

**PROFESSIONAL SERVICES CONTRACT  
FOR ARCHITECTURAL AND ENGINEERING  
DESIGN SERVICES**

**BETWEEN**

**CITY OF HOUSTON**

**AND**



**FOR**

**MICKEY LELAND INTERNATIONAL TERMINAL (TERMINAL D)**

**PROJECT NO. 826**

**CIP NO. A-0800**

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**PROFESSIONAL SERVICES CONTRACT**

**FOR ARCHITECTURAL AND ENGINEERING DESIGN SERVICES**

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

That the **CITY OF HOUSTON**, a home-rule city of the State of Texas located principally within Harris County, Texas, (the "City") proposes to construct the following:

**MICKEY LELAND INTERNATIONAL TERMINAL (TERMINAL D AT IAH)**  
**3701 N TERMINAL ROAD**  
**HOUSTON, TX 77032**

(hereinafter referred to as the "Project").

That the City liaison for this Agreement is:

**DIRECTOR**  
**HOUSTON AIRPORT SYSTEM**  
**P. O. BOX 60106**  
**HOUSTON, TEXAS 77205-0106**

That the City desires to enter into an agreement with:

**NAME OF DESIGN CONSULTANT**  
**STREET ADDRESS**  
**CITY, STATE ZIP**

(the "Design Consultant") to perform certain professional architectural, engineering, and other professional services in connection with the Project, as described herein and in **Exhibit "B"**, which is attached hereto and incorporated herein for all purposes; and,

**NOW THEREFORE**, in consideration of the mutual covenants and agreements of the parties, the City and the Design Consultant agree as set forth below:

## ARTICLE 1.

### DESIGN CONSULTANT'S SERVICES AND RESPONSIBILITIES

#### 1.1 GENERAL

1.1.1 **Definitions.** Unless otherwise defined herein, the capitalized terms used herein shall have the definitions included in **Exhibit "A"**, attached and incorporated herein.

1.1.2 **Scope.** The Design Consultant's scope of services and responsibilities are described throughout this Agreement and its exhibits. The Design Consultant agrees to provide prompt and efficient professional services as herein defined for the fees hereinafter specified and in accordance with the Design Schedule. The Design Schedule shall be drafted by the Design Consultant and approved by the Director and updated monthly at the time of invoice submittal. The Design Consultant shall coordinate their performance of the services hereunder with the Director and such other persons as the Director may specify. The Design Consultant shall make periodic verbal or written reports and recommendations to the Director with respect to conditions, transactions, situations, or circumstances encountered by the Design Consultant relating to the services to be performed under this Agreement and shall attend meetings which the Director determines to be necessary. The Design Consultant shall, upon written request, provide the Director with a copy of Documents prepared by the Design Consultant or made available to it as a result of its performance under this Agreement.

#### 1.1.3 Design to Budget

1.1.3.1 The Design Consultant shall plan and design the Project in such a manner that the Agreed Cost of the Work does not exceed the sum of **\$472,700,000.00** without the express written approval of the Director. The sum of **\$472,700,000.00** is an unescalated amount as of November 2015 which may be increased or decreased by the Director, in his sole discretion.

1.1.3.2 The Design Consultant shall continuously monitor and participate in updating the Probable Cost of the Work throughout the design process. If at any time during the course of this Project the Probable Cost of the Work, for all Work designed and specified, exceeds or becomes likely to exceed the Agreed Cost of the Work, as updated from time to time, the Design Consultant shall immediately notify the Director. Upon becoming aware that the Probable Cost of the Work will exceed the current Agreed Cost of the Work, the Director, in his sole discretion, may by written notice either: (i) increase the Cost of the Work (ii) reduce the scope, or (iii) require a re-design of the Project by Design Consultant.

1.1.3.3 There shall be no increase in the Design Consultant's compensation for any such re-design to maintain the Agreed Cost of the Work, unless such re-design is a result of cost increases that are not reasonably foreseeable. For purposes of **Section 1.1.3**, inclusive of all sections therein, no person other than the Director may provide written authorization to change the Agreed Cost of the Work specified herein.

1.1.4 **Standard of Care.** The Design Consultant shall perform its services in accordance with the professional skill and care ordinarily provided by competent engineers, architects, or consultants, as applicable, practicing in the same or similar locality and under the same or similar circumstances and professional license; and as expeditiously as is prudent considering the ordinarily professional skill and care of a competent engineer, architect, or consultant, as applicable.

1.1.5 **Responsibility for Subconsultants.** All obligations of the Design Consultant hereunder shall be performed by Design Consultant or its Subconsultants, which shall be qualified to perform the specific services and meet all licensing and certification requirements. The Design Consultant shall be fully responsible, in accordance with the terms and conditions of this Agreement, for all services performed by its Subconsultants. As between itself and the City, the Design Consultant shall remain responsible

and liable to the City for all obligations under this Agreement, and shall be responsible for all acts, omissions, breaches, defaults, non-compliance, negligence, wilful misconduct, or other legal fault of each Subconsultant. All references in this Agreement to any act, omission, breach, default, non-compliance, negligence, wilful misconduct, or other legal fault of the Design Consultant will be construed accordingly to include any such act, omission, breach, default, non-compliance, negligence, wilful misconduct or other legal fault committed by Design Consultant or its Subconsultants. Design Consultant shall replace any Subconsultant whose performance, work, or work product is deemed unsatisfactory at the Director's discretion. Design Consultant shall provide the Director with a copy of any of its Subconsultant's subcontracts at Director's request.

- 1.1.6 **Key Personnel.** The Design Consultant acknowledges that the identity and commitment of certain key management and supervisory personnel identified by the Design Consultant in its statement of qualifications were material factors in the selection of the Design Consultant to perform this Agreement. Such personnel, their affiliations, and their anticipated roles in the performance of the services are set forth in **Exhibit "C"**, attached and incorporated herein. The Design Consultant shall use such personnel to perform such services unless such personnel are unavailable for good cause shown. "Good cause shown" shall not include performing services on other projects for the Design Consultant or any of its affiliates, but shall include termination for cause, employee death, disability, retirement, or resignation. In the event of any such permissible unavailability, the Design Consultant shall use replacement key management and supervisory personnel of equivalent skill, experience, and reputation acceptable to the Director. Any personnel change shall be proposed to the Director with reasonable advance notice (no less than 30 days, unless extenuating circumstances exist) for the Director's review and approval, which shall not be unreasonably withheld or delayed. The Director may exclude from the Project any personnel performing services if the Director, acting reasonably, determines that an unworkable relationship has developed between the City and the individual. Upon the Director's approval of changes to Key Personnel or a request to exclude any Key Personnel, **Exhibit "C"** shall be updated without the need of a contract amendment or further Council Action.
- 1.1.7 **Designated Representative.** The individual identified in **Exhibit "C"** as the "Designated Representative" shall, until further designation under this Section, act as the designated representative of the Design Consultant with respect to this Agreement and shall coordinate with the Director as to administrative matters under this Agreement. The Design Consultant may replace the individual designated as its representative under this Agreement from time to time by giving advance written notice to the Director, subject to the reasonable approval of the Director. The Design Consultant shall replace the individual designated as its representative under this Agreement at any time upon written notice by the Director in the Director's reasonable discretion. Any individual designated as the representative of the Design Consultant under this Agreement shall have sufficient qualifications and experience to serve as the Design Consultant's representative hereunder and shall be vested with the authority to act on behalf of the Design Consultant, to receive notices on behalf of the Design Consultant, to make binding decisions with respect to the performance of the services, and to bind the Design Consultant with respect to any certification to be made by the Design Consultant hereunder. The designated representative shall be the Director's primary contact for the performance of the services and shall be available, as required, for the benefit of the City and the Project. Upon the Director's approval of changes to the Designated Representative or the Director's request to replace the Designated Representative, **Exhibit "C"** shall be updated without the need of a contract amendment or further Council Action.
- 1.1.8 **Information Provided by or on Behalf of the City.** The City makes no representation or warranty with respect to any information provided to the Design Consultant by or on behalf of the City in connection with this Agreement. The Design Consultant shall assess all risks related to the Project and independently verify and confirm all information supplied to it by or on behalf of the City and upon which the Design Consultant elects to rely in connection herewith. Except as may reasonably be requested by the Design Consultant, agreed upon by the City in its sole discretion, the Design Consultant shall have no right to relief hereunder, or to make any claim against the City, or to seek any adjustment to the compensation or contract time as the result of any error, omission, or insufficiency relating to any

information provided to the Design Consultant by or on behalf of the City in connection with this Agreement.

- 1.1.9 **Information Provided by or on Behalf of Design Consultant to City.** The Design Consultant agrees to report promptly any errors, omissions, inaccuracies, and/or discrepancies, in all Construction Documents and other information furnished to the City and/or the CMAR.
- 1.1.10 **Licenses & Permits:** Unless otherwise specifically provided herein, Design Consultant shall obtain and pay for all licenses, permits, certificates, and governmental approvals needed for the performance of this Project and/or the Design Consultant's services, including all professional licenses required by any statute, ordinance, rule, or regulation of any regulatory body having jurisdiction over the conduct of its operations hereunder. Design Consultant shall maintain all required professional licenses during the Term of this Agreement. Any failure of the Design Consultant to maintain such professional licenses or any revocation or suspension thereof, even if probated, shall entitle the Director in his sole discretion, to immediately terminate this Agreement. Design Consultant shall immediately notify the Director of any suspension, revocation, or other detrimental action against his license.
- 1.1.11 **Conflict of Interest:** If an actual or potential conflict arises between the interests of the City and the interests of the Design Consultant or other clients represented by Design Consultant, Design Consultant shall immediately notify the Director by fax transmission or telephone. If the Director, in his sole discretion, consents to Design Consultant's continued representation of such other clients, he shall so notify the Design Consultant in writing. If the Director does not issue written consent within three (3) Business Days of receipt of Design Consultant's notice, Design Consultant shall immediately terminate its representation of the other client whose interests are or may be in conflict with those of the City.
- 1.1.12 **Non-Participation.** Design Consultant shall not participate in the bidding process as a bidder and shall not engage in construction of any construction projects emanating from Design Consultant's design services on the Project. By written agreement, Consultant shall require each of its Subconsultants to comply with the requirements of this Section.
- 1.1.13 **Prompt Payment:** To the extent permitted by the Texas Prompt Payment Act, Design Consultant shall make timely payments to all persons and entities supplying labor, materials or equipment for the performance of this Agreement. DESIGN CONSULTANT AGREES TO PROTECT, DEFEND, AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF DESIGN CONSULTANT'S FAILURE TO MAKE SUCH PAYMENTS IF THE CITY HAS MADE CORRESPONDING PAYMENTS TO THE DESIGN CONSULTANT.
- 1.1.14 **Confidentiality:** Design Consultant, its agents, employees, contractors, and Subconsultants shall hold all City information, data, and Documents (collectively, the "Information") that they receive, or to which they have access, in strictest confidence. Design Consultant, its agents, employees, contractors, and Subconsultants shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Design Consultant shall obtain written agreements from its agents, employees, contractors, and Subconsultants which bind them to the terms in this Section.
- 1.1.15 **Sensitive Security Information:** The Design Consultant shall take all appropriate measures in accordance with 49 C.F.R. 1520 and other applicable laws to protect all proprietary, privileged, confidential, or otherwise Sensitive Security Information ("SSI") that may come into the Design Consultant's possession as a result of this Agreement.
- 1.1.16 **Airport Security.** Design Consultant shall comply with all HAS, TSA, FAA, and any other governmental agency security directives, rules, and regulations. The FAA and/or the TSA may assess fines and/or penalties for Design Consultant'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 Design Consultant's operations. Within fifteen (15) days after receiving written notice from the FAA, the TSA, or other agency of any alleged violation or infraction, the Director shall notify Design Consultant in writing and provide a copy of the FAA/TSA/Agency Documents pertaining to the violation.

Within ten (10) days of required payment of any fine or penalty by the City, Design Consultant shall reimburse the City for any fine or penalty assessed against the City because of Design Consultant's non-compliance with 49 CFR 1540 and 1542 or other applicable laws or regulations.

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

**1.1.18 Non-Discrimination.** Design Consultant 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, Design Consultant shall include the summary of the provisions of 49 CFR Part 21, as may be amended, in subcontracts it enters into under this Agreement. This summary is set forth in **Exhibit "E"**, attached and incorporated herein.

**1.1.19 Minority and Women Business Enterprise Participation**

1.1.19.1 Design Consultant shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Design Consultant shall make good faith efforts to award subcontracts or supply agreements in at least       % [REFER TO RFQ FOR MWBE REQUIREMENT] of the value of this Agreement to MWBEs. Design Consultant acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunity ("OBO"), and will comply with them.

1.1.19.2 Design Consultant shall ensure that all subcontracts with MWBE Subconsultants and suppliers contain the following terms:

1.1.19.2.1 (MWBE Subconsultant) shall not delegate or subcontract more than 50% of the work under this subcontract to any other Subconsultant or supplier without the express written consent of the City of Houston's Office of Business Opportunity Director ("OBO Director").

1.1.19.2.2 (MWBE Subconsultant) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the Subconsultant, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subconsultant shall keep such books and records available for such purpose for at least four (4) 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.

1.1.19.2.3 Within five (5) Business Days of execution of this subcontract, Design Consultant (prime contractor) and Subconsultant shall designate in writing to the OBO Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.

1.1.19.2.4 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 OBO Director. The OBO 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.

## 1.1.20 Drug Abuse Detection and Deterrence

- 1.1.20.1 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 consultants while on City Premises is prohibited. Consultant shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Consultants, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
- 1.1.20.2 Before the City signs this Agreement, Design Consultant shall file with the Agreement Compliance Officer for Drug Testing ("CCODT"):
- 1.1.20.2.1 a copy of its drug-free workplace policy,
  - 1.1.20.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in **Exhibit "F"**, attached and incorporated herein, together with a written designation of all safety impact positions and,
  - 1.1.20.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in **Exhibit "G"**, attached and incorporated herein.
- 1.1.20.3 If Design Consultant files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six (6) months during the performance of this Agreement or on completion of this Agreement if performance is less than six (6) months, a Drug Policy Compliance Declaration in a form substantially similar to **Exhibit "H"**, attached and incorporated herein. Design Consultant shall submit the Drug Policy Compliance Declaration to the CCODT within thirty (30) days of the expiration of each 6-month period of performance and within thirty (30) days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its first Notice to Proceed.
- 1.1.20.4 Design Consultant also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Design Consultant's employee work force.
- 1.1.20.5 Design Consultant shall require that its Subconsultants comply with the Executive Order, and Design Consultant shall secure and maintain the required Documents for City inspection.
- 1.1.21 **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 Agreement for all purposes. Design Consultant has reviewed Executive Order No. 1-7, as revised, and shall comply with its terms and conditions.
- 1.1.22 **Non-Exclusivity.** This Agreement does not create an exclusive right for Design Consultant to perform all architecture, engineering, and other professional services concerning this Project. The City may procure and execute contracts with other architecture, engineering, or other professional firms for the same, similar, or additional services as those set forth in this Agreement.
- 1.1.23 **Publicity.** Design Consultant shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the Director.
- 1.1.24 **Dispute Resolution.** The Director shall create a dispute resolution process, which shall be applicable to all Phases of this Agreement. The Design Consultant shall participate in the dispute resolution process as established by the Director and as further set forth in the procedures to be created by the

Director. Submission of a disputed matter to the Dispute Avoidance Panel for an oral or written recommendation as to resolution shall be a condition precedent to pursuit of any claim or litigation.

## 1.2 PROFESSIONAL SERVICES

### 1.2.1 BASIC SERVICES

1.2.1.1 **General.** The Design Consultant's Basic Services shall include all disciplines identified within and all related usual and customary design, consultant, and other services necessary and reasonably inferable to complete the Project, or any Phase of the Project, in accordance with the City's requirements and the terms of this Agreement. The Design Consultant agrees to perform the services described herein for each Phase as authorized by the Director. In addition, the Design Consultant agrees to perform the particular scope of services as are set forth in **Exhibit "B"**, attached and incorporated herein. In the event of an inconsistency between the terms of this Article and the terms of **Exhibit "B"**, the terms of **Exhibit "B"** shall control with respect only to the scope of services.

1.2.1.2 **Revisions.** Without limiting any other provisions of this Agreement or the City's other rights and remedies, the Design Consultant agrees that any and all revisions required to be made to the drawings, specifications, and other Documents prepared by or on behalf of the Design Consultant for any of the following reasons shall be included as part of Basic Services and shall be performed at the Design Consultant's sole cost and expense:

1.2.1.2.1 Drafting errors, conflicts, inconsistencies, and other errors or omissions;

1.2.1.2.2 Any failure of the Design Consultant or its Subconsultants to follow any written instructions or approvals given by the Director;

1.2.1.2.3 The fault or negligence of the Design Consultant or its Subconsultants;

1.2.1.2.4 A failure by the Design Consultant or its Subconsultants to perform in accordance with the terms of this Agreement;

1.2.1.2.5 A failure by the Design Consultant or its Subconsultants to design within the budget then established by the Director; and

1.2.1.2.6 Reasonable objection by the Director to Documents which have not previously been approved.

### 1.2.1.3 PHASES 1 - 4: DESIGN SERVICES

1.2.1.3.1 **General.** For Phases 1, 2, 3, and 4, the Design Consultant shall furnish to the Director an electronic version (in a medium satisfactory to the Director) of all Drawings, Specifications, reports, and other required Documents.

1.2.1.3.1.1 The Design Consultant has reviewed the scope of Basic Services as set forth in **Exhibit "B"**, determined its feasibility within established budgetary constraints, and arrived at an understanding of such requirements with the Director. The Design Consultant acknowledges that the Probable Cost of the Work provided in **Section 1.1.3.1**, is reasonable for this Project throughout each Phase.

1.2.1.3.1.2 The Design Consultant shall proceed with Phases 1 - 4 upon receipt of a written Notice to Proceed. The Design Consultant's performance of

Basic Services for Phases 1 - 4 shall follow the requirements set forth in **Exhibit "B"**.

- 1.2.1.3.1.3 The Design Consultant shall engage registered professional engineers to assume responsibility for the civil, structural, mechanical, and electrical engineering aspects of the Project throughout its design and construction.
- 1.2.1.3.1.4 The Design Consultant shall support the City with its applications for utilities commitments and furnish additional information necessary to obtain utility commitments for the Project site.
- 1.2.1.3.1.5 The Design Consultant shall attend review conferences with the Director and such others as the Director may designate to assure consensus with respect to the Design Consultant's development of each Phase of the Project.
- 1.2.1.3.2 **Pre Design.** The Design Consultant shall furnish to the Director an electronic version (in a medium satisfactory to the Director) of Documents that (1) summarize all of the data presented to Design Consultant prior to and as part of the data collection efforts, (2) describe the impact of the data on the design efforts, and (3) point out key decisions that are required to move the Project forward as more fully described in **Exhibit "B"**.
- 1.2.1.3.3 **Concept Design.** The Design Consultant shall furnish to the Director an electronic version (in a medium satisfactory to the Director) of Documents that provide the basis of design as more fully described in **Exhibit "B"**.
- 1.2.1.3.4 **Schematic Design.** The Design Consultant shall furnish to the Director an electronic version (in a medium satisfactory to the Director) of Documents that fully illustrate the scope, scale, and relationship of all Project components representing the Design Consultant's design solution to the criteria set forth in **Exhibit "B"**.
- 1.2.1.3.5 **Design Development.** Completion of Design Development shall indicate that the Design Consultant has substantially solved the details of the design solution and is prepared to start the Construction Documents. The Design Consultant shall furnish to the Director an electronic version (in a medium satisfactory to the Director) of Drawings and Specifications, as more fully described in **Exhibit "B"**.
- 1.2.1.3.6 **Physical Submission of Documents.** Upon the Director's request, the Design Consultant shall submit physical copies (in a number and format prescribed by the Director) of the electronic version of Documents submitted for **Sections 1.2.1.3.2** through **1.2.1.3.5**. Such costs shall be paid as a Reimbursable Expense.
- 1.2.1.3.7 **Revisions.** The Design Consultant shall make modifications to the Documents submitted for **Sections 1.2.1.3.2** through **1.2.1.3.6** as may be required to obtain approval of the Director and submit the revised electronic version (in a medium satisfactory to the Director) of the Document(s) to the Director. Upon the Director's request, the Design Consultant shall submit physical copies (in a number and format prescribed by the Director) of the electronic version of revised Documents submitted under this **Section 1.2.1.3.7**. The costs for the physical Documents of the revised designs shall not be paid as a Reimbursable Expense.

#### 1.2.1.4 PHASE 5: CONSTRUCTION DOCUMENTS

- 1.2.1.4.1 The Design Consultant shall proceed with the Phase 5 Construction Documents upon the Director's written approval of the Phase 4 Design Development Documents and upon the Director's written Notice to Proceed for Phase 5 Construction Documents.
- 1.2.1.4.2 Based upon the approved Phase 4 Design Development Documents and any adjustments authorized by the Director in the Agreed Cost of the Work, the Design Consultant shall prepare, for approval by the Director, Construction Documents suitable for solicitation of competitive construction bids, for incorporation into the Project's CMAR contract, and shall make clarifications and revisions necessary to obtain the building permit. Construction Documents are those Documents prepared for the purpose of obtaining bids and guiding the construction of the Project. Construction Documents shall generally include, but not be restricted to, the following:
  - 1.2.1.4.2.1 Drawings of plans, elevations, sections and details defining the dimensions and spatial relationships of all elements of the Project.
  - 1.2.1.4.2.2 A written Project Manual, which includes bidding requirements, sample forms, conditions of the CMAR contract, and Specifications. The City will provide the Design Consultant bidding requirements, sample forms and conditions of the CMAR contract for Design Consultant's inclusion in the Project Manual. Specifications shall define the general requirements for the Project, written descriptions of the technical nature of materials, equipment, construction systems, standards, and workmanship. The Design Consultant shall not include in either the general requirements or in other technical specification sections requirements that conflict with the bidding requirements, sample forms and conditions of the CMAR contract provided by the City. Dollar allowances shall not be used in the Project Manual.
  - 1.2.1.4.2.3 To the extent practicable for each item that requires a specific designation, the Design Consultant shall specify the Products of at least three (3) manufacturers of each material and manufactured item acceptable for use in the Project.
  - 1.2.1.4.2.4 The Specifications shall also provide means by which the successful bidder can submit for approval products other than those specified which it considers equivalent to those specified in quality, including durability, serviceability, design, appearance, function, finish, performance, size, and weight. The Design Consultant shall advise the Director as to whether or not Products other than those listed in the specifications are equivalent to the Products listed.
- 1.2.1.4.3 The Design Consultant shall attend review conferences with the Director and such others as the Director may designate to obtain the Director's approval of the development of the Construction Documents.
- 1.2.1.4.4 The Design Consultant shall, on behalf of the City, file all applications and Documents necessary to obtain approval of Governmental Authorities having jurisdiction over the Project and furnish any additional information necessary to obtain approvals. This shall include, but not be limited to, submittal of drawings to the Texas Department of Licensing and Regulations, Architectural Barriers Section

for review, and all other governmental applications. The Design Consultant shall provide the City with copies of Proof of Submission and Proof of Inspection filings.

- 1.2.1.4.5 The Design Consultant shall, on behalf of the City, submit drawings for the Building Permit application. The Design Consultant shall provide the City with copies of Proof of Submission.
- 1.2.1.4.6 The Design Consultant shall furnish to the Director an electronic version (in a medium satisfactory to the Director) of Construction Documents for review by the Director in accordance with **Exhibit "B"**. The Design Consultant shall incorporate all review comments, if any, and furnish to the Director the revised electronic version (in a medium satisfactory to the Director) of Construction Documents. Upon the Director's request, the Design Consultant shall submit physical copies (in a number and format prescribed by the Director) of the Documents submitted for this Section. Such costs shall be paid as a Reimbursable Expense.
- 1.2.1.4.7 The Design Consultant and Subconsultants shall attend Pre-Bid Conference(s) and respond to bidders' questions. If required by the Director, the Design Consultant shall issue Addenda to the Construction Documents during the bid period as necessary to respond to bidders' questions and to make clarifications. The Design Consultant shall evaluate bids and bidders only when the Director requests such evaluations in writing.

#### 1.2.1.5 **PHASE 6: CONSTRUCTION SERVICES**

- 1.2.1.5.1 The Design Consultant shall proceed with the Phase 6 Construction Services upon receipt of the Director's written Notice to Proceed for Phase 6 Construction Services.
- 1.2.1.5.2 Unless otherwise provided in this Agreement, the Design Consultant shall provide administration of the CMAR contract as set forth below and in **Exhibit "B"**.
- 1.2.1.5.3 The Design Consultant shall be a consultant of the City during Phase 6 Construction Services, and shall advise and consult with the City. Instructions to the CMAR by the City shall also be sent to the Design Consultant. The Design Consultant shall have authority to act on behalf of the City only to the extent provided in this Agreement.
- 1.2.1.5.4 The Design Consultant shall at all times have access to the Work wherever it is in preparation or progress.
- 1.2.1.5.5 The Design Consultant shall attend conferences at the Project site with the Director and such others as the Director may designate, to assist the City in the administration of the Contract.
- 1.2.1.5.6 The duties, responsibilities, and limitations of authority of the Design Consultant shall not be restricted, modified, or extended without written notice by the City to the Design Consultant and CMAR.
- 1.2.1.5.7 Before final payment of Phase 6 Construction Services compensation, the Design Consultant shall furnish to the Director, the electronic version (in a medium satisfactory to the Director) of a complete set of accurate as built documents that reflect changes in the Work within tolerances and scope as defined in the BIM Project Execution Plan ("BPxP") and that incorporates all Addenda, Change Orders, and all Modifications to the Construction Documents made during construction.

Upon the Director's request, the Design Consultant shall submit physical copies (in a number and format prescribed by the Director) of the Documents submitted for this Section. Such costs shall be paid as a Reimbursable Expense. All information, drawings, and manuals shall conform to the HAS CAD/Geospatial Data Standards and the BPxP. The as built document shall consist of, but is not limited to:

- 1.2.1.5.7.1 PDF files of record drawing and record specifications;
- 1.2.1.5.7.2 AutoCAD drawings using the version approved by the Director;
- 1.2.1.5.7.3 Native formats of the final record BIM including the Revit revision approved by the Director; and
- 1.2.1.5.7.4 Federated Navisworks files using the version approved by the Director.

#### 1.2.1.6 **PHASE 7: POST-CONSTRUCTION SERVICES**

- 1.2.1.6.1 The Design Consultant shall proceed with the Phase 7 Post-Construction Services upon written authorization by the Director to proceed for Phase 7 Post-Construction Services.
- 1.2.1.6.2 The Design Consultant shall inspect the Project in the company of the CMAR, and the Director or such others as the Director may designate, no less than thirty (30) days and no more than forty-five (45) days prior to the expiration of the Correction Period, established in the Contract Documents. On or before the seventh day after such inspection, the Design Consultant shall furnish the Director a written report identifying items which require repair or replacement under the Correction Period provisions of the Contract Documents.

#### 1.2.2 **ADDITIONAL SERVICES**

- 1.2.2.1 The following Additional Services shall be performed by the Design Consultant, if authorized by the Director, in addition to Design Consultant's Basic Services, and shall be paid for by the City as provided for in **Article 3** of this Agreement. Additional Services shall only be provided when necessary and related to the purposes of this Agreement and not otherwise included in the Basic Services or other Additional Services, when mutually agreed upon and subsequently authorized in writing by the Director, and when sufficient funding has been allocated for such services.
  - 1.2.2.1.1 Providing analyses of the City's needs, and programming the requirements of the Project beyond the scope of services provided in **Section 1.2.1**, inclusive of all sections therein.
  - 1.2.2.1.2 Providing financial, feasibility, or other special studies.
  - 1.2.2.1.3 Providing planning surveys, site evaluations, environmental studies or comparative studies of prospective sites, and preparing special surveys, studies and submissions required for approvals of Governmental Authorities or others having jurisdiction over the Project.
  - 1.2.2.1.4 Providing services relative to future facilities, systems, and equipment which are not intended to be constructed during the Phase 6 Construction Services.
  - 1.2.2.1.5 Providing services for the design of leased tenant or rental spaces.

- 1.2.2.1.6 Making revisions in Drawings, Specifications, or other Documents when such revisions are inconsistent with written approvals or instructions previously given, or during Phase 5 Construction Documents.
- 1.2.2.1.7 Making revisions to the Contract Documents required by the enactment or revision of codes, laws, or regulations subsequent to the preparation of such Documents or due to other causes not within the control of the Design Consultant.
- 1.2.2.1.8 Preparing Drawings, Specifications, and supporting data and providing other services in connection with a change to approved Phase 5 Construction Documents to the extent that such services are in excess of the Basic Services or other Additional Services required of the Design Consultant pursuant to this Agreement and provided such changes are not necessitated by an act or omission of the Design Consultant. In the event a Change Order is caused by an act or omission of the Design Consultant, the Design Consultant will be required to prepare such Drawings and Specifications and supporting data at no expense to the City.
- 1.2.2.1.9 Making investigations, surveys, valuations, inventories, or detailed appraisals of existing facilities and services required in connection with construction performed by the City.
- 1.2.2.1.10 Providing consultation concerning replacement of any Work damaged during construction by fire or any other cause not under the Design Consultant's control, and furnishing services as may be required in connection with the replacement of such Work.
- 1.2.2.1.11 Providing services made necessary by the default of the CMAR, or by major defects or deficiencies in the Work of the CMAR, or by failure of performance of either the City or CMAR under the CMAR contract.
- 1.2.2.1.12 Providing extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
- 1.2.2.1.13 Providing additional Phase 6 Construction Services beyond the time period set out in **Section 1.3.1** by more than thirty (30) days, due to no fault of the Design Consultant.
- 1.2.2.1.14 Providing inspection of the Project in the company of the CMAR, and the Director, or such others as the Director may designate, no less than thirty (30) days and no more than forty-five (45) days prior to expiration of any special Project warranty, but after expiration of the Correction Period, as defined in the General Conditions of the CMAR contract, established in the Contract Documents. On or before the seventh day after such inspection, the Design Consultant shall furnish the Director a written report enumerating items which require repair or replacement under the special project warranty provisions of the Contract Documents.
- 1.2.2.1.15 Providing land survey services to supplement any legal description and site information provided by the City and to include, but not be limited to, as applicable to the Project, grades of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, deed restrictions and contours of the site, locations, dimensions and complete data pertaining to existing buildings, other improvements and trees; and information concerning available services and utility lines both public and private, above and below grade, including inverts and

depths in accordance with Project requirements. The Design Consultant shall commission a survey to be prepared by a registered land surveyor acceptable to the Director. The survey shall be signed and sealed by the registered land surveyor.

- 1.2.2.1.16 Providing geotechnical investigation and engineering services required for the design of the Project. Such services may include, as applicable to the Project, test borings, test pits, soil bearing values, percolation tests, and similar investigations and engineering services with reports and appropriate recommendations in accordance with the Project requirements. The Design Consultant shall commission a geotechnical investigation to be completed by a registered geotechnical Subconsultant acceptable to the Director. The geotechnical report and appropriate recommendations shall be signed and sealed by the registered geotechnical engineer.
- 1.2.2.1.17 Providing Cultural Resource Reconnaissance or Surveying services as defined in the General Rules of Practice and Procedures, Chapter 41 of the Texas Antiquities Committee, to supplement the site information provided by the City and to identify potential historic or prehistoric sites in Project areas to be affected by improvements planned as part of the Project. The reconnaissance shall be conducted in accordance with procedures promulgated by the Texas Antiquities Committee in conformance with the Antiquities Code of Texas and signed by a professional archaeologist acceptable to the Texas Antiquities Committee and the Director. For the purposes of this Agreement, the Director or his delegate is authorized to approve the archaeologist's permit applications for such Cultural Resource Reconnaissance or Surveys on behalf of the City.
- 1.2.2.1.18 Providing data processing and photographic production techniques when used in connection with another Additional Service.
- 1.2.2.1.19 Providing other professional services beyond the scope of Basic Services of this Agreement which are necessary and related to the purposes of this Agreement.
- 1.2.2.2 Whenever the Design Consultant, in the course of performing services, is required to present recommendations to the Director with respect to the advisability of, or the need for, any Additional Service, such recommendation shall include a recommended scope for the Additional Services and the recommended fee and expenses. If the Design Consultant recommends Subconsultant services, the recommendation shall also include the names of the Subconsultant(s) recommended by the Design Consultant. A maximum fee for each such Subconsultant's service shall be proposed by the Design Consultant at the time Additional Services requiring such expenses are requested by the Director and shall be negotiated and agreed upon by the Design Consultant and the Director prior to the expense being incurred. The compensation for each such Subconsultant's service expense shall never exceed this agreed upon maximum amount.

### 1.3 TIME

- 1.3.1 The Design Consultant shall perform Basic and Additional Services as expeditiously as is consistent with professional skill and care, and the orderly progress of the Work. Upon definition of the scope of the Project as provided in **Section 1.2.1.3.4** and **Exhibit "B"**, the Design Consultant shall submit for Director's approval a Design Schedule of Design Consultant's services not exceeding the time limits provided in this **Section 1.3**, which shall include allowances for periods of time required for City's review and for approval of submissions by authorities having jurisdiction over the Project. Time is of the essence of this Agreement, and the limits established by this Agreement and the Design Schedule approved by Director shall not be exceeded by Design Consultant or by the City except as provided by **Section 1.3.6**.

TIME OF PERFORMANCE		
Type	Phase	Calendar Days from First NTP
Pre-Construction	Phase 1 – Pre-Design Services	450 Days
	Phase 2 – Concept Design Services	
	Phase 3 – Schematic Design Services	
	Phase 4 – Design Development	
Construction	Phase 5 – Construction Documents	1,965 Days
	Phase 6 – Construction Services	
<b>TOTAL DURATION</b>		<b>2,415 Days</b>

- 1.3.2 The Design Consultant agrees to perform the services and furnish to the Director items called for in **Section 1.2.1.3** (Phases 1 - 4 Design) of this Agreement within 450 calendar days from the issuance of a Notice to Proceed by the Director which includes a period of twenty-one (21) calendar days for the City's reviews and approvals, providing there are no delays caused by the City or other agencies with whom the Project must be coordinated and over whom the Design Consultant has no control.
- 1.3.3 Upon approval by the Director of Phase 4 Drawings and Specifications, and upon written authorization by the Director, the Design Consultant agrees to perform services called for in **Section 1.2.1.4** (Phase 5 Construction Documents) of this Agreement in accordance with Work packages created under the CMAR contract.
- 1.3.4 Upon receipt of the Notice to Proceed from the Director, the Design Consultant agrees to perform the services and furnish to the Director the items called for in **Section 1.2.1.5** (Phase 6 Construction Services) of this Agreement until Final Completion of the entire Project.
- 1.3.5 Upon receipt of the Notice to Proceed from the Director, the Design Consultant agrees to perform services and furnish to the Director the items called for in **Section 1.2.1.6** (Phase 7 Post-Construction Services) of this Agreement within the time specified in **Section 1.2.1.6.2** of this Agreement.
- 1.3.6 Extensions of any of the time-of-performance commitments by the Design Consultant in this Section shall be granted only by the Director, in written form, and shall have the same force and effect as the time-of-performance commitments originally stated herein.
- 1.3.7 The Design Consultant acknowledges and agrees that any services it provides to the City after the completion date established in the Design Schedule, unless an extension of time has been granted, will be deemed to be gratuitously provided, and the City shall have no obligation to pay for such services unless the City Council approves an agreement to do so in its sole discretion.
- 1.3.8 Design Consultant shall notify the Director promptly of any factor, occurrence, or event coming to its attention that Design Consultant believes is likely to adversely affect its ability to meet any of its obligations hereunder or to materially delay delivery of any Document or service provided for herein and in the Design Schedule, in such event, promptly consult with the Director regarding a plan of action to prevent, eliminate, or remedy such default or delay.
- 1.3.9 This Agreement shall remain in force (1) until expiration of the one year from the date of Final Completion of the entire Project or (2) 365 days after completion of the services required in either **Section 1.2.1.3** Phases 1-4 (Design Services) or **Section 1.2.1.4** Phase 5 (Construction Documents) whichever shall have been completed without the subsequent Phase being authorized, or (3) until terminated under provisions of **Article 6** herein.

## **1.4 COORDINATION - RELATED PROJECTS**

- 1.4.1 Design Consultant shall coordinate its services with City provided services set forth in **Section 2.4**, inclusive of all sections therein.
- 1.4.2 The Design Consultant shall coordinate its services with other ITRP and HAS projects. The Director shall notify Design Consultant in writing of the removal or addition of projects to be coordinated with. Below is a non-exhaustive list of currently identified projects requiring coordination:
  - 1.4.2.1 United Terminal C North Pier;
  - 1.4.2.2 ITRP Enabling Utilities – Landside;
  - 1.4.2.3 East Aircraft Parking Hardstand;
  - 1.4.2.4 MLIT Apron and Taxilanes;
  - 1.4.2.5 Federal Inspection Services (“FIS”) Renovation and Expansion;
  - 1.4.2.6 Airport-Wide Systems;
  - 1.4.2.7 Tenant Improvements;
  - 1.4.2.8 Projects within the HAS Capital Improvement Plan; and
  - 1.4.2.9 Program Management Office (“PMO”) Building.

## **ARTICLE 2.**

### **THE CITY'S RESPONSIBILITIES**

- 2.1 The City shall provide information regarding requirements for the Project including a written descriptive document, which shall set forth in detail the City's conditions and requirements for objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expendability, special equipment, and other conditions or requirements appropriate to the nature of the Project.
- 2.2 The Director shall designate a representative authorized to act on the City's behalf with respect to the Project. The Director's authorized representative shall examine the Phases 1-5 Documents submitted by the Design Consultant and shall render and obtain decisions pertaining thereto promptly to avoid unreasonable delay in the Design Consultant's services.
- 2.3 If required for the Project, the City shall furnish or shall authorize the cost of obtaining as an Additional Service, a complete and correct written legal description of the site, including metes and bounds, corners, lines of streets and alleys, and location of the site.
- 2.4 The City shall provide the following services at the City's expense:
  - 2.4.1 Geotechnical investigation, testing and report
  - 2.4.2 Hazardous Materials surveying and abatement;
  - 2.4.3 Quality assurance testing;
  - 2.4.4 Third-party project Commissioning Authority; and

2.4.5 ORAT.

- 2.5 If the City observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Construction Documents, written notice thereof shall be given by the City to both the Design Consultant and CMAR.
- 2.6 The City shall furnish required information and services and shall render or obtain approvals and decisions as reasonably necessary for the orderly progress of the Design Consultant's services and of the Work.

**ARTICLE 3.**

**COMPENSATION**

**3.1 GENERAL**

- 3.1.1 The City shall compensate the Design Consultant under this Agreement as provided in this Article.
- 3.1.2 All invoices are subject to approval by the Director and are due and payable on or about thirty (30) days after receipt in accordance with the requirements of the Texas Prompt Payment Act. The City will pay in less than thirty (30) days in return for an early payment discount from the Design Consultant as follows:

<b>Payment Time</b>	<b>Discount</b>
10 Days	2%
20 Days	1%

- 3.1.2.1 If the City fails to make a payment according to the early payment schedule above, but does make the payment within the time specified by the Texas Prompt Payment Act, the City shall not receive the discount, but shall pay no other penalty. When the payment date falls on a Saturday, Sunday, or City Holiday, payment may be made on the following business day.
- 3.1.3 The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Design Consultant's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.
- 3.1.4 Payments for Basic Services, Additional Services, and Reimbursable Expenses may be made monthly upon presentation of the Design Consultant's statement of services rendered or expenses incurred. Paid invoices or other proof of payment shall be submitted when requesting reimbursement.
- 3.1.5 All payments shall be made by check. Such checks shall be made payable to the Design Consultant and payments shall be addressed to the Design Consultant at its address specified herein for notices.
- 3.1.6 If the City disputes any items in an invoice Design Consultant submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Design Consultant of the dispute and request remedial action. After the dispute is settled, Design Consultant shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.
- 3.1.7 Neither partial payments made hereunder nor approval of invoices or services by the Director shall be construed as final acceptance or approval of that part of the Design Consultant's services to which such partial payment or approval relates nor shall such payments be construed as relieving the Design Consultant of any of its obligations hereunder with respect thereto.

3.1.8 The Director and City Controller shall have the right to examine and review the Design Consultant's books, records and all other Documents supporting or otherwise related to its statements for services rendered (electronic or otherwise) which relate directly or indirectly to performance or payment under this Agreement. The Design Consultant shall maintain such books, records, and other Documents for seven (7) years after the cessation of Design Consultant's other services and responsibilities under this Agreement. Nothing in this Article shall affect the time for bringing a cause of action nor the applicable statute of limitations.

**3.2 COMPENSATION FOR BASIC SERVICES**

3.2.1 The City agrees to pay the Design Consultant not to exceed the following stipulated sum for Phases 1 - 5 Basic Services (excluding Enabling Packages and Phases 6 and 7) performed by the Design Consultant:

<b>STIPULATED SUM</b>	
Phase 1 – Pre-Design Services	\$ _____
Phase 2 – Concept Design Services	\$ _____
Phase 3 – Schematic Design Services	\$ _____
Phase 4 – Design Development	\$ _____
Phase 5 – Construction Documents	\$ _____
Phase 6 – Construction Services	\$ _____
Phase 7 – Post-Construction Services	\$ _____
<b>TOTAL NOT TO EXCEED STIPULATED SUM FOR BASIC SERVICES</b>	\$ _____

3.2.1.1 The amount of payment due for Basic Services performed during each Phase is a percentage of the lump sum fee commensurate with the percentage of Basic Services performed for the Phase during the period covered by the statement for services rendered plus Reimbursable Expenses.

3.2.2 Compensation for Basic Services is subject to **Section 3.7**, Limit of Appropriation.

**3.3 COMPENSATION FOR ADDITIONAL SERVICES**

3.3.1 For Additional Services of the Design Consultant, the Director shall determine one of the following methods of compensation: (i) Design Consultants hourly cost at the billing rates set forth in **Exhibit “D”**, attached and incorporated herein, plus Subconsultants billing rates and Reimbursable Expenses, or (ii) a negotiated lump sum for services plus Reimbursable Expenses, that does not exceed an estimate of (i).

3.3.1.1 The Design Consultant’s billing rates described above shall include the direct salaries of the Design Consultant and all of the Design Consultant's personnel directly engaged on the Project, plus portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits. For the purpose of this Agreement, the cost of such contributions and benefits is established as equal to \_\_\_\_\_% of direct salaries as supported by the employer’s federally audited financial records.

3.3.1.1.1 The billing rates set forth in **Exhibit “D”** for the Design Consultant must not be exceeded without the prior written approval of the Director and only for (i) actual salary increases (which include cost of living adjustments) that are not to exceed

three (3%) percent from the previous year or (ii) additional employee categories required to accomplish Additional Services and corresponding direct salaries. Upon the Director's approval, **Exhibit "D"** shall be updated without the need of a contract amendment or further Council Action.

3.3.2 Compensation for Additional Services is subject to **Section 3.7**, Limit of Appropriation.

### 3.4 REIMBURSABLE EXPENSES

3.4.1 A maximum amount for Reimbursable Expenses shall be proposed by the Design Consultant prior to the time that services requiring such expenses are requested by the Director and shall be negotiated and agreed upon by the Design Consultant and the Director prior to the expenses being incurred. The compensation for such Reimbursable Expenses shall never exceed this agreed upon maximum amount. Reimbursable Expenses are to be paid in addition to the compensation for Basic and Additional Services.

3.4.2 Reimbursable Expenses include only actual costs incurred by the Design Consultant and the Design Consultant's employees and Subconsultants, including any sales tax Design Consultant is legally required to pay, in the interest of the Project while performing services requested by the Director pursuant to the following Sections:

3.4.2.1 If authorized in advance in writing by the Director in accordance with **Section 3.4.1**, travel costs in connection with out-of-town travel, to and from points outside of the greater City of Houston area, not to exceed the amounts established under the City's then-current travel reimbursement policy for its employees;

3.4.2.2 If authorized in advance in writing by the Director in accordance with **Section 3.4.1**, fees paid for securing approval of authorities having jurisdiction affecting the Project for which the Design Consultant is required to obtain approval elsewhere in this Agreement;

3.4.2.3 Expense of reproductions, postage and handling of Drawings, Specifications and other Documents, including submittals, are Reimbursable Expenses;

3.4.2.3.1 Reproductions for corrections of submittals and for in house use by the Design Consultant and their Sub-Consultants are not Reimbursable Expenses.

3.4.2.4 If authorized in advance by the Director, the expense of renderings, models and mock-ups, to the extent exceeding the requirements set forth in the Basic Services; and

3.4.2.5 If authorized in advance by the Director, the expense of filing Documents for governmental approval, except for building permits, required for the Project.

3.4.3 Compensation for Reimbursable Expenses is subject to **Section 3.7** Limit of Appropriation.

### 3.5 WITHHOLDING PAYMENTS / OFFSET

3.5.1 No deductions shall be made from the Design Consultant's compensation on account of penalty or liquidated damages.

3.5.2 All sums owed to the City by the Design Consultant pursuant this Agreement may be offset against other sums owed by the City to the Design Consultant under this Agreement or any other contract between Design Consultant and the City.

3.5.3 If the Design Consultant receives payment from the City for services performed by any Subconsultant or for materials provided by any supplier and the Design Consultant withholds or has withheld payment to

the Subconsultant or supplier on account of a deficiency in the quality or quantity of that Subconsultant's or supplier's services or materials, the City may withhold the amount associated with such services or materials from any pending or future payments to the Design Consultant until the next regular payment to the Design Consultant occurring after the City receives reasonable documentation that the deficiency has been remedied.

**3.6 LIMIT OF APPROPRIATION**

3.7.1. The City's duty to pay money to Design Consultant under this Agreement is limited in its entirety by the provisions of this Section.

3.7.2. In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated \$ [redacted] for Basic Services, Additional Services, and Reimbursable Expenses under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

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

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

3.7.3. The Original Allocation plus all supplemental allocations are the "Allocated Funds". The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. The Design Consultant must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, the Design Consultant's only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

**ARTICLE 4.**

**OWNERSHIP AND USE OF THE DOCUMENTS**

4.1 Design Consultant conveys and assigns to the City its entire interest and full ownership worldwide in and to any Documents and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively "Proprietary Rights") that Design Consultant, its agents, employees, contractors, and Subconsultants (collectively the "Authors") develop, write, or produce under this Agreement (collectively the "Works").

4.2 The Design Consultant and the Authors shall not claim or exercise any Proprietary Rights related to the Works. If requested by the Director, Design Consultant shall place a conspicuous notation on any Works which indicates that the City owns the Proprietary Rights.

- 4.3 Design Consultant shall execute all Documents required by the Director to further evidence this assignment and ownership. Design Consultant shall cooperate with the City in registering, creating, and enforcing Proprietary Rights arising under this Agreement. If Design Consultant's assistance is requested and rendered under this Section, the City shall reimburse Design Consultant for all out-of-pocket expenses it incurs in rendering assistance, subject to the availability of funds. On termination of this Agreement, or if requested by the Director, Design Consultant shall deliver all Works to the City. Design Consultant shall obtain written agreements from the Authors which bind them to the terms in this **Article 4**.
- 4.4 All Works developed, written, or produced under this Agreement for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, are "works made for hire."
- 4.5 Design Consultant may retain copies of the Works for its archives. Design Consultant shall not otherwise use, sell, or license the Works.

**ARTICLE 5.**

**INDEMNIFICATION AND INSURANCE**

**5.1 INDEMNIFICATION**

- 5.1.1 **DESIGN CONSULTANT AGREES TO AND SHALL, TO THE EXTENT PERMITTED BY TEXAS LOCAL GOVERNMENT CODE §271.904, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY ARISING AS A RESULT OF CONSULTANT'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONSULTANTS', OR SUBCONSULTANTS' ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS IN CONNECTION WITH ITS PERFORMANCE UNDER THIS AGREEMENT, WHETHER CONSULTANT IS IMMUNE FROM LIABILITY OR NOT. THE INDEMNITY SHALL APPLY WHETHER OR NOT THE EVENT IS CAUSED BY THE SOLE OR CONTRIBUTORY NEGLIGENCE OF THE CITY.**

**5.2 INSURANCE**

- 5.2.1 With no intent to limit Design Consultant's liability or the indemnification provisions set forth herein, Design Consultant shall maintain insurance 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 \$1,000,000 (each accident)</li> <li>• Bodily Injury by Disease \$1,000,000 (policy limit)</li> <li>• Bodily Injury by Disease \$1,000,000 (each employee)</li> </ul>
Commercial General Liability: 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 vehicles driven on airfield
Professional Liability Coverage with no policy exclusions of any kind	\$5,000,000 per claim/aggregate

Excess Liability for Commercial General Liability and Automobile Liability	\$10,000,000
<b>Aggregate Limits are per 12-month policy period unless otherwise indicated.</b>	

- 5.2.2 **Insurance Coverage.** At all times during the Term of this Agreement and any extensions or renewals, Design Consultant shall provide and maintain insurance coverage that meets the Agreement requirements. Design Consultant shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Design Consultant waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Design Consultant shall also require all Subconsultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except the limit of liability. The limits of liability for Subconsultants must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim. The limits of liability required of any Subconsultants may be modified by the City Attorney, in his sole discretion.
- 5.2.3 **Form of insurance.** The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall not (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Agreement. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide.
- 5.2.4 **Required Coverage.** The City shall be an Additional Insured under this Agreement, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name the City as an Additional Insured for both ongoing and completed operations. The City shall enjoy the same coverage as the Named Insured without regard to other Agreement provisions. If professional liability coverage is written on a "claims made" basis, Design Consultant shall also provide proof of renewal each year for ten (10) years after Substantial Completion, or in the alternative: evidence of extended reporting period coverage for a period of ten (10) years after Substantial Completion, or a project liability policy for the Project covered by this Agreement with a duration of ten (10) years after Substantial Completion.
- 5.2.5 **Notice.** DESIGN CONSULTANT 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, Design Consultant shall provide other suitable policies in order to maintain the required coverage. If Design Consultant does not comply with this requirement, the Director, at his sole discretion, may immediately suspend Design Consultant from any further performance under this Agreement and begin procedures to terminate for default. All policies maintained by Design Consultant as required herein shall be endorsed to provide thirty (30) days' notice of cancellation to the City.
- 5.2.6 **Deductibles and Self-Insured Retentions.** Design Consultant shall be responsible for and pay any claims or losses to the extent of any deductible amounts or self-insured retentions and waives any claim it may have for the same against the City, its officers, agents, or employees.
- 5.2.7 **Subrogation.** Design Consultant waives any claim or right of subrogation to recover against the City, its officers, agents, or employees. Each policy, except professional liability, must contain an endorsement waiving such claim.
- 5.2.8 **Endorsement of Primary Insurance.** Each policy, except Workers' Compensation and Professional Liability, must contain an endorsement that the policy is primary and non-contributory to any other insurance available to the Additional Insured with respect to claims arising under this Agreement.
- 5.2.9 **Liability for Premium.** Design Consultant shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.

#### 5.2.10 Proof of Insurance

5.2.10.1 On the Countersignature Date and upon request at any other time during the Term of this Agreement, Design Consultant shall furnish the Director with certificates of insurance and required endorsements, along with an affidavit from Design Consultant confirming that the Certificates accurately reflect the insurance coverage maintained. If requested in writing by the Director, Design Consultant shall furnish the City with certified copies of Consultant's actual insurance policies. Failure of Design Consultant to provide certified copies, as requested, within fourteen (14) days after receipt of written notice from Director, may be deemed, in the Director's and/or City Attorney's discretion, to constitute a breach of this Agreement.

5.2.10.2 Design Consultant shall continuously and without interruption, maintain in force the required insurance coverages specified in this Section. If Design Consultant does not comply with this requirement, the Director, at his discretion, may immediately suspend Design Consultant from any further performance under this Agreement and begin procedures to terminate for default.

### ARTICLE 6.

#### TERMINATION AND SUSPENSION OF AGREEMENT

##### 6.1 TERMINATION FOR CONVENIENCE BY CITY

6.1.1 The Director may terminate this Agreement at any time by giving thirty (30) days written notice to the Design Consultant. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

6.1.2 On receiving the notice, Design Consultant shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel (or assign as instructed, in the discretion of the Director) all existing orders and subcontracts that are chargeable to this Agreement and deliver all supplies and materials accumulated in performing this Agreement to a place designated by the Director. Within thirty (30) days after receiving the termination notice, Design Consultant shall submit an invoice showing in detail all costs for services performed and expenses reasonably incurred under this Agreement up to the termination date. The City shall then pay the Design Consultant for services actually performed and costs reasonably incurred, less any offsets and to the extent the City has not previously issued payment, in the same manner as prescribed in **Article 3**, unless the amounts invoiced exceed the allocated funds remaining under this Agreement. For those services provided on the basis of a stipulated sum, the fees will be prorated in accordance with the progress of the services at the date of termination. The Design Consultant may also submit invoices for vendor and Subconsultant charges incurred before the notice of termination.

6.1.3 **RECEIPT OF PAYMENT FOR SERVICES RENDERED IS DESIGN CONSULTANT'S SOLE REMEDY FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH SHALL NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. DESIGN CONSULTANT 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.**

##### 6.2 TERMINATION FOR CAUSE BY CITY

6.2.1 If the Design Consultant defaults under this Agreement, the Director may either terminate this Agreement or allow Design Consultant to cure the default as provided below. The City's rights and remedies provided below are in addition to all rights and remedies provided by law or under this Agreement. Default by Consultant occurs if:

- 6.2.1.1 Design Consultant fails to perform or timely perform any of its material duties under this Agreement;
  - 6.2.1.2 Design Consultant becomes insolvent;
  - 6.2.1.3 All or a substantial part of Design Consultant's assets are assigned for the benefit of its creditors; or
  - 6.2.1.4 A receiver or trustee is appointed for Design Consultant.
- 6.2.2 If a default occurs, the Director may, but is not obligated to, deliver a written notice to Design Consultant describing the default and a time frame in which to cure the default along with a termination date if default is not cured. The Director, at his sole option, may extend the termination date to a later date. If the Design Consultant cures the default to the Director's satisfaction before the termination date, then the termination is ineffective. If the Design Consultant does not cure the default before the termination date, then the Director may terminate this Agreement on the termination date, at no further obligation of the City.
- 6.2.3 To effect termination, the Director must notify Design Consultant in writing. After receiving the notice, Design Consultant shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, promptly cancel (or assign as instructed, in the discretion of the Director) all orders or subcontracts chargeable to this Agreement and deliver all work product, supplies and materials accumulated in performing this Agreement to a place designated by the Director.
- 6.2.4 In the event of termination due to Design Consultant'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, Design Consultant shall be liable to the City for any additional cost occasioned to the City thereby.
- 6.2.5 If after termination of this Agreement for cause, it is determined that the Design Consultant has 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 6.1.2**. Regardless of whether any termination of this Agreement by the City is for cause or convenience, City shall own all Instruments of Service related to the Project (and the intellectual property rights pertaining thereto), and Design Consultant shall promptly turn over to City all such materials, whether electronically stored or otherwise.

### **6.3 TERMINATION FOR CAUSE BY DESIGN CONSULTANT**

- 6.3.1 The Design Consultant shall have no right to terminate this Agreement for convenience. The Design Consultant may terminate its performance under this Agreement only if (i) the City defaults and fails to cure the default after receiving written notice of it in accordance with this section, and (ii) the Design Consultant is not in default. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and the Design Consultant decides to terminate the Agreement, the Design Consultant must deliver a written notice to the Director describing the default and the proposed termination date. The date must be at least sixty (60) days after the Director receives the notice. The Design Consultant, 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 the Design Consultant may terminate its performance under this Agreement on the termination date. If the Design Consultant is in default when it furnishes the City with a notice of default, the notice of default furnished by Design Consultant shall be a nullity, without force and effect.

### **6.4 PROJECT SUSPENSION**

- 6.4.1 The City may suspend the Project at any time for any or no reason. If the Project is suspended through no fault of Design Consultant for more than 365 days, Design Consultant shall, subject to the availability

of funds, be compensated for all services performed prior to the suspension and reasonable suspension costs, to the same extent as if the suspension were a termination for convenience. However, if the project is suspended for any duration by reason of Design Consultant's fault, Design Consultant shall be responsible for all resulting costs incurred by the City. Upon the restart of the Project following a suspension, the Design Consultant and the City will agree on reasonable re-mobilization costs, if any, for the Design Consultant.

## 6.5 FORCE MAJEURE

- 6.5.1 Timely performance by both parties is essential to this Agreement. However, neither party will be liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. For purposes of this Agreement, Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, 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 Design Consultant to extra Reimbursable Expenses or payment.
- 6.5.2 This relief is not applicable unless the affected party does the following:
- 6.5.2.1 uses due diligence to remove the Force Majeure as quickly as possible;
  - 6.5.2.2 provides the other party with prompt written notice of the cause and its anticipated effect; and
  - 6.5.2.3 provides the other party with written notice describing the actual delay or non-performance incurred within seven (7) days after the Force Majeure ceases.
- 6.5.3 The Director will review claims that a Force Majeure that directly impacts the City or Design Consultant has occurred and render a written decision within fourteen (14) days. The decision of the Director is final.
- 6.5.4 The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by the City.
- 6.5.5 If the Force Majeure continues for more than thirty (30) days, the Director may terminate this Agreement by giving seven (7) days' written notice to Design Consultant. Such termination is not a default or breach of this Agreement. **DESIGN CONSULTANT WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS THEN DUE AND PAYABLE UNDER THE AGREEMENT FOR SERVICES PERFORMED AND REASONABLE COSTS INCURRED.**
- 6.5.6 Design Consultant shall not be relieved of the performance of its obligations under this Agreement due to a strike or work slowdown of its employees. Design Consultant shall employ only fully trained and qualified personnel during a strike.

## ARTICLE 7.

### MISCELLANEOUS PROVISIONS

#### 7.1 NON-WAIVER

- 7.1.1.1 Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce by any appropriate remedy, strict compliance

with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

7.1.1.2 Any acceptance or approval by the City, or its agents or employees shall not constitute nor be deemed to be a release of the responsibility and liability of the Design Consultant, its employees, agents, Subconsultants or suppliers for the accuracy, competency and completeness of any Documents prepared or services performed pursuant to the terms and conditions of this Agreement, nor shall acceptance or approval be deemed to be an assumption of such responsibility or liability by the City, or its agents and employees, for any defect, error or omission in any Documents prepared or services performed by the Design Consultant, its employees, agents, Subconsultants or suppliers pursuant to this Agreement.

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

## **7.2 NOTICES**

7.2.1 All notices required or permitted hereunder shall be in writing and shall be deemed received when actually received or if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the other party at the address prescribed in the preamble hereof or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.

## **7.3 SUCCESSORS AND ASSIGNS**

7.3.1 The City and Design Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the City nor the Design Consultant shall assign in law or otherwise, sublet or transfer any interest in this Agreement without the written consent of the other.

## **7.4 INDEPENDENT CONTRACTOR**

7.4.1 The relationship of the Design Consultant to the City shall be that of an independent contractor.

## **7.5 THIRD PARTY BENEFICIARIES**

7.5.1 This Agreement shall bind and benefit the parties hereto and shall not bestow any rights or benefits upon any third parties.

## **7.6 BUSINESS STRUCTURE AND ASSIGNMENTS**

7.6.1 Design Consultant shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however prevents the assignment of accounts receivable or the creation of a security interest as described in Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Design Consultant 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.

## **7.7 NO CITY EXPENDITURE**

7.7.1 Except for **Article 3**, nothing in this Agreement requires the City to pay Design Consultant or any other party for services rendered or expenses incurred.

## **7.8 DESIGN CONSULTANT'S DEBT**

7.8.1 IF DESIGN CONSULTANT, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY CITY CONTROLLER IN WRITING. IF CITY CONTROLLER BECOMES AWARE THAT DESIGN CONSULTANT HAS INCURRED A DEBT, IT SHALL IMMEDIATELY NOTIFY DESIGN CONSULTANT IN WRITING. IF DESIGN CONSULTANT DOES NOT PAY THE DEBT WITHIN THIRTY (30) DAYS OF EITHER SUCH NOTIFICATION, CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO DESIGN CONSULTANT UNDER THIS AGREEMENT, AND DESIGN CONSULTANT WAIVES ANY RECOURSE THEREFORE. DESIGN CONSULTANT SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

## **7.9 CONSTRUCTION AND INTERPRETATION**

7.9.1 The captions at the beginning of the articles and sections of this Agreement are guides and labels to assist in locating and reading such articles and sections and, therefore, will be given no effect in construing this Agreement and shall not be restrictive of or be used to interpret the subject matter of any article, section, or part of this Agreement.

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

7.9.3 In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

## **7.10 SURVIVAL**

7.10.1 Design Consultant shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond and survive the termination, cancellation, or expiration of this Agreement, including but not limited to the provisions set forth in **Section 1.1.13, Article 4**, Ownership and Use of The Documents, and **Article 5**, Indemnification and Insurance.

## **7.11 CUMULATIVE REMEDIES**

7.11.1 Except as otherwise provided herein, the rights and remedies contained in this Agreement shall not be exclusive, and are cumulative of all rights and remedies now or hereafter existing by statute, at law, or in equity.

## **7.12 APPLICABLE LAWS**

7.12.1 This Agreement is subject to and shall be construed in accordance with the laws of the State of Texas, the City Charter and ordinances of the City of Houston, the laws and regulations of the federal government of the United States of America, and all rules and regulations of any regulatory body or officer having jurisdiction over this Project. Venue for any dispute arising out of this Agreement is Harris County, Texas.

7.12.2 Nothing in this Agreement 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).

## **7.13 ENFORCEMENT**

7.13.1 The City Attorney or his designee shall have the right to enforce all legal rights and obligations under this Agreement without further authorization. Design Consultant covenants to provide to the City

Attorney all Documents and records that the City Attorney deems necessary to assist in determining Design Consultant's compliance with this Agreement, with the exception of those Documents made confidential by federal or State law or regulation.

#### **7.14 EXTENT OF AGREEMENT**

7.14.1 This Agreement, including the referenced Exhibits which are made a part hereof, represents the entire and integrated agreement between the City and the Design Consultant and supersedes all prior negotiations, representations, or agreements either written or oral. Except to the extent authorized herein, this Agreement may not be altered or amended except in writing executed on behalf of all of the parties and approved by ordinance by the City Council of the City of Houston.

**[SIGNATURE PAGE FOLLOWS]**

**SIGNATURE PAGE:**

The parties have executed this Agreement in duplicate copies, each of which shall be an original, as of the date of countersignature by the City Controller of the City of Houston.

**DESIGN CONSULTANT:**



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

**ATTEST/SEAL:**

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

Tax ID No. \_\_\_\_\_

**CITY:**

**THE CITY OF HOUSTON TEXAS**

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

**ATTEST/SEAL:**

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

**COUNTERSIGNED:**

\_\_\_\_\_  
City Controller

**DATE COUNTERSIGNED:**

\_\_\_\_\_

**APPROVED:**

\_\_\_\_\_  
Director, Houston Airport System

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Assistant City Attorney  
LD No. \_\_\_\_\_

## EXHIBIT "A"

### DEFINED TERMS

#### ARTICLE 1. INTERPRETATION

1.1. This Agreement will be interpreted in accordance with the following:

- 1.1.1. **References to Hereto.** The terms "hereto," "hereby," "hereof," "herein," "hereunder" and any similar terms refer to this Agreement.
- 1.1.2. **References to Including.** The words "include," "includes" and "including" are to be construed as meaning "include without limitation," "includes without limitation" and "including without limitation," respectively.
- 1.1.3. **References to Statutes.** Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.
- 1.1.4. **References to Governmental Authorities.** Each reference to the City or a Governmental Authority is deemed to include a reference to any successor to the City or such Governmental Authority or any organization or entity which has taken over the functions or responsibilities of the City or such Governmental Authority. Each reference to a private Person that is not an individual is deemed to include a reference to its successors and permitted assigns.
- 1.1.5. **References to Documents and Standards.** Each reference to an agreement, document, standard, principle or other instrument includes a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.
- 1.1.6. **Delivery of Documents in Digital Format.** In this Agreement, the Design Consultant is obligated to deliver reports, records, designs, plans, Drawings, Specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Design Consultant agrees that all such Documents shall be submitted to the City both in printed form (in the number of copies indicated) and, at the City's request, in digital form. Digital copies shall consist of computer readable data submitted in any standard interchange format which the City may reasonably request to facilitate the administration and enforcement of this Agreement. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.

#### ARTICLE 2. DEFINITIONS

2.1. As used in this Agreement, the following terms have the meanings set forth below:

- 2.1.1. **Actual Cost:** A verifiable amount the CMAR paid for labor, material, equipment, and supplies in its performance of the Work.
- 2.1.2. **Addenda:** Any addenda to the Drawings or Specifications or other Contract Documents identified as Addenda, if any, in the Contract Documents.

- 2.1.3. **Additional Services:** Services not specifically included in Basic Services or reasonably inferable therefrom and further defined in **Section 1.2.2** of the Agreement.
- 2.1.4. **Agreed Cost of the Work:** The specific amount defined in **Section 1.1.3** that may not be exceeded by the Probable Cost of the Work without the express written consent of the Director.
- 2.1.5. **Agreement:** This contract between the Parties, including all exhibits and written amendments authorized by City Council and Consultant.
- 2.1.6. **Allowance:** An estimated sum of money to be used only for a limited class of expenditures such as utility relocation costs, fees for special licenses or permits, or other “pass-through” costs that would be the same for any contractor. Allowances may not be used to purchase goods or services that are not specified in the CMAR Contract. The unspecified items must be purchased according to the terms of the General Conditions.
- 2.1.7. **Applicable Law:** All laws, treaties, ordinances, judgments, decrees, injunctions, writs, orders, codes, rules, regulations, permits, and interpretations of any Governmental Authority having jurisdiction over the Parties, the Project, the Work, the Contract Documents, and each other document delivered hereunder or in connection herewith.
- 2.1.8. **Basic Services:** Includes all disciplines identified within **Section 1.2.1, Exhibit B**, and all related usual and customary design, consultant, and other services necessary and reasonably inferable to complete the Project, or any Phase of the Project, in accordance with the City’s requirements and the terms of this Agreement.
- 2.1.9. **Beneficial Occupancy:** When the City takes possession of and operates the Work (or portions of the Work) for its intended purposes.
- 2.1.10. **Bonds:** Performance Bond, Payment Bond, Maintenance Bond, Bid Bond, Proposal Bond and other Surety instruments executed by Surety. When in singular form, refers to individual instrument.
- 2.1.11. **Building Information Modeling** or **BIM:** The digital or electronic representation of the Project models which include the process to create the models.
- 2.1.12. **Business Day(s):** Any day that is not a Saturday, Sunday, or City Holiday. In the event that any deadline set forth in this Agreement falls on a Saturday, Sunday, or City Holiday, the deadline shall automatically be extended to the next day that is not a Saturday, Sunday, or City Holiday.
- 2.1.13. **CBP:** U.S. Customs and Border Protection.
- 2.1.14. **City or Owner:** The City of Houston, a home rule municipality located principally within Harris County, Texas, including its successors and its authorized representatives.
- 2.1.15. **City Attorney:** The City Attorney of the City or any person designated by the City Attorney to perform one or more of the duties of the City Attorney under this Agreement.
- 2.1.16. **City Holiday:** Any official City of Houston holiday as determined each year by the City Council.
- 2.1.17. **Change Order:** A written instrument prepared by the City and signed by the Director and CMAR, specifying the following: (1) a change in Work; (2) a change in the GMP; and (3) a change in Contract Time, if any. The value of a Change Order is the net amount offsetting all deductions against all additions effected by the Change Order.

- 2.1.18. **CMAR:** The Construction Manager at Risk, including its successors and its authorized representatives, contracted by the City to perform pre-construction services and execute the Work. Construction Management at Risk is the delivery method.
- 2.1.19. **Co-Location:** A system under which select Design Consultant's personnel designated by the Director are located "under one roof" along with the Program Management Team in a location near the Project site.
- 2.1.20. **Contract Documents:** Are enumerated in the contract between the City and CMAR (hereinafter the CMAR Contract) and consist of the CMAR Contract, Conditions of the Contract, Drawings, Specifications, Addenda, and other Documents listed in the CMAR Contract and Modifications issued after execution of the CMAR Contract.
- 2.1.21. **Commissioning:** A quality-focused process for enhancing delivery of a project. The process focuses upon verifying and documenting that the facility and all its systems and assemblies are planned, designed, installed, tested, operated, and maintained to meet the City requirements.
- 2.1.22. **Commissioning Plan or CxP:** Will be developed by the Commissioning Authority with the assistance of the Program Management Team per the requirements of the CMAR Contract. The CxP provides structure, checklists, testing forms, and schedules for all systems and equipment being installed.
- 2.1.23. **Commissioning Authority:** A third party contracted by the City to establish and manage the overall Commissioning Plan.
- 2.1.24. **Component Guaranteed Maximum Price (CGMP):** A guaranteed maximum price for construction of a defined incremental element of Work.
- 2.1.25. **Construction Documents:** All of the graphic and written information prepared or assembled by Design Consultant for communicating the design for the bidding and construction of the Project.
- 2.1.26. **Construction Phase:** Phase of the Project during which the CMAR implements and executes the Work required by the Construction Documents. This may also be referred to as "Phase 2 – Construction".
- 2.1.27. **Construction Phase Fee:** The fee for CMAR's profit and general overhead, calculated as Cost of the Work (except pass-through Allowances, insurance, and Bonds) determined by the City at the time of acceptance of the GMP.
- 2.1.28. **Contingency:** The dollar amount set out in the Guaranteed Maximum Price Proposal that includes costs that the CMAR incurs in performance of the Work.
- 2.1.29. **Contract Time:** The number of days stated in the CMAR Contract to substantially complete the Work, plus days authorized by Change Order.
- 2.1.30. **Correction Period:** The period during which the CMAR shall be obligated to replace or correct deficiencies in Products and/or the Work, which shall be for one year following Substantial Completion and acceptance of the Project, or discrete phase thereof, unless the applicable manufacturer or subcontractor, if any, provides a longer correction period, in which event the longer correction period shall apply.
- 2.1.31. **Cost of the Work:** The actual reimbursable construction costs the CMAR necessarily incurs in the proper performance of the Work, without mark-up. The Cost of the Work

includes, but is not limited to: (i) cost, at current market rates, of labor and materials furnished to the City; (ii) equipment designed, specified, selected, or specially provided for by the Design Consultant; (iii) building permit fees; (iv) Allowance; and (5) Contingency. The Cost of the Work does not include the CMAR's Fee.

- 2.1.32. **Countersignature Date:** The date the City Controller countersigns this Agreement. The Countersignature Date is the effective date of this Agreement.
- 2.1.33. **Date of Substantial Completion:** Date that construction, or portion thereof designated by the Director, is certified by the Director to be substantially complete.
- 2.1.34. **Day(s):** Whether capitalized or not, unless otherwise specifically provided, means calendar day, including weekends and City Holidays. In the case of plural 'days', those days will be consecutive.
- 2.1.35. **Design Consultant:** Defined in the preamble of the Agreement and includes its successors and assigns.
- 2.1.36. **Design Schedule:** A schedule of Project activities and events, showing initiation point, duration, and ending points. The Design Schedule indicates time allowed for reviews by the City staff. The Design Schedule shall be drafted by the Design Consultant and subject to the Director's approval. The Design Schedule may be updated in accordance with the terms and conditions of this Agreement, without the need of a contract amendment, provided that the revised Design Schedule has been approved by the Director in writing.
- 2.1.37. **Director:** The Director of the Houston Airport System, or any person designated by the Director to perform one or more of the Director's duties under this Agreement.
- 2.1.38. **Documents:** All original and non-identical copy of any written, typed, or printed matter, or electronically stored information, of any kind or description.
  - 2.1.38.1. The word "documents" includes, but is not limited to, the following: agendas, analyses, audio or video recordings, bulletins, charts, circulars, communications (including any interoffice, social media, and other communications), computations, computer programs, copies, correspondence, data, databases, data compilations, data prototypes, designs, details, diagrams, diskettes, documents, drafts, drawings, electronic mail (email), electronically stored information, exhibits, facsimiles, forms, graphs, guides, images, information, interpretations, inventions, items, letters, logs, manuals, maps, materials, memoranda, metadata, microfilm, minutes or meeting minutes, models, notes, notations, notebooks, operating manuals, original tracings of all drawings and plans, other graphic matter (however produced or reproduced), pamphlets, photographs (including any digital or film photographs), plans, printouts, policies, procedures, records, recordings (including any audio, video, digital, film, tape, and other recordings), reports, responses to Requests for Information ("RFI") and other inquiries, schematics, social media communications, software, specifications, tabulations, telegrams, underlying data, works, worksheets, work products, writings, and any other writings or recordings of any type or nature (and any revisions, modifications, or improvements to them) that the Design Consultant prepares, receives, or provides under this Agreement.
- 2.1.39. **Drawings:** Graphic and pictorial portions of the Contract Documents that define the character and scope of the Work.

- 2.1.40. **Employee:** The Personnel working under Design Consultant's direction and control who are direct employees of Design Consultant.
- 2.1.41. **Enabling Packages:** Those portions of the Project to be identified by the Director as preliminary to the primary scope of the Project. Enabling Packages are part of Basic Services.
- 2.1.42. **EPM:** Executive Project Manager contracted by the City to lead and manage, in consultation with the Director, the ITRP to successful completion. Roles include Executive Program Manager, Manager of Projects, Program Controls Manager, Manager of Design, and Manager of Construction.
- 2.1.43. **FAA:** Federal Aviation Administration as presently constituted as a division of the United States Department of Transportation or its successor agency or agencies.
- 2.1.44. **Final Completion:** The full completion of the Work in accordance with the Contract Documents, without limitation, the satisfaction of all outstanding and Punch List items, and the issuance of a Certificate of Occupancy by all permitting and licensing entities.
- 2.1.45. **Guaranteed Maximum Price or GMP:** The amount agreed upon by City and CMAR as the maximum cost to City for the Work, including the Cost of the Work and the CMAR's Fee for that Work.
- 2.1.46. **General Conditions:** The requirements, terms, and conditions set forth in City's 0700 Document (Exhibit C of CMAR Contract).
- 2.1.47. **General Conditions Work:** CMAR's on-site management, administrative personnel, insurance, Bonds, equipment, utilities, and incidental work, including field labor and materials. General Conditions includes, but is not limited to: all supervision and project management, including superintendent, assistant superintendent; permits; mobilization; de-mobilization; field engineers and helpers, professional surveyor; field office; field office furnishings; office supplies; field office maintenance and repair; copiers and supplies; storage; communication devices (telephone, radio, etc.); project signs; construction fence – install/remove/maintain; access construction; general clean-up; finish areas clean-up; dumpsters; temporary water service; temporary electrical service; temporary lighting; temporary telephone; temporary weather protection; temporary fire protection; equipment start and testing; monthly ice and cups, monthly toilets; monthly water; and quality control.
- 2.1.48. **Governmental Authority:** Any federal, foreign, state, local or municipal governmental body; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal. Notwithstanding the foregoing, Governmental Authority shall not include the Director or his designees.
- 2.1.49. **HAS:** The Houston Airport System, which is the City's Department of Aviation.
- 2.1.50. **IAH:** George Bush Intercontinental Airport/Houston.
- 2.1.51. **Information:** All information, data, facts, or knowledge of any kind or description whether in tangible or intangible form.
- 2.1.52. **Instruments of Service:** Representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design Consultant

and the Design Consultant's consultants under their respective professional services agreements.

- 2.1.53. **ITRP:** IAH Terminal Redevelopment Program.
- 2.1.54. **Milestone:** An event activity that has zero day duration and is typically used to represent the beginning or end of a certain stage of the Project.
- 2.1.55. **MLIT:** The Mickey Leland International Terminal, also referred to as Terminal D, at IAH.
- 2.1.56. **Modification:** Change Order, Work Change Directive, or Minor Change in the Work.
- 2.1.57. **Notice to Proceed** or **NTP:** A written communication from the Director to Design Consultant instructing Design Consultant to begin performance on a specifically designated Phase or specific item within a Phase under this Agreement.
- 2.1.58. **ORAT:** Operational Readiness and Airport Transfer.
- 2.1.59. **Party** or **Parties:** The City and Design Consultant who are bound by this Agreement, individually or collectively as indicated in the context by which it appears.
- 2.1.60. **PDM:** The Program Definition Manual for the Mickey Leland International Terminal – Final Version December 2014 and is incorporated into this Agreement by reference.
- 2.1.61. **Phase** or **Phases:** Phase 1 – Pre-Design Services; Phase 2 – Concept Design Services; Phase 3 – Schematic Design Services; Phase 4 – Design Development; Phase 5 – Construction Documents; Phase 6 – Construction Services; Phase 7 – Post Construction Services, individually or collectively as indicated in the context in which it appears.
- 2.1.62. **PMSS:** Program Management Support Services consisting of staff contracted by the City to provide systems, services, and staff as an integrated team to manage and execute ITRP in support of the EPM.
- 2.1.63. **Preconstruction Phase Fee:** The fee for CMAR's performance of Preconstruction Phase services, including all costs, overhead, and profit.
- 2.1.64. **Probable Cost of the Work:** An estimate of the Cost of the Work as reconciled by the Design Consultant, CMAR, and the Director.
- 2.1.65. **Product:** Materials, equipment, or systems permanently incorporated into the Work (or to be incorporated into the Work) and temporarily used in performance of the Work. Products may include existing construction or components intended for reuse.
- 2.1.66. **Program:** IAH Terminal Redevelopment Program (ITRP). The Project is part of the Program.
- 2.1.67. **Project:** The plan and design of the Mickey Leland International Terminal, commonly referred to as MLIT, which is part of the Program.
- 2.1.68. **Project or Program Manager:** Also referred to in this Agreement as "Program Management Team" PMT". HAS, EPM, PMSS, and professionals or firms employing professionals contracted by City to be the Director's authorized representative for administration of the Work. Titles used within City's departments may be different from those used in this definition. Unless otherwise designated by the Director, references in the Contract Documents to the Program Manager shall refer to Director.

- 2.1.69. **Project Manual:** The specifications for the Work. Certain provisions of the Project Manual may be revised during Preconstruction Phase services as set forth in **Exhibit B**.
- 2.1.70. **Project Schedule:** The CMAR's full scope of Work and services, time phased and logic linked, in a schedule that represents how the CMAR intends to reach Final Completion within the Contract Time.
- 2.1.71. **Project Team:** The City (including the Project Manager, City Engineer and other City employees and representatives working in connection with the Project), EPM, PMSS, CMAR, Design Consultant, any separate contractors employed by City, and other consultants employed for the purpose of programming, design, and construction of the Project. The constitution of the Project Team may vary at different times during the Preconstruction Services and Construction Phase of the Project. The Project Team, excluding those designated by the CMAR, will be designated by the Director and may be modified from time to time by him.
- 2.1.72. **Punch List Items:** Uncompleted work items that the CMAR must complete in order to achieve Final Completion.
- 2.1.73. **Quality Control (QC):** Those standards, systems, processes, procedures, and activities exercised by the Design Consultant to ensure that the Work is constructed in accordance with the Construction Documents.
- 2.1.74. **Reimbursable Expenses:** Defined in **Section 3.4.** of the Agreement.
- 2.1.75. **Security Identification Display Area or SIDA:** The secure area of the Airport after which an identification badge must be visible and displayed.
- 2.1.76. **Services:** Basic and Additional Services.
- 2.1.77. **Special Conditions:** Any additional provisions identified as Special Conditions, if any, in the Contract Documents.
- 2.1.78. **Specifications:** Divisions 01 through 43 of the Contract Documents that are incorporated into the CMAR contract, consisting of written General Requirements and requirements for Products, standards, and workmanship for the Work, and performance of related services.
- 2.1.79. **Subconsultant Cost:** The ordinary and reasonable cost of subcontracts made by Design Consultant and approved in writing in advance by the Director for services rendered by Subconsultants under this Agreement plus a markup not to exceed 5% of Subconsultant Cost to compensate Design Consultant for profit, assumption of responsibility, and performance risk related to the subcontracts. Markup shall be computed on a case by case basis and shall not be subject to adjustment unless the scope of services, with respect to subcontracted work, changes. Design Consultant is responsible for the performance and work product of Subconsultants including, but not limited to, the coordination of design elements published under the Design Consultant's design.
- 2.1.80. **Subconsultant:** The professional entity subcontracted by Design Consultant and approved by the Director to provide a portion of the architectural, engineering, and or other professional services required under this Agreement.
- 2.1.81. **Subcontractor:** Person or firm that has direct or indirect contract with the CMAR or with another Subcontractor to perform a portion of the Work and its authorized representatives.
- 2.1.82. **Substantial Completion:** The stage 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 thirty (30) Calendar Days.

- 2.1.83. **Surety:** Corporate entity that is bound by one or more Bonds. Surety shall include co-surety or reinsurer, as applicable.
- 2.1.84. **Term:** The entire period during which this Agreement is in effect, starting on the Countersignature Date and continuing through the final date of termination or expiration of this Agreement, including any renewals or extensions.
- 2.1.85. **TSA:** Transportation Security Administration.
- 2.1.86. **UMP:** The IAH Utilities Master Plan.
- 2.1.87. **Work:** The entire construction required to be provided by the Construction Documents. The Work may constitute the whole or a portion of the Project.
- 2.1.88. **Work Change Directive:** A written change in the Work, ordered by the Director, that is within the general scope of the CMAR Contract and consisting of additions, deletions, or other revisions. A Work Change Directive will state proposed basis for adjustment, if any, in Contract Price or Contract Time, or both.

**EXHIBIT "B"**

**SCOPE OF BASIC SERVICES**

**REFER TO RFQ FOR SCOPE OF SERVICES**

**EXHIBIT "C"**

**DESIGN CONSULTANTS KEY PERSONNEL**

## **EXHIBIT "D"**

### **BILLING RATES**

Pursuant to **Section 3.3.1.1** of the Agreement, the tables on the following pages represent the classifications and direct salary rates of personnel the Design Consultant anticipates will be directly engaged on the Project.

## EXHIBIT "E"

### TITLE VI: NON-DISCRIMINATION

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

1. Compliance with Regulations - The Design Consultant 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 Design Consultant, 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 Design Consultant 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 Design Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential Subconsultant or supplier shall be notified by the Design Consultant of the Design Consultant'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 Design Consultant shall provide all information and reports required by the regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the FAA to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of the Design Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Design Consultant 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 Design Consultant'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 Design Consultant under the Agreement until the Design Consultant complies, and/or
  - 5.2. cancellation, termination, or suspension of the Agreement, in whole or in part.
6. Incorporation of Provisions - The Design Consultant shall include the provisions of paragraphs 1-5 above in every subcontract, including procurement of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The Design Consultant shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. If the Design Consultant becomes involved in, or is threatened with, litigation with a Subconsultant or supplier as a result of such direction, the Design Consultant may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the Design Consultant may request the United States of America to enter into such litigation to protect the interests of the United States.

**EXHIBIT "F"**

**DRUG POLICY COMPLIANCE AGREEMENT**

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

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

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Design Consultant 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 the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Design Consultant Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**EXHIBIT "G"**

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

I, \_\_\_\_\_, \_\_\_\_\_, as an owner or officer of  
(Name) (Title)

\_\_\_\_\_ (Design Consultant) have the authority to bind Design Consultant  
(Name of Company)

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

Design Consultant agrees and covenants that it shall immediately notify the City of Houston Director of 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 "H"**

**DRUG POLICY COMPLIANCE DECLARATION**

I, \_\_\_\_\_, as an owner or officer of \_\_\_\_\_ (Design Consultant)  
(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 Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.  
Initials

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

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

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

	Random	Reasonable Suspicion	Post Accident	Total
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

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

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

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)