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### **1.3. PARTS INCORPORATED**

1.3.1. All of the above-described articles and exhibits are attached and incorporated into this Agreement.

### **1.4. CONTROLLING PARTS**

1.4.1. If there is a conflict among the articles and exhibits arises, the articles control over the exhibits.

**[SIGNATURE PAGE FOLLOWS]**

**1.5. SIGNATURES**

1.5.1. The City and Broker have executed this Agreement in multiple copies, each of which is an original.

**BROKER:**



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

Name:

Position:

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

**WITNESS** (if not a corporation)

\_\_\_\_\_

Name:

Tax ID No.:

**CITY:**

**CITY OF HOUSTON**

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

Mayor

**ATTEST/SEAL**

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

City Secretary

**APPROVED:**

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Assistant City Attorney  
L.D. File No.

**COUNTERSIGNED BY:**

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

**DATE COUNTERSIGNED:**

\_\_\_\_\_  
("Countersignature Date")

## ARTICLE 2. DEFINITIONS

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

- 2.1.1. “*Additional Services*” means those services described in **Exhibit “A”**.
- 2.1.2. “*Agreement*” means this contract between the Parties, including all exhibits and any written amendments authorized by the City Council and Broker and duly authorized Change Orders.
- 2.1.3. “*Basic Services*” means those services described in **Exhibit “A”**.
- 2.1.4. “*Broker*” is defined in the **Preamble** of this Agreement and includes its successors and assigns.
- 2.1.5. “*Broker’s Representative*” means the individual who shall directly manage and direct the Services under this Agreement and who has authority to act for the Broker, but who may or may not have the authority to bind Broker contractually.
- 2.1.6. “*Business Day(s)*” mean(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.
- 2.1.7. “*City*” is defined in the **Preamble** of this Agreement and includes its successors and assigns.
- 2.1.8. “*City Attorney*” means 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.
- 2.1.9. “*Contractor*” means an entity enrolled in the OCIP.
- 2.1.10. “*Countersignature Date*” means the date the City Controller countersigns this Agreement. The Countersignature Date is the effective date of this Agreement.
- 2.1.11. “*Day(s)*” whether capitalized or not, unless otherwise specifically provided, means calendar day, including weekends and legal holidays. In the case of plural ‘days’, those days will be consecutive.
- 2.1.12. “*Deliverable(s)*” mean(s) any services, products, goods, software, case management databases and applications, documents, or other tangible item provided by Broker to the City in connection with this Agreement.
- 2.1.13. “*Director*” means 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.

2.1.14. "*Documents*" means all original and non-identical copy of any written, typed, or printed matter, or electronically stored information, of any kind or description.

2.1.14.1. 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, diagrams, diskettes, documents, drafts, drawings, electronic mail (email), electronically stored information, exhibits, facsimiles, forms, graphs, guides, images, information, 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, 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).

2.1.15. "*Equipment*" or "*equipment*" mean(s) any and all hardware, equipment, material, goods, products, or other tangible items that Broker provides or furnishes to City under, pursuant to, or in connection with this Agreement.

2.1.16. "*HAS*" means the Houston Airport System.

2.1.17. "*Include*" and "*including*", and words of similar import, shall be deemed to be followed by the words "without limitation".

2.1.18. "*ITRP*" or "*Program*" means the International Terminal Redevelopment Program at George Bush Intercontinental Airport/Houston ("IAH").

2.1.19. "*Notice to Proceed*" means a written communication from the Director to Broker instructing Broker to begin performance under this Agreement.

2.1.20. "*OCIP*" means the Owner Controlled Insurance Program created, organized, and managed by Broker on behalf of the City as set forth in this Agreement for the International Terminal Redevelopment Program ("ITRP").

- 2.1.21. “*Party*” or “*Parties*” means the City and Broker who are bound by this Agreement, individually or collectively as indicated in the context in which it appears.
- 2.1.22. “*Services*” means all services required by or reasonably inferable from the Agreement and **Exhibit A** including all labor, materials, tools, supplies, equipment, transportation, mobilization, insurance, subcontracts, supervision, management, reports, incidentals, quality control, and other items necessary or incidental by Broker to fulfilling Broker’s obligations.
- 2.1.23. “*Term*” means 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.
- 2.1.24. “*Writing*” or “*written*” shall mean a written communication from one Party to the other, including an electronic communication or e-mail.
- 2.2. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular include the plural.
- 2.3. The word “shall” is always mandatory and not merely permissive.

## **ARTICLE 3. SCOPE OF SERVICES**

### **3.1. SCOPE OF SERVICES**

- 3.1.1. In consideration of the payments specified in this Agreement, Broker shall provide all labor, material, and supervision necessary to perform the Services and furnish the Deliverables described in **Exhibit “A”**.

### **3.2. COORDINATE PERFORMANCE**

- 3.2.1. Broker shall coordinate all of its performance with the Director and such other person(s) as the Director may specify. Broker shall keep said person(s) currently advised at a minimum on a biweekly basis of developments relating to the performance of this Agreement, and Broker shall promptly inform the Director or such other person(s) of all significant events relating to the performance of this Agreement.

### **3.3. SCHEDULE OF PERFORMANCE**

- 3.2.1. The Director shall provide Broker with a Notice to Proceed specifying a date for the Broker to begin its performance.
- 3.2.2. Broker shall begin and complete its obligations in accordance with a detailed

Schedule that Broker shall develop for the Director's approval after the Broker begins performance. Subject to the Director's approval, the Broker may revise or update the Schedule.

### **3.3. REPORTS**

3.3.1. Broker shall submit all reports and progress updates required by the Director.

### **3.4. SUBCONTRACTORS**

3.4.1. Broker shall not subcontract any part of its Agreement without approval by the Director.

3.4.2. Broker shall be responsible for services performed by subcontractors to the same extent as if the services were performed by Broker.

3.4.3. Broker shall replace any subcontractor when requested to do so by the Director, in his sole discretion.

3.4.4. Broker shall provide the Director with a copy of any of its subcontractor subcontracts at the Director's request.

### **3.5. PAYMENT OF SUBCONTRACTORS**

3.5.1. In accordance with the Texas Prompt Payment Act, Broker shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement in accordance with the State of Texas Prompt Payment Act. **BROKER SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF BROKER'S FAILURE TO MAKE THESE PAYMENTS.**

### **3.6. WORK BY THE CITY**

3.6.1. The City reserves the right to undertake or award contracts for the performance of similar type work as contemplated herein, and to do so will not breach or otherwise violate the Agreement.

## **ARTICLE IV. DUTIES OF BROKER**

### **4.1. BROKER'S REPRESENTATIVE**

4.1.1. At all times during performance of the Services and until the Services is completed and accepted, Broker shall manage, supervise, and direct the Services under this Agreement.

- 4.1.2. The individual identified in **Exhibit “C”** as the Designated Representative shall, until further designation under this Section, act as the designated representative of the Broker with respect to this Agreement and shall coordinate with the Director as to administrative matters under this Agreement. The Broker may replace the individual designated as its representative under this Agreement from time to time by written notice to the Director, subject to the reasonable approval of the Director. The Broker shall replace the individual designated as its representative under this Agreement when the Director, acting reasonably, determines that an unworkable relationship has developed between the City and the Designated Representative upon written notice by the Director. Any individual designated as the representative of the Broker under this Agreement shall have sufficient qualifications and experience to serve as the Broker’s representative hereunder and shall be vested with the authority to act on behalf of the Broker, to receive notices on behalf of the Broker, to make binding decisions with respect to the performance of the services, and to bind the Broker with respect to any certification to be made by the Broker 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 Program.
- 4.1.3. The Broker acknowledges that the identity and commitment of certain key management and supervisory personnel identified by the Broker in its proposal were material factors in the selection of the Broker to perform this Agreement. Such personnel, their afflictions, and their anticipated roles in the performance of the services are set forth in **Exhibit “C”**. The Broker 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 Broker or any of its affiliates, but shall include termination for cause, employee death, disability, promotion, retirement, or resignation. In the event of any such permissible unavailability, the Broker 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) for the Director’s review and approval, which shall not be unreasonably withheld or delayed. The Director may exclude from the Program any personnel performing services if the Director, acting reasonably, determines that an unworkable relationship has developed between the City and the individual.

#### 4.2. **SERVICE PERFORMANCE STANDARDS**

- 4.2.1. Broker shall supervise and direct the Services, using Broker’s full skill and attention. Broker shall be solely responsible for and have control over means, methods, techniques, sequences and procedures and for coordinating all portions of the Services under the Agreement, unless the Agreement or Director gives contrary specific written instructions concerning these matters.

- 4.2.2. Unless otherwise provided in this Agreement, Broker shall provide and pay for labor, materials, tools, equipment, and machinery necessary for the proper execution and completion of the Services.
- 4.2.3. Broker shall enforce strict discipline and good order among Broker's employees, agents, subcontractors, and other persons carrying out the Services.
- 4.2.4. Broker shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Services.
- 4.2.5. Broker shall take all precautions to ensure that no damage to private or public property results from its operations. Broker must repair or replace items damaged by it at no cost to the City.
- 4.2.6. Broker shall comply with all applicable state and federal laws and regulations, and the City Charter and Code of Ordinances.

#### 4.3. **INVOICING**

- 4.3.1. Broker shall submit its invoices on forms approved in advance by the Director, which may include electronic format, accompanied by support documents as may be requested by the Director. Each invoice Broker submits must include the documents required to support the charges it contains. Each invoice must be identified by the Agreement name and Agreement number. All invoices are to be delivered or mailed to the following location:

HAS POINT OF CONTACT  
POSITION  
HOUSTON AIRPORT SYSTEM  
# STREET  
HOUSTON, TX 77xxx

#### 4.4. **RELEASE**

- 4.4.1. **BROKER AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.**

#### 4.5. INDEMNIFICATION

4.5.1. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, BROKER AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:**

4.5.1.1. **BROKER'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONSULTANTS' OR SUBCONTRACTORS' (COLLECTIVELY IN THIS SECTION 4.5, INCLUSIVE OF SECTIONS THEREIN, "BROKER") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**

4.5.1.2. **THE CITY'S AND BROKER'S ACTUAL OR ALLEGED SOLE AND/OR CONCURRENT NEGLIGENCE, WHETHER BROKER IS IMMUNE FROM LIABILITY OR NOT; OR**

4.5.1.3. **THE CITY'S AND BROKER'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER BROKER IS IMMUNE FROM LIABILITY OR NOT.**

4.5.2. **BROKER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR 10 YEARS AFTER THE AGREEMENT TERMINATES. BROKER'S INDEMNIFICATION IS LIMITED TO \$10,000,000.**

#### 4.6. INDEMNIFICATION PROCEDURES

##### 4.6.1. *Notice of Indemnification Claims*

4.6.1.1. If the City or Broker receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 Days. The notice must include the following:

4.6.1.1.1. a description of the indemnification event in reasonable detail,

4.6.1.1.2. the basis on which indemnification may be due, and

4.6.1.1.3. the anticipated amount of the indemnified loss.

4.6.1.2. This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice.

4.6.1.3. If the City does not provide this notice within the 10-Day period, the City does not waive any right to indemnification except to the extent that Broker is prejudiced, suffers loss, or incurs expense because of the delay.

#### 4.6.2. *Defense of Indemnification Claims*

4.6.2.1. Assumption of Defense: Broker may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Broker shall then control the defense and any negotiations to settle the claim. Within 10 Days after receiving written notice of the indemnification request, Broker must advise the City as to whether or not it will defend the claim. If Broker does not assume the defense, the City shall assume and control the defense, and all defense expenses shall be reimbursed monthly and be in addition to any indemnified losses.

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

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

4.6.2.2.2. would require the City to pay amounts that Broker does not fund in full;

4.6.2.2.2.1. City shall have the right, at its sole discretion, to approve counsel retained to represent City

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

4.6.2.2.4. Requires and admission of liability or fault on the part of the City

**4.7. INDEMNIFICATION-SUBCONTRACTOR'S INDEMNITY**

**4.7.1. BROKER SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.**

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

**4.8.1. BROKER AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “CITY”) FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING BROKER, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS BROKER FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. BROKER SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.**

**4.8.2. BROKER SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT AT THE CITY'S SOLE DISCRETION.**

**4.8.3. WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, BROKER SHALL, AT ITS OWN EXPENSE, EITHER (I) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (II) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND BROKER SHALL REFUND THE PURCHASE PRICE AND ANY ASSOCIATED EXPENSES.**

**4.9. INSURANCE**

4.9.1. With no intent to limit Broker’s liability or the indemnification provisions set forth herein, Broker shall provide and maintain certain insurance in full force and effect at all times during the term of this Agreement and any extensions thereto. Such insurance is described as follows:

4.9.1.1. *Risks and Limits of Liability:* Broker shall, at a minimum, maintain the following coverage and limits of liability:

<b>REQUIRED COVERAGE</b>	
<b>Coverage</b>	<b>Limit of Liability</b>
Workers' Compensation	Statutory Limits of Workers' Compensation
Employer's Liability	Bodily Injury by Accident \$1,000,000 (each accident) Bodily Injury by Disease \$1,000,000 (policy limit) Bodily Injury by Disease \$1,000,000 (each employee)
Commercial General Liability (Including Broker's Protective, Broad Form Property Damage, Contractual Liability, Explosion, Underground and Collapse, Bodily Injury, Personal Injury, and Products and Completed Operations)	Combined single limit of \$1,000,000 (each occurrence), subject to general aggregate of \$2,000,000
Automobile Liability Insurance (For automobiles furnished by Broker in the course of its performance under this Agreement, including Employer's Non-Owned and Hired Auto Coverage)	\$1,000,000 combined single limit for bodily injury and property damage of each occurrence  \$10,000,000 for autos driven on the airfield
Professional Liability Insurance	\$10,000,000 per claim; \$10,000,000 per aggregate
Excess Liability Coverage	\$10,000,000
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

4.9.1.2. *Insurance Coverage.* At all times during the term of this Agreement and any extensions or renewals, Broker shall provide and maintain insurance coverage that meets the Agreement requirements. Broker shall be responsible for and pay (a) all premiums and (b) any deductible amounts. Broker waives any claim it may have under the Commercial General Liability, Automobile Liability, and Excess Liability insurance policies for premiums or deductibles against the City, its officers, agents, or employees. Broker shall also require all subcontractors 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 subcontracts must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim. The limits of

liability required of any subcontractors may be modified by the City Attorney, in his sole discretion.

- 4.9.1.3. *Forms of Insurance.* The form of the insurance shall be approved by the Director and City Attorney; however such approval shall not (a) excuse non-compliance with the terms of this **Section 4.10**, inclusive all sections therein or (b) waive or estop the City from asserting its rights to Terminate this Agreement. The policy issuer (i) shall have a Certificate of Authority to transact insurance business in Texas or (ii) shall 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.
- 4.9.1.4. *Required Coverages.* The City shall be an Additional Insured under this Agreement. Each policy, except those for Worker's Compensation, Employer's Liability, and Professional Liability, must name the City (and its officers, agents, and employees) as Additional Insured parties on the original policy and all renewals or replacement.
- 4.9.1.5. *Deductibles.* Broker shall be responsible for and pay any claims or losses to the extent of any deductible amounts and self-insured retentions and waives any claim it may have for the same against the City, its officers, agents, or employees.
- 4.9.1.6. *Notice.* All policies required under this contract shall be endorsed to provide thirty (30) days' prior written notice of cancellation to the Director to any cancellation or material change to Broker's insurance coverage. **BROKER SHALL GIVE THIRTY (30) DAYS' ADVANCED WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the thirty (30) day period, Broker shall provide other suitable policies in order to maintain in effect the required coverage. If Broker does not comply with this requirement, the Director, at his sole discretion, may immediately suspend Broker from any further performance under this Agreement and begin procedures to terminate for default. All policies maintained by Broker are required herein shall be endorsed to provide thirty (30) days' notice of cancellation or material change to the Director.
- 4.9.1.7. *Erosion.* Broker shall notify the Director in writing of any claim(s) which may erode the annual aggregate limits of any insurance policy to a point where the remaining insurance limits no longer comply with the requirements of this Agreement.
- 4.9.1.8. *Deductibles and Self-Insured Retentions.* Broker shall be responsible for

and pay any deductible amounts or self-insured retentions.

- 4.9.1.9. *Subrogation.* Broker waives any claim or right of subrogation to recover against the City, its officers, agents, or employees and each policy, except Professional Liability, and must contain an endorsement waiving such claim.
- 4.9.1.10. *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.
- 4.9.1.11. *Liability for Premium.* Broker shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.
- 4.9.1.12. *Proof of Insurance.*
  - 4.9.1.12.1. On the Countersignature Date and upon request at any time during the Term of this Agreement, Broker shall furnish the Director with certificates of insurance and required endorsements, along with an affidavit from Broker confirming that the certificates accurately reflect the insurance coverage maintained. If requested in writing by the Director, Broker shall furnish the City with certified copies of Broker's actual insurance policies. Failure of Broker to provide certified copies, as requested, within ten (10) 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.
  - 4.9.1.12.2. Broker shall continuously and without interruption maintain in force the required insurance coverage specified in **Section 4.9**, inclusive of all sections therein. If Broker does not comply with this requirement, the Director, at his discretion, may immediately suspend Broker from any further performance under this Agreement and begin procedures to terminate for default.
- 4.9.1.13. *Other Insurance.* If requested by the Director, Broker shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Broker's operations under this Agreement.

4.9.2. *Right to Review and Adjust Coverage Limits.* The Director reserves the right at reasonable intervals during the Term of this Agreement to cause the insurance requirements of this Agreement to be reviewed by an independent insurance consultant experienced in insurance for public airports in Texas, taking into consideration changes in statutory law, court decisions, or the claims history of Broker, and, based on the written recommendations of such consultant, and in consultation with Broker, to reasonably adjust or add insurance coverages and limits required herein, but not more often than every twenty-four (24) months.

#### 4.10. **WARRANTIES**

4.10.1. Broker's performance shall conform to the professional standards prevailing in Harris County, Texas with respect to the scope, quality, due diligence, and care of the services and products Broker provides under this Agreement. Broker shall perform all work using trained and skilled persons having experience performing the work required under this Agreement.

4.10.2. **BROKER WARRANTS THE SERVICES IT PROVIDES HEREUNDER WILL CONFORM SUBSTANTIALLY WITH THE REQUIREMENTS IN EXHIBIT A, SCOPE OF SERVICES.**

#### 4.11. **COPYRIGHTS AND PATENTS**

4.11.1. Broker warrants that it has title to all software sold or used by the City pursuant to this Agreement and that it has full right to license all software license thereunder.

#### 4.12. **CONFIDENTIALITY**

4.12.1. Broker and its agents, employees, consultants and subcontractors shall hold all City and Contractor information, data, and documents (collectively, "Information") that they receive, prepare, or to which they have access, in strictest confidence. Broker, its agents, employees, consultants and subcontractors shall not disclose, disseminate, or use the Information other than in connection with the performance of the Services and to its employees, directors, officers, members, agents, contractors, advisors, lenders, financial partners and other representatives who (a) are actively and directly participating in the Services or who otherwise have a need to know the Information and (b) have been informed of the terms of this Agreement and agreed to act in accordance with such terms or substantially similar restrictions on the use and disclosure of such Information ("Representatives") unless the Director authorizes it in writing. Broker shall establish procedures to ensure confidentiality of the Information and to prevent its unauthorized use and disclosure. Broker shall obtain written agreements from its agents, employees, consultants, and subcontractors who perform work under this Agreement, which bind them to the terms in this Section or substantially similar restrictions on the use and disclosure of Information.

#### 4.13. OWNERSHIP AND USE OF DOCUMENTS

- 4.13.1. Broker conveys and assigns to the City its entire interest and full ownership worldwide in and to any work, invention, and all Documents, and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively "Proprietary Rights") that Broker, its agents, employees, contractors, and subcontractors (collectively "Authors") develop, write, or produce under this Agreement (collectively "Works").
- 4.13.2. The Authors shall not claim or exercise any Proprietary Rights related to the Works. If requested by the Director, Broker shall place a conspicuous notation on any Works which indicates that the City owns the Proprietary Rights.
- 4.13.3. Broker shall execute all documents required by the Director to further evidence this assignment and ownership. Broker shall cooperate with the City in registering, creating, and enforcing Proprietary Rights arising under this Agreement. If Broker's assistance is requested and rendered under this Section, the City shall reimburse Broker 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, Broker shall deliver all Works to the City. Broker shall obtain written agreements from the Authors which bind them to the terms in this Section.
- 4.13.4. 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."
- 4.13.5. Broker may retain copies of the Works for its archives. Broker shall not otherwise use, sell, license, or market the Works.

**4.14. CONTROL OF DATA**

4.14.1. For any raw data created, assembled, used, maintained, collected, or stored by the Broker for or on behalf of the City, Broker shall provide the City either the raw data itself or the ability to extract the raw data in a format mutually agreed upon by both parties at no additional cost to the City.

**4.15. LICENSES AND PERMITS**

4.15.1. Unless otherwise provided in the Agreement, Broker shall secure and pay for all inspections, licenses, certificates, including any professional licenses required by any statute, ordinance, rule, or regulation of any regulatory body having jurisdiction over the conduct of its operations hereunder and necessary for proper execution and completion of the Services. Broker shall maintain any required professional licenses during the term of this Agreement. Any failure of the Broker 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. Broker shall immediately notify the Director of any suspension, revocation or other detrimental action against his license.

**4.16. COMPLIANCE WITH LAWS**

4.16.1. Broker shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.

**4.17. COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE**

4.17.1. Broker shall comply with the City's Equal Opportunity Ordinance as set out in Section 15-17 of the Code of Ordinances.

**4.18. MINORITY AND SMALL BUSINESS ENTERPRISES**

4.18.1. Broker 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. Broker shall make good faith efforts to award subcontracts or supply agreements in at least     % [REFER TO RFP FOR REQUIREMENT] of the value of this Agreement to MWBEs. Broker acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunities ("OBO"), and will comply with them.

**4.19. NON-DISCRIMINATION**

4.19.1. Broker 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, Broker 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 “D”**.

#### 4.20. **DRUG ABUSE DETECTION AND DETERRENCE**

- 4.20.1. 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 contractors while on City Premises is prohibited. Broker shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
- 4.20.2. Before the City signs this Agreement, Broker shall file with the Contract Compliance Officer for Drug Testing ("CCODT"),
  - 4.20.2.1. a copy of its drug-free workplace policy,
  - 4.20.2.2. the Drug Policy Compliance Agreement substantially in the form set forth in **Exhibit “C”**, together with a written designation of all safety impact positions, and
  - 4.20.2.3. if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in **Exhibit “D”**.
- 4.20.3. If Broker files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to **Exhibit “E”**. Broker 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 Notice to Proceed or if no Notice to Proceed is issued, on the first Day Broker begins work under this Agreement.
- 4.20.4. Broker also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Broker's employee work force.
- 4.20.5. Broker shall require that its subcontractors comply with the Executive Order and Broker shall secure and maintain the required documents for City inspection.

#### 4.21. SENSITIVE SECURITY INFORMATION

4.21.1. The Broker 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 Broker’s possession as a result of this Agreement.

#### 4.22. CONFLICTS OF INTEREST

4.22.1. If an actual or potential conflict arises between the interests of the City and the interests of other clients represented by Broker regarding this Project, Broker shall immediately notify the Director by fax transmission or telephone. If the Director consents to Broker’s continued representation of these other clients, he will notify Broker in writing. If the Director does not issue written consent within three (3) Business Days after receiving Broker's notice, Broker shall immediately terminate its representation if allowed by the other agreements of the other client whose interests are or may be in conflict with those of the City. If Broker does not terminate the other agreements, the Director may terminate this Agreement immediately without providing any further opportunity to cure under **Section 6.2**.

#### 4.23. AIRPORT SECURITY

4.23.1. Broker shall comply with all HAS, Transportation Security Administration (“TSA”), Federal Aviation Administration (“FAA”), and any other governmental agency security directives, rules and regulations. The FAA and/or the TSA may assess fines and/or penalties for Broker'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 Broker's operations. Within 15 days after receiving written notice from the FAA, the TSA, or other agency of any alleged violation or infraction, the Director shall notify Broker in writing and provide a copy of the FAA/TSA/Agency documents pertaining to the violation. Within 10 days of required payment of any fine or penalty by the City, Broker shall reimburse the City for any fine or penalty assessed against the City because of Broker's non-compliance with 49 CFR 1540 and 1542 or other applicable laws or regulations.

#### 4.24. ENVIRONMENTAL LAWS

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

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

4.25. **SAFETY**

4.25.1. Broker shall abide by all applicable City rules, regulations, programs, ordinances, and codes with regard to safety.

4.26. **PAY OR PLAY**

4.26.1. 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. Broker has reviewed Executive Order No. 1-7, as revised, and shall comply with its terms and conditions.

**ARTICLE V. DUTIES OF CITY**

**5.1. PAYMENT TERMS**

5.1.1. The City shall pay and Broker shall accept fees set forth in **Exhibit "B"** as full compensation for all the Services Broker provides under this Agreement. The fees must be paid from allocated funds as provided in **Section 5.5.**, Limit of Appropriation, inclusive of all sections therein.

5.1.1.1. *Basic Services.* [TO BE NEGOTIATED]

5.1.1.2. *Additional Services.* [TO BE NEGOTIATED]

5.1.2. *Prompt Payment.* The City standard payment term is to pay thirty (30) days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Tx. Gov't Code, Ch. 2251). However, the City will pay in less than thirty (30) days in return for an early payment discount from Broker as follows:

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

5.1.3. *Commissions.* In the event that Broker receives commission(s) from one or more insurance companies and/or intermediaries for the placement of insurance policies for the City (a "Commission"), the City shall reduce its payment to Broker by the amount of such Commission.

## **5.2. METHOD OF PAYMENT**

5.2.1. The City shall pay Broker on the basis of monthly invoices submitted by Broker and approved by the Director showing the Basic Services and Additional Services and the amount due to Broker. The City shall make payments to Broker at its address for notices within thirty (30) days of receipt of an approved invoice.

## **5.3. DISPUTED PAYMENTS**

5.3.1. If the City disputes any items in an invoice Broker 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 Broker of the dispute and request remedial action. After the dispute is settled, Broker shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

## **5.4. TAXES**

5.4.1. The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Broker'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 Broker if requested.

## **5.5. LIMIT OF APPROPRIATION**

5.5.1. The City's duty to pay money to Broker under the Agreement is limited in its entirety by the provisions of this Paragraph.

5.5.2. 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 the sum of \$ [REDACTED] to pay money due 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:

5.5.2.1. The City makes a Supplemental Allocation by issuing to Broker 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.

**NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS**

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.

\$ \_\_\_\_\_

- 5.5.3. 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. Broker must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Broker=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.

**5.6. CHANGES**

- 5.6.1. At any time during the Agreement Term, the Director may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he may find necessary to accomplish the general purposes of this Agreement. Broker shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.
- 5.6.2. The Director will issue the Change Order in substantially the following form:

<b><u>CHANGE ORDER</u></b>	
TO:	[Name of Broker]
FROM:	City of Houston, Texas (the "City")
DATE:	[Date of Notice]
SUBJECT:	Change Order under the Agreement between the City and [Name of Broker] countersigned by the City Controller on [Date of countersignature of the Agreement]
Subject to all terms and conditions of the Agreement, the City requests that Broker provide the following:	
<b>[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]</b>	
Signed:	
[Signature of Director]	

5.6.3. The Director may issue more than one Change Order, subject to the following limitations:

5.6.3.1. Council expressly authorizes the Director to approve Change Orders up to \$50,000. A Change Order of more than \$50,000 over the approved contract amount must be approved by the City Council.

5.6.3.2. If a Change Order describes items that Broker is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Broker.

5.6.3.3. The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.

5.6.4. Whenever Broker receives a Change Order, Broker shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Broker shall complete the work within the time prescribed. If no time for completion is prescribed, Broker shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Broker is required to perform under this Agreement, Broker may request a time extension for the completion of the work. The Director's decision regarding a time extension is final.

5.6.5. A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.

5.6.6. Change Orders are subject to the Allocated Funds provisions of this Agreement.

## **5.7. ACCESS TO DATA**

5.7.1. The City shall, to the extent permitted by law, allow Broker to access and make copies of documents in the possession or control of the City or available to it that are reasonably necessary for Broker to perform under this Agreement.

5.7.2. The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for Broker's use.

## **5.8. REAPPROPRIATION OF BUDGET ITEMS**

5.8.1. The City may reduce the funds allocated and the Services required under this Agreement at its discretion. The Director shall notify Broker in writing of this reduction. Broker shall not perform any Services subtracted from the Agreement. The de-obligation of funds does not require any formal amendment of this Agreement but shall be evidenced by a revised budget approved by the Director, a copy of which must be furnished to the City Controller.

# **ARTICLE VI. TERM AND TERMINATION**

## **6.1. TERM**

6.1.1. This Agreement is effective on the date the City Controller countersigns this Agreement and remains in effect for eight (8) years, unless sooner terminated under this Agreement ("Initial Term").

## **6.2. RENEWALS**

6.2.1. Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two (2) successive one-year terms (each a "Renewal Term") on the same terms and conditions. If the Director or the City chooses not to renew this Agreement, the Director shall notify Broker and the Chief Procurement Officer of non-renewal at least thirty (30) days before the expiration of the then-current term.

### **6.3. TERMINATION FOR CONVENIENCE BY CITY**

- 6.3.1. The Director may terminate this Agreement at any time by giving thirty (30) days written notice to Broker with a copy of the notice to the Chief Procurement Officer. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.
- 6.3.2. On receiving the notice, Broker shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Broker shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Broker for services actually performed, but not already paid for, in the same manner as prescribed in **Article 5**, inclusive of all sections therein, unless the fees exceed the allocated funds remaining under this Agreement.
- 6.3.3. TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE BROKER'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. BROKER 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.**

### **6.4. TERMINATION FOR CAUSE BY CITY**

- 6.4.1. If Broker defaults under this Agreement, the Director may either terminate this Agreement or allow Broker to cure the default as provided below. The City's rights and remedies provided below are in addition to all rights and remedies which exist now or in the future. Default by Broker occurs if:
- 6.4.1.1. Broker fails to perform any of its duties under this Agreement;
  - 6.4.1.2. Broker becomes insolvent;
  - 6.4.1.3. all or a substantial part of Broker's assets are assigned for the benefit of its creditors; or
  - 6.4.1.4. a receiver or trustee is appointed for Broker.
- 6.4.2. If a default occurs, the Director may deliver a written notice to Broker describing the default and the termination date. The Director, at his or her sole option, may extend the termination date to a later date. If Broker cures the default to the Director's satisfaction before the termination date, then the termination is ineffective. If Broker

does not cure the default before the termination date, then the Director upon notice of termination may terminate this Agreement on the termination date, at no further obligation of the City.

- 6.4.3. To effect final termination, the Director must notify Broker in writing. After receiving the notice, Broker shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, promptly cancel all orders or subcontracts chargeable to this Agreement.
- 6.4.4. If after termination for failure to fulfill contract obligations, it is determined that the Broker had not so failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, payment shall be made as provided in **Article 5**, inclusive of all sections therein.

## **6.5. TERMINATION FOR CAUSE BY BROKER**

- 6.5.1. Broker may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Broker decides to terminate the Agreement, then Broker must deliver a written notice to the Director describing the default and the proposed termination date. The proposed termination date must be at least 60 days after the Director receives the notice. Broker, 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 Broker may terminate its performance under this Agreement on the termination date.

## **ARTICLE VII. MISCELLANEOUS**

### **7.1. FORCE MAJEURE**

- 7.2.1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Broker. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Broker, 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 Broker to extra reimbursable expenses or payment.

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

7.2.2.1. uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and

7.2.2.2. provides the other party with prompt written notice of the cause and its anticipated effect.

7.2.3. The Director will review claims that a Force Majeure that directly impacts the City or Broker has occurred and render a written decision within fourteen (14) days. The decision of the Director is final.

7.2.4. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.

7.2.5. If the Force Majeure continues for more than fourteen (14) days from the date performance is affected, the Director may terminate this Agreement by giving seven days' written notice to Broker. This termination is not a default or breach of this Agreement. **BROKER WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THIS AGREEMENT UP TO THE TIME THE SERVICES IS HALTED DUE TO FORCE MAJEURE.**

7.2.6. Broker is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Broker shall employ only fully trained and qualified personnel during a strike.

### **7.3. INSPECTIONS AND AUDITS**

7.9.1. City representatives have the right to perform, or to have performed, (i) audits of Broker's books and records pertaining to this Agreement, and (ii) inspections of all places where work is undertaken in connection with this Agreement. Broker shall keep its books and records available for this purpose for at least 4 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

### **7.4. ENFORCEMENT**

7.10.1. The City Attorney shall have the right to enforce all legal rights and obligations under this Agreement without further authorization. Broker covenants to provide to the City Attorney all documents and records that the City Attorney deems necessary to assist in determining Broker's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

## **7.5. NON-WAIVER**

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

7.13.2. 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.

7.13.3. 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 Broker, its employees, agents, subcontractors 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 Broker, its employees, agents, subcontractors or suppliers pursuant to this Agreement.

7.13.4. An approval by the Director, or by any other employee or agent of the City, of any part of Broker'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.

## **7.6. PUBLICITY**

7.6.1. Broker 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.

## **7.7. INDEPENDENT CONTRACTOR**

7.7.1. The relationship of the Broker to the City shall be that of an independent contractor.

## **7.8. NO THIRD PARTY BENEFICIARIES**

7.8.1. This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Broker only.

## **7.9. NOTICES**

**7.9.1.** 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 **Section 1.1.** hereof or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.

## **7.10. SUCCESSORS AND ASSIGNS**

7.10.1. This Agreement binds and benefits the parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets as set out in **Section 7.17**, inclusive of all sections therein. This Agreement does not create any personal liability on the part of any employee, officer, or agent of the City.

## **7.11. BUSINESS STRUCTURE AND ASSIGNMENTS**

7.11.1. Broker 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, Broker 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.

7.11.2. Broker shall not delegate any portion of its performance under this Agreement without the Director's prior written consent.

## **7.12. NO CITY EXPENDITURE**

7.12.1. Except for as provided for in **Article 5**, inclusive of all sections therein, nothing in this Agreement requires the City to pay Broker or any other party for services rendered or expenses incurred.

## **7.13. BROKER DEBT**

7.13.1. IF BROKER, 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 THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT BROKER HAS INCURRED A DEBT, HE SHALL IMMEDIATELY NOTIFY BROKER IN WRITING. IF BROKER DOES NOT PAY THE DEBT WITHIN THIRTY (30) DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FOR ANY PAYMENTS OWED TO BROKER UNDER THIS AGREEMENT, AND BROKER WAIVES ANY RECOURSE THEREFOR. BROKER 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.

#### **7.14. CONSTRUCTION AND INTERPRETATION**

7.14.1. 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.

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

7.14.3. 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.

#### **7.15. SURVIVAL**

7.15.1. Broker 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 **Sections 4.5** through **4.8**, Indemnification, **Section 4.9**, Insurance, and **Section 4.13**, Ownership and Use of The Documents.

#### **7.16. CUMULATIVE REMEDIES**

7.16.1. 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. Neither party may terminate its duties under this Agreement except in accordance with the terms and conditions of this Agreement.

#### **7.17. APPLICABLE LAWS**

7.17.1. 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 Program. Venue for any dispute arising out of this Agreement is Harris County, Texas.

7.17.2. 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).

## **7.18. ENFORCEMENT**

7.18.1. The City Attorney shall have the right to enforce all legal rights and obligations under this Agreement without further authorization. Broker covenants to provide to the City Attorney all documents and records that the City Attorney deems necessary to assist in determining Broker's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

## **7.19. EXTENT OF AGREEMENT**

7.19.1. This Agreement, including the referenced Exhibits which are made a part hereof, represents the entire and integrated agreement between the City and the Broker 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.

**[REST OF PAGE HAS BEEN INTENTIONALLY LEFT BLANK]**

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**REFER TO RFP**

**EXHIBIT "B"**  
**FEE SCHEDULE**

**TO BE NEGOTIATED**

## EXHIBIT "C"

### TITLE VI ASSURANCES

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

1. Compliance with Regulations - The Broker 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 Contract.
2. Non-discrimination - The Broker, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Broker 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 Broker for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Broker of the Broker'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 Broker 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 Broker is in the exclusive possession of another who fails or refuses to furnish this information, the Broker 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 Broker's noncompliance with the non-discrimination provisions of this Agreement, the sponsor shall impose such Agreement sanctions as it or the FAA may determine to be appropriate, including but not limited to:
  - 5.1. withholding of payments to the Broker under the Agreement until the Broker complies, and/or
  - 5.2. cancellation, termination, or suspension of the Agreement, in whole or in part.
6. Incorporation of Provisions - The Broker 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 Broker 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 Broker becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Broker may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the Broker may request the United States of America to enter into such litigation to protect the interests of the United States.

**EXHIBIT "D"**

**DRUG POLICY COMPLIANCE AGREEMENT**

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

have authority to bind Broker 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 Broker 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 Letter of Authorization:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Broker 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 Broker that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Broker Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**EXHIBIT "E"**

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

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

officer of \_\_\_\_\_ (Broker) have the authority to bind Broker with respect to  
(Name of Company)

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

Broker 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 G**

**DRUG POLICY COMPLIANCE DECLARATION**

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Date

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

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

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