer shall not deposit oil, gasoline, grease, lubricants, or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City property in violation of the Environmental Laws.

**3.18 STATE ENERGY CONSERVATION PLAN.** The Architect/Engineer shall recognize mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163), which is incorporated herein by reference.

**3.19 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION.** In accordance with 49 CFR Part 29 the Architect/Engineer certifies by acceptance of this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts.

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**3.20 CERTIFICATION REGARDING FOREIGN TRADE RESTRICTIONS**

3.20.1 In accordance with 49 CFR Part 30, Architect/Engineer, by execution of this Contract, certifies that it:

3.20.1.1 is not owned or controlled by one or more citizens or nationals of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);

3.20.1.2 has not knowingly entered into any contract or subcontract for this Project with a contractor that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list; and

3.20.1.3 has not procured any product nor subcontracted for the supply of any product for use on the Project that is produced in a foreign country on said list.

3.20.2 Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Architect/Engineer or subcontractor who is unable to certify to the above. If the Architect/Engineer knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the Project; the Federal Aviation Administration may direct, through the City, cancellation of the Contract at no cost to the City of the Federal Government.

3.20.3 Further, the Architect/Engineer agrees that it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The Architect/Engineer may rely upon the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous. The Architect/Engineer shall provide immediate written notice to the City if the Architect/Engineer learns that its certification or that of subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide immediate written notice to the Architect/Engineer, if at any time it learns that its certification was erroneous by reason of changed circumstances.

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

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

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

- 3.21 PAY OR PLAY.** The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into this Contract for all purposes. Contractor has reviewed Executive Order No. 1-7, as revised, and shall comply with its terms and conditions.
- 3.22 PUBLICITY.** Architect/Engineer shall make no announcement or release of information concerning this Contract unless the release has been submitted to and approved, in writing, by the Director.
- 3.23 NON-EXCLUSIVITY.** This Contract does not create an exclusive right for Architect/Engineer to perform all architecture/engineering services concerning this Project. The City may procure and execute contracts with other architecture/engineering firms for the same, similar or additional services as those set forth in this Contract.

### ARTICLE 4. RIGHTS AND DUTIES OF CITY

#### 4.1 PAYMENT

##### 4.1.1 Fees, In General

- 4.1.1.1 The City shall pay fees to the Architect/Engineer as specified in Article IV for all services rendered by the Architect/Engineer in accordance with the terms and conditions of this Contract, but subject to **Section 4.2** relating to appropriations made by the City.
- 4.1.1.2 If the Architect/Engineer receives payment from the City for work performed by any subcontractor or for materials provided by any supplier, and the Architect/Engineer withholds payment to the subcontractor or supplier on account of a deficiency in the quality or quantity of the work or materials, the City may withhold a corresponding amount from any pending or future payments to the Architect/Engineer until the next regular payment to the Architect/Engineer occurring after the City receives reasonable documentation that the deficiency has been remedied.

##### 4.1.2 Fees; Method of Payment

- 4.1.2.1 The Architect/Engineer shall perform services only in response to an LOA signed by the Director.
- 4.1.2.2** For the Architect/Engineer and all Architect/Engineer subcontract firms, the City shall pay (a) Billing Rate for Principals, the Direct Labor Rate multiplied by the Direct Labor Multiplier (DLM) for employees, plus Reimbursable Expenses and other Subcontract Costs or (b) a lump sum that does not exceed an estimate of (a) for those Services set forth in an LOA that the Architect/Engineer or its employees directly

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perform. The Billing Rates and DLMs for the Architect/Engineer and each Architect/Engineer subcontract firm are provided in **Exhibit “C”**.

- 4.1.2.3 To receive payment for Services, the Architect/Engineer must submit invoices showing the corresponding Services performed and not previously invoiced. The invoice must include itemizations supporting the Architect/Engineer's costs. The itemization must include, where applicable:
- 4.1.2.3.1 A breakdown of the type and cost of each item of Reimbursable Expenses;
  - 4.1.2.3.2 A breakdown of the individual expenditures allowable as travel costs;
  - 4.1.2.3.3 The actual invoice cost of Subcontract Cost, including a copy of the invoice;
  - 4.1.2.3.4 For non-principals, the hourly actual labor rate and the number of hours expended by the Architect/Engineer's and all Architect/Engineer Subcontract firm employees, multiplied by the DLM.; and
  - 4.1.2.3.5 For Principals, the hourly Billing Rate and the number of hours expended by the Architect/Engineer's Principals and all Architect/Engineer Subcontract firm Principals.
  - 4.1.2.3.6 The procedures described in this **Section 4.1.2.3.** must be followed for all Architect/Engineer Subcontract firms.
  - 4.1.2.3.7 For lump sum LOAs, Architect/Engineer must follow **Sections 4.1.2.3.1** through **4.1.2.3.3** and **Section 4.1.2.3.6** and submit a breakdown of the work performed in the Lump Sum items and a percentage of the total that is completed.
- 4.1.2.4 All invoices must be approved by the Director. The invoices will be paid within 30 days after receipt and approval by the Director. All payments must be made by electronic transfer or check payable to the Architect/Engineer. Payments will be electronically transferred to the banking institution and account specified by the Architect/Engineer or mailed to the address specified in **Section 1.1**. The City will not unreasonably delay or withhold payment or approval of any invoice. The Director shall approve or disapprove the Architect/Engineer's invoices within 15 days after receiving them. Neither partial payments made nor approval of invoices or services by the Director constitute final acceptance or approval of the Architect/Engineer's services to which the partial payment or approval relates. The payments do not relieve the Architect/Engineer of any of its obligations under this Contract. The Architect/Engineer shall send all invoices to the address listed in **Section 1.1** or                      [@houstontx.gov](mailto:                    @houstontx.gov) to the attention of the HAS Chief Development Officer.

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

### **4.2 LIMIT OF APPROPRIATION - ALLOCATED FUNDS; LIMITATION OF CITY'S DUTIES**

4.2.1 The Architect/Engineer recognizes that under certain provisions of the Charter of the City of Houston, the City may not obligate itself by contract to an extent in excess of an amount therefor appropriated by the City Council and further recognizes that only \$ [REDACTED] has been appropriated by City Council to pay the Cost of all Services authorized by LOAs for the combination of Projects 715D, 715E, and 715F. The City does not guarantee that a minimum or maximum portion of the total appropriation will be allocated to any one of the three Projects (715D, 715E, or 715F) that share the \$ [REDACTED] appropriation. The City will request Services of the three Architect/Engineer firms under Projects 715D, 715E, and 715F in accordance with the best interests and needs of the City.

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

4.2.3 The Director may authorize the transfer of funds between LOAs when necessary to continue services, provided that the total funds authorized for all Services authorized by LOAs do not exceed the total amount appropriated by City Council. However, under no circumstances may funds be transferred into any LOA when the Architect/Engineer has agreed to perform such services for a lump sum or Not to Exceed Price when the transfer would result in increasing such agreed upon amount or Not to Exceed Price, without a corresponding increase in services.

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

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

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

4.3.1.2 Provide existing plans, maps, field notes, statistics, computations, and other data in the possession of the City which in the Director's opinion will assist Architect/Engineer in performing services under the Contract; and

4.3.1.3 Examine the Documents submitted by Architect/Engineer and render

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decisions pertaining to them within a reasonable time to avoid unnecessary delay of Architect/Engineer's services.

### **4.4 ACCESS TO CITY DATA**

- 4.4.1 The City shall, to the extent permitted by law, allow Architect/Engineer to access and make copies of documents in the possession or control of the City or available to it that are reasonably necessary for Architect/Engineer to perform under this Contract.
- 4.4.2 The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for Architect/Engineer's use.
- 4.4.3 For any raw data created, assembled, used, maintained, collected, or stored by the Architect/Engineer for or on behalf of the City, Architect/Engineer shall provide the City either the raw data itself or the ability to extract the raw data in a format mutually agreed upon by both parties at no additional cost to the City.

## **ARTICLE 5. TERM AND TERMINATION**

**5.1 TERM.** This Contract is effective on the date the City Controller countersigns this Contract and remains in effect for five years from the Effective Date, unless sooner terminated under this terms of this Contract. After expiration of this Contract, no additional LOAs may be issued; however, for any LOA issued prior to the expiration of the Contract, Architect/Engineer shall complete the work unless otherwise notified by the Director in writing.

### **5.2 TERMINATION FOR CONVENIENCE BY CITY**

- 5.2.1 The Director may terminate this Contract at any time by giving 14 days written notice to Architect/Engineer. The City's right to terminate this Contract for convenience is cumulative of all rights and remedies which exist now or in the future.
- 5.2.2 On receiving the notice, Architect/Engineer shall, unless the notice directs otherwise, immediately discontinue all services under this Contract and cancel all existing orders and subcontracts that are chargeable to this Contract and deliver all materials, supplies, and work products accumulated in performing this Contract to a place designated by the Director. As soon as practicable after receiving the termination notice, Architect/Engineer shall submit an invoice showing in detail the services performed under this Contract up to the termination date. The City shall then pay the fees to Architect/Engineer for services actually performed, but not already paid for, in the same manner as prescribed in **Article 4** unless the fees exceed the allocated funds remaining under this Contract.
- 5.2.3 Any installments on Fixed Lump Sum fees will be prorated in accordance with the progress of the work at the date of termination. Architect/Engineer may submit invoices for vendor and subcontractor charges incurred before the notice of termination and received by Architect/Engineer after its initial termination invoice.



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5.2.4 **TERMINATION OF THIS CONTRACT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE ARCHITECT/ENGINEER'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS CONTRACT. ARCHITECT/ENGINEER WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.**

### 5.3 TERMINATION FOR CAUSE BY CITY

5.3.1 If Architect/Engineer defaults under this Contract, the Director may either terminate this Contract or allow Architect/Engineer to cure the default as provided below. The City's rights and remedies provided in this **Section 5.3** are in addition to all rights and remedies provided by law or under this Contract. Default by Architect/Engineer occurs if:

5.3.1.1 Architect/Engineer fails to perform any of its duties under this Contract;

5.3.1.2 Architect/Engineer becomes insolvent;

5.3.1.3 All or a substantial part of Architect/Engineer's assets are assigned for the benefit of its creditors; or

5.3.1.4 A receiver or trustee is appointed for Architect/Engineer.

5.3.2 If a default occurs, the Director may deliver a written notice to Architect/Engineer describing the default and the termination date. The Director, at his or her sole option, may extend the termination date to a later date. If Architect/Engineer cures the default to the Director's satisfaction before the termination date, then the termination is ineffective. If Architect/Engineer does not cure the default before the termination date, then the Director upon notice of termination, may terminate this Contract on the termination date, at no further obligation of the City.

5.3.3 To effect final termination, the Director must notify Architect/Engineer in writing. After receiving the notice, Architect/Engineer shall, unless the notice directs otherwise, immediately discontinue all services under this Contract, promptly cancel all orders or subcontracts chargeable to this Contract and deliver all materials, supplies, and work products accumulated in performing this Contract to a place designated by the Director.

5.3.4 In the event of termination due to Architect/Engineer's failure to fulfill its obligations, the City may take over the work and prosecute the same to completion by contract or otherwise. In such case, Architect/Engineer shall be liable to the City for any additional cost occasioned to the City thereby.

5.3.5 If after termination for failure to fulfill contract obligations, it is determined that the Architect/Engineer had not so failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, payment shall be made as provided in **Section 5.2**.

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- 5.4 **TERMINATION FOR CAUSE BY ARCHITECT/ENGINEER.** Architect/Engineer may terminate its performance under this Contract only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Contract. If a default occurs and Architect/Engineer decides to terminate the Contract, then Architect/Engineer must deliver a written notice to the Director describing the default and the proposed termination date. The date must be at least 60 days after the Director receives the notice. Architect/Engineer, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Architect/Engineer may terminate its performance under this Contract on the termination date.

### **ARTICLE 6. MISCELLANEOUS**

- 6.1 **INDEPENDENT CONTRACTOR.** Architect/Engineer is an independent contractor and is not an employee, agent, representative, or subcontractor of the City. No partnership or joint venture is created by this Contract.

#### **6.2 FORCE MAJEURE**

6.2.1 Timely performance by both parties is essential to this Contract. However, neither party is liable for reasonable delays in performing its obligations under this Contract to the extent the delay is caused by Force Majeure that directly impacts the City or Architect/Engineer. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Contract. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Architect/Engineer, riots, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive, or impractical. Force Majeure does not entitle Architect/Engineer to extra Reimbursable Expenses or payment.

6.2.2 This relief is not applicable unless the affected party does the following:

6.2.2.1 Uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and

6.2.2.2 Provides the other party with prompt written notice of the cause and its anticipated effect.

6.2.3 The Director will review claims that a Force Majeure that directly impacts the City or Architect/Engineer has occurred and render a written decision within fourteen 14 days. The decision of the Director is final.

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- 6.2.4 The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Contract by the City.
- 6.2.5 If the Force Majeure continues for more than 14 days from the date performance is affected, the Director may terminate this Contract by giving seven days' written notice to Contractor. This termination is not a default or breach of this Contract. **ARCHITECT/ENGINEER WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE CONTRACT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE**
- 6.2.6 Architect/Engineer is not relieved from performing its obligations under this Contract due to a strike or work slowdown of its employees. Architect/Engineer shall employ only fully trained and qualified personnel during a strike.
- 6.3 SEVERABILITY.** If any part of this Contract is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.
- 6.4 ENTIRE CONTRACT.** This Contract merges the prior negotiations and understandings of the parties and embodies the entire agreement of the parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the parties regarding this Contract.
- 6.5 WRITTEN AMENDMENT.** Unless otherwise specified elsewhere in this Contract, this Contract may be amended only by written instrument executed on behalf of the City (by authority of an ordinance duly adopted by the City Council) and Architect/Engineer. The Director is authorized to perform only the functions specifically delegated to him in this Contract.
- 6.6 GOVERNING LAW.** This Contract and any disputes or controversies arising under it are governed by the laws of the State of Texas, with venue in Harris County. Nothing in this Contract creates any new cause of action against the City or waives any immunity or limitation of liability in favor of the City existing now or in the future under common law, state or federal regulations, or statutes (including, but not limited to, the Texas Tort Claims Act).
- 6.7 NOTICES.** All notices to either party to the Contract must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in **Section 1.1** or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.
- 6.8 CAPTIONS AND HEADINGS.** The captions and headings at the beginning of the Articles and Sections of this Contract are guides and labels to assist in locating and reading the Articles and Sections, and, therefore, will be given no effect in construing

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this Contract. Any reference to gender shall include the masculine, feminine and neutral.

### **6.9 NON-WAIVER**

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

6.9.2 An approval by the Director, or by any other employee or agent of the City, of any part of Architect/Engineer's performance does not waive compliance with this Contract or establish a standard of performance other than that required by this Contract and by law. The Director is not authorized to vary the terms of this Contract.

**6.10 INSPECTIONS AND AUDITS.** City representatives may perform, or have performed inspections of all places where work is undertaken in connection with this Contract. Architect/Engineer shall maintain an acceptable job cost accounting system. The City, the FAA, the TSA, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Architect/Engineer which are directly pertinent to this Contract for the purposes of making an audit, examination, excerpts and transcriptions. Architect/Engineer shall maintain all required records for seven years after the City makes final payment and all other pending matters are closed. This provision does not affect the applicable statute of limitations.

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

**6.12 AMBIGUITIES.** If any term of this Contract is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

**6.13 SURVIVAL.** Architect/Engineer shall remain obligated to the City under all clauses of this Contract that expressly or by their nature extend beyond and survive the expiration or termination of this Contract.

**6.14 NO THIRD PARTY BENEFICIARY.** This Contract is made for the benefit of the parties, and it does not create any right or benefit enforceable by any third party.

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

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**6.16 BUSINESS STRUCTURE AND ASSIGNMENTS**

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

6.16.2 Architect/Engineer shall not delegate any portion of its performance under this Contract without the Director's prior written consent.

**6.17 REMEDIES CUMULATIVE.** Except as otherwise provided herein, the rights and remedies contained in this Contract shall not be exclusive, and are cumulative of all rights and remedies now or hereafter existing by statute, at law, or in equity. Neither party may terminate its duties under this Contract except in accordance with its terms.

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

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**SAMPLE CONTRACT – SUBJECT TO CHANGE**

**EXHIBIT “A”**

**SCOPE OF SERVICES<sup>1</sup>**

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**1. Introduction**

1.1. The City expects a wide variety of skills and capabilities in On-Call Aviation Design Services relating to airports will be required throughout the term of this Contract. Detailed scopes of work and budgets will be prepared on an individual basis by the HAS Infrastructure Division for each assignment and Letters of Authorization (“LOA”) will be executed prior to the issuance of a notice-to-proceed on all assignments. Assignments will be formulated as needs arise and may include, but are not limited to, the disciplines described below:

Architectural Services	Wayfinding Signage
Mechanical Engineering	Runway, Taxiway, Airfield Design
Civil Engineering	Vertical Transportation
Electrical Engineering	Horizontal Transportation
Plumbing Engineering	Moisture Protection and Forensic
Structural Engineering	Governing Agency Code Compliance
Interior Design	QA/QC- Design
Landscape Architecture	Investigative Discovery
Scheduling	Sustainability/ Commissioning
Construction Administration	Project Control Compliance
Geotechnical Engineering	Constructability Reviews
Topographical Engineering	Budget Compliance/ Cost Estimation
Subsurface Utility Engineering	Technology (HAS IT Standards)

1.2 On-Call Aviation Design services will include activities that directly support any of the work assigned to the Infrastructure Division of the Houston Airport System. These activities are quite broad and to some extent are dependent on the results of on-going plan studies and changing trends in the aviation industry. Work to be completed under this contract includes, but is not limited to, the following types of assignments:

Terminal Modernization	Parking Lots
Fleet Maintenance	Checkpoint Reconfigurations
Wayfinding and Signage	Central Utility
Restroom Remodels	Ditch Improvements
Underground Train	

**2. Services in General** – The City will detail requested services the Architect/Engineer is to provide in a Letter of Authorization.

2.1 **Schematic or Preliminary Design (30%)**. Schematic or preliminary design services include, but are not limited to, the following:

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<sup>1</sup> Unless otherwise provided for in this **Exhibit “A”**, capitalized terms have the meaning set forth in **Article 2** of the Contract. Use of the term “Owner” means the City of Houston.

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- 2.1.1 Submit a Project Schedule reflecting firm dates for activities and reviews within 10 days of receiving an executed LOA.
  - 2.1.2 Prepare and submit preliminary engineering report and designs for the Project at 30% completion milestone. These studies and designs consist of preliminary layouts, sketches, and recommended final design criteria, list of City of Houston standard specifications to be incorporated into the Project, reports, and cost estimates.
  - 2.1.3 The reports must (i) clearly indicate anticipated problems; (ii) recommend alternate solutions to the problems; (iii) identify possible "alternate" bid items for the Project recommended by the Architect/Engineer; and (iv) show recommended subdivision into separate contracts, if any. The Architect/Engineer shall coordinate all Documents.
  - 2.1.4 Submit copies of the preliminary design and outline specification Documents to the Director as provided in an LOA.
- 2.2 **Design Development and Construction Documents.** Based upon approved schematic or preliminary design Documents and any further adjustments in the scope or quality of the Project authorized by the Director, Design Development and Construction Documents services include, but are not limited to, the following:
- 2.2.1 Submit the Project Schedule updated to reflect firm dates for the beginning and end of each activity and the review dates within ten days of receiving the notice to proceed.
  - 2.2.2 Prepare detailed Construction Documents based on guidelines provided by the Director. The Construction Documents must list recommended alternate bid items for the Project in a manner that permits ready evaluation and comparison. Specifications must conform to City of Houston standards.
  - 2.2.3 Inform the Director of any adjustments to previous estimates of the Project Construction Cost which are indicated by market conditions or authorized changes in the scope and requirements of the Project. The Architect/Engineer does not guarantee that bids will not vary from the estimate.
  - 2.2.4 Prepare and submit the required Documents to obtain approval of all governmental authorities having jurisdiction over the design or operation of the Project and all public and private utilities, including pipeline transmission and railroad companies affected by the Project; obtain the signatures of representatives of these governmental authorities and public and private utilities; obtain the signatures of City officials indicated by the City's standard title block for drawings.
  - 2.2.5 Design the Project in compliance with the requirements of applicable laws, codes, and regulations, including the City of Houston Building Code; make revisions to the Contract Documents necessary to provide clarifications or to correct discrepancies; and provide the Director with Documents necessary for obtaining a City building permit and other required permits for the Project. The Construction Documents must conform to applicable federal, state and City regulations.
  - 2.2.6 Deliver to the Director:

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- 2.2.6.1 A detailed cost estimate at the 65%, 95%, and 100% completion stages;
- 2.2.6.2 Copies of all reports, recommendations, analyses, specifications, plans and drawings (including working drawings); and
- 2.2.6.3 Construction Documents identified in this Contract.
- 2.2.7 Assist the City in securing bids for the construction of the Project based on the Construction Documents; attend pre-bid conferences; assist the City in evaluating the bid proposals; prepare tabulations of bids received; and furnish the City three copies of the bid tabulation and a written recommendation for the award of a construction contract for the Project.
- 2.2.8 Prepare all required addenda to revise the Construction Documents in order to provide clarifications, correct discrepancies, or correct errors or omissions.
- 2.2.9 Provide an electronic record in PDF file format of the "as-bid" record drawings and specifications, in accordance with the current edition of the HAS CAD/Geospatial Data Standards and Procedures and HAS BIM Standards as applicable to the Project.
- 2.2.10 Provide assistance to the City in the preparation and processing of a building permit application for the Project.
- 2.2.11 Provide design of traffic control and related drawings, details and notes, including developing construction sequencing procedures and documentation.
- 2.2.12 Prepare pollution prevention plans, consistent with the Environmental Protection Agency National Pollutant Discharge Elimination System (NPDES) permit requirements.
- 2.3 **Construction Administration Services.** The Architect/Engineer shall provide professional services during construction to assist in obtaining a completed Project in accordance with the purpose and intent of the Construction Documents. These services include, but are not limited to, the following:
  - 2.3.1 Participate in pre-construction conferences and assist with the preparation of a contract between the City and the successful bidder.
  - 2.3.2 Attend weekly construction meetings and make monthly visits to the Project site during construction to observe and report on the progress and the quality of the Work, or in the frequency indicated in an individual LOA. The reports must be in writing and inform the Director of deviations from the Construction Documents or the Contractor's Construction Schedule observed by or brought to the attention of the Architect/Engineer. The Architect/Engineer must submit the reports in a timely manner so that Work is not delayed. The Architect/Engineer's personnel must be experienced in construction contracts administration and must be supervised by a professional Architect/Engineer registered in Texas. Supporting personnel must be provided from the Project design team when specialized knowledge of the Project design is required.
  - 2.3.3 Review and approve or take other appropriate action on the shop drawings, samples, and other submissions furnished by the Contractor and submitted to the



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Architect/Engineer by the City. The Architect/Engineer shall determine if the shop drawings, samples, and other submissions conform to the Design concept of the Project and the requirements of the Construction Documents. The Architect/Engineer must notify the Director if the shop drawings, samples or other submissions do not conform to the design concept of the Project. These actions must be taken within 21 days of receipt from the City unless otherwise approved in advance by the Director. The Architect/Engineer must maintain a log of all Contractor submittals which includes the submittal date, the action taken, and the date returned.

- 2.3.4 Prepare supporting data and provide other services (including revisions to Construction Documents) in connection with change orders when such change orders are required either (i) to make clarifications or to correct discrepancies, errors, or omissions in the Construction Documents, or (ii) to conform the Construction Documents to the requirements of all applicable laws, codes, and regulations, including the City of Houston Building Code in effect during design of the Project.
- 2.3.5 Review laboratory, shop, and mill tests of material and equipment for general conformance with Contract Document requirements and report findings to the Director in writing.
- 2.3.6 Provide design clarifications and recommendations to assist the City in resolving field problems relating to the construction.
- 2.3.7 Evaluate Contractor change and cost proposals and substitutions and recommend either approval or disapproval.
- 2.3.8 Visit the construction site with City representatives as needed to determine the dates of substantial and final completion of the Work. The Architect/Engineer shall recommend the proper date to issue the final certificate of payment.
- 2.3.9 No less than 30 days and no more than 45 days before the expiration of the correction period established by the Construction Documents, the Architect/Engineer and the Director shall observe the construction site. Within 14 days after this observation, the Architect/Engineer shall furnish a written report enumerating items which require repair or replacement as provided under the correction period provisions of the Construction Documents.
- 2.3.10 Provide continuing counsel to the Director throughout the construction of the Project. The Architect/Engineer does not have the authority or responsibility to issue direct instructions to the Contractor, to reject work done by the Contractor, or to require special inspections or tests. The Director is responsible for the general administration of the contract.
- 2.3.11 Within 90 days after Substantial Completion, the Architect/Engineer shall furnish to the Director, the electronic version (in a medium satisfactory to the Director) of a complete set of accurate Record (as-built) Documents that reflect changes in the Work within tolerances and scope as defined in the current edition of the HAS CAD/Geospatial Data Standards and Procedures and that incorporates all Addenda, Change Orders, and all Modifications to the Construction Documents made during construction. Upon the Director's request, the Architect/Engineer shall submit physical copies (in a number and format prescribed by the Director) of

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the Documents submitted for the services. Such costs shall be paid as a reimbursable expense. All information, drawings, and manuals shall conform to the HAS CAD/Geospatial Data Standards. The final Record Documents shall consist of, but are not limited to:

2.3.11.1 PDF files of record drawing and record specifications;

2.3.11.2 AutoCAD drawings using the version approved by the Director;

2.3.11.3 as applicable, native formats of the final record Building Information Model (BIM) including the Revit version approved by the Director; and

2.3.11.4 as applicable, federated Navisworks files using the version approved by the Director.

2.3.11.5 Contractor's working "red-line" documents

2.3.12 Subject to the requirements of this **Section 2.3**, Construction Administration Services, the Architect/Engineer will not be otherwise responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor(s) or the safety precautions and programs incident to the work of the Contractor(s). However, if the Architect/Engineer observes any unsafe conditions or unsafe practices by the Contractors, it shall notify the Director immediately. The Architect/Engineer shall ensure that the Contractor(s) complete the construction work in general conformance with the Contract Documents.

**3. Services in Particular:** Additional scopes of work that augment other HAS Design and Construction Projects. These services shall be performed only in response to a LOA, and may include, but not limited to, the following:

3.1 **Technical Design Peer Review Services:** The purpose of technical Design Peer Review services is for the Architect/Engineer to provide independent verification that the submitted design of an HAS project is in general conformance with the Owner's requirements and all related codes and technical standards.

3.1.1 The Architect/Engineer in a reviewing role, shall review the project plans and specifications, typically during the Design Development and/or Construction Documents stages of design, for compliance with the Owner's requirements and all related codes and design standards. The reviewing Architect/Engineer shall perform the following tasks as a minimum:

3.1.1.1 Confirm that the design conforms to applicable codes.

3.1.1.2 Confirm that design criteria and design assumptions conform to the Owner's Requirements and are in accordance with generally accepted architectural and engineering practices.

3.1.1.3 Review related investigations and confirm that the design properly incorporates the results and recommendations of those investigations.

3.1.1.4 Perform independent calculations for a representative fraction of the systems and details to check their adequacy. The number of

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representative systems and details verified shall be sufficient to form a basis for the reviewer's conclusions.

3.1.1.5 Verify that performance-specified components (such as certain precast concrete elements or baggage handling systems) have been appropriately specified and coordinated with the Owner's requirements.

3.1.1.6 Confirm that major design items are accommodated in the plans.

3.1.1.7 Attest to the general completeness of the plans and specifications.

3.1.2 Design Peer Review Report: The reviewing Architect/Engineer shall submit a report to the Director stating whether or not the design as shown in the Construction Documents conforms to the Owner's requirements and all related codes and technical standards.

3.1.2.1 The report shall demonstrate, at a minimum, compliance with items noted in **Section 1**, Services in General, of this **Exhibit "A"**. In addition, the report shall also include the following:

3.1.2.1.1 A list of the codes and standards used in the design of the project.

3.1.2.1.2 The basis for design criteria used that is not specified directly in applicable codes and standards. This should include reports by specialty sub-consultants. The report should confirm that Owner's requirements and any Basis of Design have been investigated as appropriate and that the proposed design is in conformance with these requirements.

3.1.3 Responsibility:

3.1.3.1 Architect and/or Engineer of Record: The Architect/Engineer of Record for a project shall retain sole responsibility for the design. The activities and reports of the reviewing Architect/Engineer shall not relieve the Architect/Engineer of record of this responsibility.

3.1.3.2 Reviewing Architect/Engineer: The reviewing Architect/Engineer's report states his or her opinion regarding the design by the Architect/Engineer of record. The standard of care to which the reviewing Architect/Engineer shall be held in the performance of the Design Peer Review and report is that the level of skill and care are consistent with Peer Review services performed by professional architects and engineers licensed in the State of Texas for similar types of projects.

3.2 Commissioning Services

3.2.1 Qualifications of the Commissioning Authority: The Commissioning Authority (CxA) must have documented commissioning process experience on at least two building projects with a similar scope of work. The experience must extend from early design phase through at least 10 months of occupancy.

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### 3.2.2 Definitions:

- 3.2.2.1 Basis of Design (BOD): A document that records the concepts, calculations, decisions, and product selections used to meet the Owner's Project Requirements and to satisfy applicable regulatory requirements, standards, and guidelines. The document includes both narrative descriptions and lists of individual items that support the design process.
- 3.2.2.2 Commissioning Authority (CxA): An entity who leads, plans, schedules, and coordinates the commissioning team to implement the Commissioning Process.
- 3.2.2.3 Owner's Project Requirements (OPR): A written document that details the functional requirements of a project and the expectations of how it will be used, operated and maintained. These include project goals, measurable performance criteria, cost considerations, benchmarks, success criteria, and supporting information.
- 3.2.2.4 Systems Manual: A system focused composite document that includes the operation manual, maintenance manual, and additional information of use to the Owner during the Occupancy and Operations Phase.
- 3.2.2.5 Test Procedure: A written protocol that defines methods, personnel, and expectations for tests conducted on components, equipment, assemblies, systems, and interfaces among systems.

3.2.3 Project Requirements: The objective of commissioning (Cx) is to provide documented conformation that the facilities fulfill the functional and performance requirements of the Owner, occupants and operators. To reach this goal, it is necessary for the commissioning process to develop and document the Owner's criteria for system function, performance, and maintainability as well as, to verify and document compliance with these criteria throughout the phases of each project, design, construction, acceptance and the initial period of operation and the 12 month warranty phase. In addition, review and comment on Operation and Maintenance (O&M) Manuals, as well as training plans, agendas and syllabi and the training shall be provided to the building operators to ensure that systems and equipment continue to operate as intended.

3.2.4 The primary role of the CxA assigned during the Design Phase is to ensure proper and accurate documentation of the OPR and BOD plus develop detailed commissioning specifications and review the design to ensure it meets the Owner's objectives. Other CxA duties during the design phase include development of the Systems Manual and the overall Commissioning Plan, and assurance that O&M manual requirements and staff and end user training are included in the Construction Documents. Perform focused reviews of the design, drawings and specifications at various stages of development. Coordinate a controls integration meeting where the electrical and mechanical engineers, Owner's representative, and the CxA discuss integration issues between equipment, systems and disciplines to ensure that integration issues and responsibilities are clearly described in the specifications

3.2.5 The CxA and Owner shall document the OPR with information including but not limited to:

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- 3.2.5.1 Project-Specific Design Goals
  - 3.2.5.2 Occupancy and Use
  - 3.2.5.3 Sustainability and Energy Efficiency
  - 3.2.5.4 Ramp Usage
  - 3.2.5.5 Building Envelope
  - 3.2.5.6 Indoor Environmental Quality
  - 3.2.5.7 Normal and Emergency Power
  - 3.2.5.8 Special Systems
  - 3.2.5.9 Baggage Handling Systems
  - 3.2.5.10 Ramp Equipment and Systems
  - 3.2.5.11 Access Control and CCTV Systems (Sensitive Security Information) (SSI)
  - 3.2.5.12 Hazardous Materials
  - 3.2.5.13 Furniture, Fixtures and Equipment (FF&E)
  - 3.2.5.14 Commissioning, Inspection and Quality Assurance
  - 3.2.5.15 Construction Completion and Turnover
  - 3.2.5.16 Operation & Maintenance
  - 3.2.5.17 Owner Training
  - 3.2.5.18 Post-Occupancy and Warranty
- 3.2.6 The role of the Commissioning Authority during the construction phase is to ensure that the OPR and BOD are updated to reflect the actual installations and modify the overall Cx Plan as required. The CxA shall conduct and document Cx Meetings along with the Contractor's Cx Lead, assist the installing subcontractors with the development of their technical commissioning plans, provide functional test forms as required and review and recommend revision/acceptance of Contractor submittals including test procedures. The CxA shall also field verify system and equipment installations, pressure testing, ductwork testing, cleaning, and pipe flushing, sufficient to be confident that proper procedures are followed. Document each site visit, prepare, plan and schedule verification testing during the acceptance phase. The CxA will also update the Systems Manual as additional information is received.
- 3.2.7 Typical Commissioning Plans shall include:
- 3.2.7.1 Commissioning Team Directory
  - 3.2.7.2 Commissioning process activities
  - 3.2.7.3 Roles and responsibilities
  - 3.2.7.4 Communication structures
  - 3.2.7.5 Tests and demonstrations
  - 3.2.7.6 Schedule
  - 3.2.7.7 Training
  - 3.2.7.8 O&M manuals
  - 3.2.7.9 Post commissioning activities
  - 3.2.7.10 Appendices (OPR, BOD, Design Review, and Issue Log)
- 3.2.8 The on-site representation comprised of the On Site CxA and its consultant staff involved in the primary commissioning of the project, shall all have relevant and appropriate types of commissioning experience. The following systems are typical systems to be commissioned, depending on the specific Project scope:

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- 3.2.8.1 Mechanical, Electrical and Plumbing (MEP)
  - 3.2.8.2 Building Management System
  - 3.2.8.3 Life Safety, Smoke Evacuation, and Fire Protection
  - 3.2.8.4 Normal, Emergency and Back-up Power Systems
  - 3.2.8.5 Lighting Control Systems
  - 3.2.8.6 Building Envelope
  - 3.2.8.7 Special Systems such as Wi Fi, PA, Backbone and Horizontal Cabling
  - 3.2.8.8 Access Control and Video Surveillance
  - 3.2.8.9 Baggage Handling
  - 3.2.8.10 Vertical Transportation and other Conveyance Systems
  - 3.2.8.11 Ramp Equipment such as PBB's, PCA, 400 Hz, VGDS, and potable water
  - 3.2.8.12 Aircraft fueling, leak detection, and emergency shutoff
  - 3.2.8.13 Irrigation
  - 3.2.8.14 Sanitary and Storm Sewer Systems
- 3.2.9 Acceptance Period: The role of the Commissioning Authority during the acceptance phase is to ensure that the OPR, BOD and Systems Manual are updated to reflect the actual functionality of the installed systems and equipment. The CxA shall review and recommend approval of applicable submittals including prefunctional checkout reports, test and balance reports (preliminary field and final reports), and final functional performance test reports. The CxA shall also:
- 3.2.9.1 Review and recommend (as appropriate) training plans, agendas and syllabi for all training
  - 3.2.9.2 Verify that Cx Plans are approved prior to prefunctional checkout and final functional performance testing by the installing contractors.
  - 3.2.9.3 Continue all applicable Cx meetings and report progress
  - 3.2.9.4 Perform field visits to witness random prefunctional checks to assure the Cx Team that the prefunctional checkout process is progressing.
  - 3.2.9.5 At Cx Meetings, identify required parties to attend Functional Performance Testing with the CxA, which may include the Architect/Engineer, HAS, installing contractors, maintenance staff and/or end-users, Government Agencies and Airline Representatives
  - 3.2.9.6 Identify instrumentation, tools and supplies required for testing
  - 3.2.9.7 Ensure proper notification is provided to attendees
  - 3.2.9.8 Perform final functional performance testing per the approved Cx Plans
  - 3.2.9.9 Identify, log, and resolve issues, provide suggested resolution to the design engineer as applicable
  - 3.2.9.10 Review warranties and O&M's for commissioned equipment to ensure that the Owners responsibilities are clearly defined

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- 3.2.9.11 Demonstrate life safety system functionality to the Authority's Having Jurisdiction
- 3.2.9.12 Witness Contractor-provided training and collect feedback from trainees. Report results to each Cx Team.
- 3.2.9.13 Ensure completion of all testing, training, O&M documentation approval and turnover to the Owner
- 3.2.9.14 Compile a Commissioning Record, which shall include:

- 3.2.9.14.1 A brief summary report that includes a list of participants and roles, brief building description, overview of commissioning and testing scope, and a general description of testing and verification methods. For each piece of commissioned equipment, the report should contain the disposition of the commissioning provider regarding the adequacy of the equipment, documentation and training meeting the contract documents in the following areas:

- 3.2.9.14.1.1 Equipment meeting the equipment specifications
    - 3.2.9.14.1.2 Equipment installation
    - 3.2.9.14.1.3 Functional performance and efficiency
    - 3.2.9.14.1.4 Equipment documentation
    - 3.2.9.14.1.5 Operator training

- 3.2.9.14.2 All outstanding non-compliance items shall be specifically listed. Recommendations for improvement to equipment operations shall be provided

3.2.10 Warranty Period: The role of the Commissioning Authority during the warranty phase is to ensure that the OPR, BOD and Systems Manual are completed and review with the Owner, Operation and Maintenance Staff and End-users. In addition, the CxA shall:

- 3.2.10.1 Coordinate and perform any deferred or seasonal testing and provide final Cx documentation for the Commissioning Record and O&M Manuals
- 3.2.10.2 Participate in lessons learned seminars
- 3.2.10.3 Return to the Project 10 months into the 12-month warranty period and review with facility staff the current building operation and the condition of outstanding issues related to the original seasonal commissioning. Also interview facility staff and identify problems or concerns they may have with operation the facility as originally intended. Make suggestions for improvement and for recording these changes in the O&M Manuals. Identify areas that may come under warranty or under the original construction contract. Assist facility staff in developing reports and documents and requests for services to remedy outstanding problems.

### **3.3 BIM Provisions:**

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- 3.3.1 Architect/Engineer will use BIM technologies and methods to create Project design and record models, documents and drawings; respecting HAS CAD/Geospatial Standards and HAS BIM Standards when required by the Director. Architect/Engineer jointly with the Director shall develop a Project BIM Execution Plan (BPxP). The BPxP will explain in detail the Project BIM utilization, and as a minimum shall include the following:
- 3.3.1.1 Project information
  - 3.3.1.2 Key Project contacts
  - 3.3.1.3 Project goals/ BIM uses
  - 3.3.1.4 BIM information exchanges
  - 3.3.1.5 BIM and facility data requirements
  - 3.3.1.6 BIM Modeling requirements
  - 3.3.1.7 BIM Quality control
  - 3.3.1.8 Project BIM deliverables/ strategies
- 3.3.2 The BPxP shall be developed within 21 days after the LOA issue date. A BIM level of development matrix shall be developed and detailed within the BPxP, to describe the stage in which correspondent BIM models will be developed.
- 3.3.3 The BPxP shall define the means and methods of collaboration between the Architect/Engineer and the City pertaining to BIM development, including workshops, communication medium, and periodic BIM meetings as applicable to the Project scope of work.
- 3.3.4 In order to maintain the BIM model's future usability, the Architect/Engineer shall coordinate the model information with HAS using HAS's defined shared parameters as will be further defined within the BPxP.
- 3.3.5 Unless otherwise noted in the LOA, the authoring tools for producing Construction Documents shall be generated exclusively from Revit and Civil3D. Architect/Engineer shall ensure that using third party software will not negatively impact the expected qualities of Revit and Civil3D models.
- 3.3.6 The Architect/Engineer will utilize BIM best practices to create and develop BIM models and shall deliver completed BIM models to the City as defined in the LOA.



**EXHIBIT "B"**

**STAFFING SCHEDULE**

**[TO BE DETERMINED]**

## EXHIBIT "C"

### HOURLY BILLING RATES AND DIRECT LABOR MULTIPLIERS

The Billing Rate for all Architect/Engineer and Architect/Engineer Subcontract firm principals shall be \$            /hour.

The Direct Labor Multiplier for all Architect/Engineer and Architect/Engineer Subcontract Firm non-principal employees shall be **2.5**. This multiplier is not subject to audit.

If the Architect/Engineer or any Architect/Engineer Subcontract firm has an audited overhead rate that results in a multiplier that exceeds **2.5** times the direct labor rates of its employees, the Architect/Engineer or Architect/Engineer Subcontract firm has the option to submit the audit results and all backup data to the City for additional audit and consideration of the higher Direct Labor Multiplier. The Architect/Engineer's audit results can be no more than two years older than the date of submittal to the City. In its consideration of a higher Direct Labor Multiplier, profit is capped at a maximum of 10%. Unacceptable overhead costs include, but are not limited to, profit sharing and bonus payments. Based on its audit, the City will either accept the proposed Direct Labor Multiplier or offer an adjusted Direct Labor Multiplier to remove any unacceptable overhead costs. Upon acceptance by the City, the higher or adjusted Direct Labor Multiplier shall be listed in the first LOA and will be used throughout the duration of the Contract.

## EXHIBIT "D"

### TITLE VI: NON-DISCRIMINATION

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

1. Compliance with Regulations - The Architect/Engineer shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation ("DOT") 49 CFR Part 21, as may be amended from time to time ("Regulations"), which are incorporated by reference and made a part of this Agreement.
2. Non-discrimination - The Architect/Engineer, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Architect/Engineer shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment - In all solicitation, either by competitive bidding or negotiation, made by the Architect/Engineer for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Architect/Engineer of the Architect/Engineer's obligations under this Agreement and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports - The Architect/Engineer shall provide all information and reports required by the regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the FAA to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of the Architect/Engineer is in the exclusive possession of another who fails or refuses to furnish this information, the Architect/Engineer shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance - In the event of the Architect/Engineer's noncompliance with the non-discrimination provisions of this Agreement, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including but not limited to:
  - 5.1. withholding of payments to the Architect/Engineer under the Agreement until the Architect/Engineer complies, and/or
  - 5.2. cancellation, termination, or suspension of the Agreement, in whole or in part.
6. Incorporation of Provisions - The Architect/Engineer shall include the provisions of paragraphs 1-5 above in every subcontract, including procurement of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The Architect/Engineer shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. If the Architect/Engineer becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Architect/Engineer may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the Architect/Engineer may request the United States of America to enter into such litigation to protect the interests of the United States.

**EXHIBIT "E"**

**DRUG POLICY COMPLIANCE AGREEMENT**

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

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

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

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

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**EXHIBIT "F"**

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

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

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

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

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

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

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

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

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

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

**EXHIBIT "G"**

**DRUG POLICY COMPLIANCE DECLARATION**

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

This reporting period covers the preceding 6 months from \_\_\_\_\_ to \_\_\_\_\_, 20\_\_\_\_.

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

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

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

\_\_\_\_\_ From \_\_\_\_\_ to \_\_\_\_\_ the following tests have occurred:  
Initials (Start Date) (End Date)

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

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

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

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

\_\_\_\_\_  
Date

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

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

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