

City of Houston



Administration & Regulatory Affairs

CITY OF HOUSTON, TEXAS
NOTICE OF BEST VALUE BID (BVB)
SOLICITATION NO.: S44-L24129

STRATEGIC PURCHASING DIVISION
"PARTNERING TO BETTER SERVE HOUSTON"

NIGP CODE:

929-66

SOLICITATION DUE DATE/TIME:

December 15, 2011 at 10:30 A.M., CST

SUBMITTAL LOCATION:

City Secretary's Office
City Hall Annex, Public Level
900 Bagby Street
Houston, Texas 77002

DESCRIPTION:

Pick-Up, Removal & Disposal of IAH International Regulated Garbage

PRE-BID CONFERENCE:

| Date | Time |
|------------|---------|
| 12/06/2011 | 1:30 PM |

Location
SPD, 901 Bagby,
Conference Rm. 1
(Lower Level), Houston,
TX 77002

In accordance with T.L.G.C. § Chapter 252, competitive sealed Bids for the services specified will be received by the City Secretary's Office of the City of Houston at the above specified location, until the time and date cited. Offers must be in the actual possession of the City Secretary's Office on or prior to the time and date, and at the location indicated above. Late offers will not be considered.

Offers must be submitted in a sealed envelope or package with the Solicitation Number and the Offeror's name and address clearly indicated on the envelope or package. All offers must be completed in ink or typewritten. Additional instructions for preparing an offer are included in this Solicitation.

OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION

Solicitation Contact Person:

John G. Tatman

Name

John.Tatman@houstontx.gov

E-Mail Address

City Purchasing Agent

11/25/2011

Date

1.0 SUBMITTAL PROCEDURE:

1.1 Sealed bids, two (2) hard copies of the Bid package, including one (1) printed original must be signed in blue ink on the Official Signature Page by an authorized officer of the Offering Company. Additionally, the Bid package must include the hard copy of the Electronic Bid Form and five (5) additional Printable electronic CD copies of the Bid Forms as referenced in Section 2.3 below are required to be submitted in a sealed envelope/box bearing the assigned Solicitation Number, located on the first page of the BVB document to:

City Secretary's Office
City Hall Annex, Public Level
900 Bagby St.
Houston, Texas 77002

1.2 The deadline for the submittal of the Bid to the City Secretary's Office is no later than the date and time as indicated on the first page of the BVB document. All bids will be opened and publicly read in the City Council Chamber, City Hall Annex, Public Level, 900 Bagby St. at 11:00 AM on the solicitation due date. Failure to submit the required number of copies as stated above may be subject for disqualification from the BVB process.

1.3 Respondents may elect to either mail or personally deliver their Bids to the City Secretary's Office.

1.4 The City of Houston shall bear no responsibility for submitting responses on behalf of any Offeror. Offeror(s) may submit their Bid to the City Secretary's Office any time prior to the stated deadline.

2.0 BEST VALUE BID FORMAT:

2.1 The Bid should be electronically generated, printed and signed in original ink. The bid should not be submitted in elaborate or expensive binders. Legibility, clarity, and completeness are important and essential.

2.2 The Bid must be signed by an individual(s) legally authorized to bind the Offeror(s), and the City may accept this bid offer by issuance of a Contract to the said Offeror(s) at any time on or before the 180th day following the day this Official Bid Form is opened by the City. This offer shall be irrevocable for 180 days, but shall expire on the 181st day unless the parties mutually agree to an extension of time in writing.

2.3 The complete Bid packet shall consist of the following items:

| TABLE 1 – REQUIRED BID FORMS |
|--|
| Signed Official Signature Page |
| Hard Copy of Electronic Bid Form (Pricing Sheet) |
| *Affidavit of Ownership.doc |
| *Fair Campaign Ordinance.doc |
| *Statement of Residency.doc |
| *Conflict of Interest Questionnaire.doc |
| *Pay or Play Program Acknowledgement Form |
| *Hire Houston First Affidavit |
| Contractor's Questionnaire |
| List of Subcontractor(s) |
| Expertise/Experience/Reliability Statement |
| Certifications/Licenses (If applicable) & Resumes of Key Personnel |
| Financial Statements |
| Five (5) Electronic CD Copies |

* Documents/forms can be downloaded from the City's Website: http://purchasing.houstontx.gov/solicitation_forms.htm

SPECIAL INSTRUCTIONS TO OFFEROR(S)
SOLICITATION NO. S44-L24129

Table 2 lists other documents and forms that should be viewed/downloaded from the City's website, but are not required to be submitted with the bid. The City will request these forms, as applicable, to be completed and submitted to the City by the recommended/successful bidder:

| TABLE 2 - DOCUMENTS & FORMS |
|---|
| Drug Forms.doc |
| EEOC.doc |
| Formal Instructions for Bid Terms.doc |
| Sample Insurance Over \$50,000.pdf |
| Pay or Play Office of Business Opportunity & Contract Compliance Q & A |
| Pay or Play Office of Business Opportunity & Contract Compliance Requirements |
| Pay or Play Contractor/Subcontractor Payment Reporting Form |
| Pay or Play Contractor/Subcontractor Waiver Request |
| Pay or Play List of Participating Subcontractors |

3.0 PRE-BID CONFERENCE:

3.1 A Pre-Bid Conference will be held at the date, time, and location as indicated on the first page of the BVB document. Interested Offeror(s) should plan to attend. It will be assumed that potential Offeror(s) attending this meeting have reviewed the BVB in detail, and are prepared to bring up any substantive questions not already addressed by the City.

4.0 ADDITIONAL INFORMATION AND SPECIFICATION CHANGES:

4.1 Requests for additional information and questions should be addressed to the Administration and Regulatory Affairs Department, Strategic Purchasing Division Buyer, John G. Tatman, telephone: (832) 393-8751, fax: (832) 393-8759, or e-mail (preferred method to): John.Tatman@houstontx.gov no later than 12/9/2011 at 5:00 P.M. CST. The City of Houston shall provide written response to all questions received in writing before the submittal deadline. Questions received from all Offeror(s) shall be answered and sent to all Offeror(s) who are listed as having obtained the BVB. Offeror(s) shall be notified in writing of any changes in the specifications contained in this BVB.

5.0 LETTER(S) OF CLARIFICATION:

5.1 All Letters of Clarification and interpretations to this Solicitation shall be in writing. Any Letter of Clarification(s) or interpretation that is not in writing shall not legally bind the City of Houston. Only information supplied by the City of Houston in writing or outlined in this BVB should be used in preparing bid responses.

5.2 The City does not assume responsibility for the receipt of any Letters of Clarification sent to Offeror(s).

6.0 EXAMINATION OF DOCUMENTS AND REQUIREMENTS:

6.1 Each Offeror shall carefully examine all BVB documents and thoroughly familiarize themselves with all requirements prior to submitting a Bid to ensure that the Bid meets the intent of this BVB.

6.2 Before submitting a Bid, each Offeror shall be responsible for making all investigations and examinations that are necessary to ascertain conditions and requirements affecting the requirements of this BVB. Failure to make such investigations and examinations shall not relieve the Offeror from obligation to comply, in every detail, with all provisions and requirements of the BVB.

SPECIAL INSTRUCTIONS TO OFFEROR(S)
SOLICITATION NO. S44-L24129

7.0 EXCEPTIONS TO TERMS AND CONDITIONS:

7.1 Best Value Bids: An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, may be rejected.

8.0 ACCEPTANCE AND REJECTION OF BIDS:

8.1 The City reserves the right to accept or reject, in whole or in part, any or all bids received and to make award on the basis of individual items or combination of items, as it is deemed most advantageous or in the best interest to the City.

8.2 The City may accept this bid offer by issuance of a Contract covering award of said bid to this Bidder at any time on or before the 180th day following the day this Official Bid Form is opened by the City. This offer shall be irrevocable for 180 days, but shall expire on the 181st day unless the parties mutually agree to an extension of time in writing.

9.0 HIRE HOUSTON FIRST:

9.1 Designation as a City Business or Local Business

9.1.1 To be designated as a City or Local Business for the purposes of the Hire Houston First Program, as set out in Article XI of Chapter 15 of the Houston City Code, a bidder or proposer must submit the **Hire Houston First Application and Affidavit ("HHF Affidavit")** to the Director of the Mayor's Office of Business Opportunities and receive notice that the submission has been approved prior to award of a contract. Bidders are encouraged to secure a designation prior to submission of a bid or proposal if at all possible.

9.1.2 **Download the HHF Affidavit** from the Office of Business Opportunities Webpage at the City of Houston e-Government Website at the following location:

www.houstontx.gov/obo/moreforms/hirehoustonfirstaffidavit.pdf

9.1.3 Submit the completed application as directed on the form, or submit a signed original affidavit with your bid.

9.2 Award of Procurement Pursuant to a Request for Proposal, Best Value Solicitation or Alternative--- Pursuant to Chapter --- of the Local Government Code

9.2.1 IN EVALUATION OF A PROPOSAL SUBMITTED UNDER ANY OF THE ABOVE PROCUREMENT METHODS, THE CITY SHALL AWARD EXTRA POINTS EQUAL TO

- **THREE PERCENT** OF THE TOTAL EVALUATION POINTS AVAILABLE TO A "LOCAL BUSINESS," AS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES, AND
- **FIVE PERCENT** OF THE TOTAL EVALUATION POINTS AVAILABLE TO A "CITY BUSINESS," AS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES
- UNLESS THE USER DEPARTMENT DETERMINES THAT AN AWARD TO THE LOCAL OR CITY BUSINESS WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

SPECIAL INSTRUCTIONS TO OFFEROR(S)
SOLICITATION NO. S44-L24129

10.0 PROTEST:

- 10.1 A protest shall comply with and be resolved, according to the City of Houston Municipal Code, Chapter 15, Article 1 and rules adopted thereunder. Protests shall be submitted in writing and filed with both, the City Purchasing Agent and the Solicitation contact person as identified on the first page of the BVB. A pre-award protest of the BVB shall be received by the City Purchasing Agent prior to the Contract award date. A post-award protest of an awarded Contract shall be filed within ten (10) days after the protester knows, or should have known, the basis or outcome of the Contract award.
- 10.2 A protest shall include the following:
 - 10.2.1 The name, address, e-mail, and telephone number of the protester;
 - 10.2.2 The signature of the protester or its representative who has the delegated authority to legally bind its company;
 - 10.2.3 Identification of the BVB description and the BVB or Contract number;
 - 10.2.4 A detailed written statement of the legal and factual grounds of the protest, including copies of relevant documents, etc.; and
 - 10.2.5 The desired form of relief or outcome, which the protester is seeking.

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UNIFORM INSTRUCTIONS TO OFFEROR(S)
SOLICITATION NO. S44-L24129

- 1.0 This BVB does not commit the City of Houston to award a Contract, issue a Purchase Order, or to pay any costs incurred in the preparation of a Bid in response to this request.
- 2.0 The Bid will become part of the City's official files without any obligation on the City's part. All Responses shall be held confidential from all parties other than the City until after the Bids are opened and publicly read. Afterward, the Bids shall be available to the public.
- 3.0 The City of Houston shall not be held accountable if material from responses is obtained without the written consent of the Offeror by parties other than the City, at any time during the Bid evaluation process.
- 4.0 In the event an Offeror submits trade secret information to the City, the information must be clearly labeled as a "**Trade Secret.**" The City will maintain the confidentiality of such trade secrets to the extent provided by law.
- 5.0 Offeror(s) shall not offer any gratuities, favors, or anything of monetary value to any official or employee of the City of Houston (including any and all members of the Bid evaluation committees).
- 6.0 Offeror(s) shall not collude in any manner, or engage in any practices, with any other Offeror(s), which may restrict or eliminate competition, or otherwise restrain trade. This is not intended to preclude subcontracts and joint ventures for the purposes of: a) responding to this BVB; or b) establishing a project team with the required experience and/or capability to provide the goods or services specified herein.
- 7.0 Offeror(s), their authorized representatives and their agents are responsible for obtaining, and will be deemed to have, full knowledge of the Conditions, requirements, and Specifications of the BVB at the time a Bid is submitted to the City.
- 8.0 The Agreement(s) shall become effective on or about March 15, 2012 for a term of three (3) years. Upon expiration of the initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two successive one-year terms on the same terms and conditions. If the Director of the City Department elects not to renew this Agreement, the City Purchasing shall notify Contractor in writing of non-renewal at least 30 days before the expiration of the then-current term.
- 9.0 If necessary for the completion of tasks required under the project, the City will provide reasonable working space to the Prime Contractor.
- 10.0 Clerical support and reproduction of documentation costs shall be the responsibility of the Prime Contractor. If required, such support and costs shall be factored into the Bid amount.
- 11.0 Prime Contractor personnel essential to the continuity, and the successful and timely completion of the project should be available for the duration of the project unless substitutions are approved in writing by the City Project Director.
- 12.0 The Prime Contractor will be expected to adhere to all standard contractual requirements of the City which shall include, but are not limited to, provisions for: Time Extensions; Appropriation of Available Funds; Approvals; Term and Termination; Independent Contractor; Business Structure and Assignments; Subcontractors; Parties in Interest; Non-Waiver; Applicable Laws; Notices; Use of Work Products; Equal Employment Opportunity; Force Majeure; and Inspections and Audits.
- 13.0 The City may terminate its performance under a Contract in the event of a default by the Prime Contractor and a failure to cure such default after receiving notice of default from the City. Default may result from the Prime Contractor's failure to perform under the Terms of the Contract or from the Prime Contractor becoming insolvent, having a substantial portion of its assets assessed for the benefit of creditors, or having a receiver or trustee appointed.
- 14.0 Prime Contractor must promptly report to the City Project Director any conditions, transactions, situation, or circumstances encountered by the Prime Contractor which would impede or impair the proper and timely performance of the Contract.

UNIFORM INSTRUCTIONS TO OFFEROR(S)
SOLICITATION NO. S44-L24129

- 15.0 The City of Houston has sole discretion and reserves the right to cancel this BVB, or to reject any or all Bids received prior to Contract award.
- 16.0 The City reserves the right to waive any minor informality concerning this BVB, or to reject any or all Bids or any part thereof.
- 17.0 The City reserves the right to request clarity of any Bid after they have been received.
- 18.0 After Contract execution, the successful Offeror shall be the Prime Contractor and responsible party for contracting and communicating the work to be performed to subcontractors, and for channeling other information between the City and subcontractors. Any subcontracting must be specified in the BVB. Any subcontracting not specified in the BVB will need prior written approval from the City Purchasing Agent.
- 19.0 Prime Contractor assumes total responsibility for the quality and quantity of all work performed, whether it is undertaken by the Prime Contractor or is subcontracted to another organization.
- 20.0 If subcontractor involvement is required in the use of license, patent, or proprietary process, the Prime Contractor is responsible for obtaining written authorization from the subcontractor to use the process, or provide another process comparable to that which is required and which is acceptable to the City, all at no additional cost or liability to the City.

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SPECIFICATIONS / SCOPE OF WORK
SOLICITATION NO.: S44-L24129

CITY OF HOUSTON
HOUSTON AIRPORT SYSTEM
SPECIFICATION FOR
PICK-UP, REMOVAL, & DISPOSAL OF
(IAH) INTERNATIONAL REGULATED GARBAGE

1.0 SCOPE OF WORK

1.1 For and in consideration of the payment specified in the Agreement, Contractor shall pick-up, remove, and dispose of regulated garbage, i.e. "The Work" at George Bush Intercontinental Airport/Houston (IAH) as outlined herein. Work to proceed will be initiated by a notice to proceed.

2.0 GENERAL

2.1 Contractor shall furnish all labor, material, equipment, transportation, supervision, permits, and incidentals required for pick-up, removal, and disposal of International Regulated Garbage at US Customs Border Protection (CBP) located at George Bush Intercontinental Airport Houston (IAH).

3.0 BASIC SERVICES

3.1 Pick-up, Removal, and Disposal of (IAH) International Regulated Garbage.

3.2 Scheduled Services/Work Hours:

3.2.1 Contractor shall pick-up regulated garbage at IAH Regulated Garbage Area seven (7) times a week on Monday thru Sunday at approximately (2000 hrs).

3.2.2 Contractor may be required to make additional pickups as needed, depending upon air traffic volume.

4.0 SPECIFIED TASKS

4.1 Contractor shall pick-up regulated garbage from IAH and arrange transportation of USDA Regulated Waste as described in CFR 330.400 and CFR 94.5 from IAH CBP office to a USDA approved treatment facility in accordance with USDA Compliance agreement and properly dispose of waste after treatment.

4.2 Each pickup must be manifested by weight and volume; showing the amount of regulated garbage collected.

4.3 Contractor must identify the name and address of the disposal landfill.

4.4 Contractor shall transport regulated garbage in sealed 4 ml thick bags inside shipping and handling containers in accordance with the requirements of the compliance agreement.

4.5 Contractor shall have a spill kit containing all required components as designated in the compliance agreement cleaning and disinfection addendum available at all times.

4.6 Contractor shall clean any regulated garbage spills according to the procedures outlined in the compliance agreement cleaning and disinfection addendum.

4.7 Contractor shall only allow employees that have been trained in accordance with the requirements listed in the compliance agreement to handle regulated garbage.

4.8 Contractor shall provide IAH Management with appropriate training certification.

4.9 Contractor shall only transport regulated garbage in an enclosed, rigid, leak proof vehicle that meet the requirements listed in the compliance agreement.

4.10 Contractor shall keep records in accordance with the record keeping requirements listed in the compliance agreement and these records shall be available within twenty four (24) hours if audit is required by IAH Management.

4.11 Contractor shall adhere to all other requirements listed in the compliance agreement.

SPECIFICATIONS / SCOPE OF WORK
SOLICITATION NO.: S44-L24129

- 4.12 Contractor is responsible for providing any required shipping documentation.
- 4.13 The average amount of regulated garbage per pick-up each day is approximately 250 lbs.
- 4.14 Should there be more than 250 lbs. of regulated garbage per pick-up each day; the Contractor shall be paid additional cost in increment(s) of 25 lbs. as stated on the Bid Form.

5.0 WORK COORDINATION:

- 5.1 Contractor shall coordinate the Work with the International Services Supervisor at phone number 281-233-3104 (or) call Airport Communication Center (ACC) at 281-230-3100 and ask for "IAB5".

6.0 LOCATION OF WORK

- 6.1 George Bush Intercontinental Airport (IAH) @ Regulated Garbage Area. FIS building Physical address is 3870 N. Terminal Road, Houston Texas 77032

7.0 DUTIES OF THE CITY:

- 7.1 The Airport will provide access to the pick-up site.
- 7.2 The Airport will assume no responsibility for the Contractor's property.
- 7.3 IAH Management has the right to inspect equipment, containers, and/or trucks for disrepair/contamination. If found to be in poor condition (disrepair, contaminated, etc), equipment/trucks/containers will not be loaded and turned away with costs borne by the Contractor, at the sole discretion of IAH Management. The Airport will not be responsible for any costs associated with delays caused by delivery of inadequate equipment/trucks/containers.

8.0 DUTIES OF CONTRACTOR

- 8.1 Contractor duties include, but are not limited to the following:
 - 8.1.1 Contractor shall specify a point-of-contact(s) person for the Work specified.
 - 8.1.2 Contractor personnel shall conform to all HAS Security & Operations rules or regulations at all times while on HAS property.
 - 8.1.3 Contractor shall be solely responsible for Contractor's vehicles, equipment, supplies, materials, and other property while on HAS property.
 - 8.1.4 In case of an emergency, HAS may order Contractor to stop Work on the project and clear the area of all personnel and equipment. Contractor shall comply with such an order with all possible haste.
 - 8.1.5 Contractor shall comply with all applicable federal, state and local environmental rules, regulations, statutes, or orders, (Environmental Laws). In any conflict between this specification and applicable Environmental Laws, the more stringent shall govern.
 - 8.1.6 Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply with Environmental Laws. Contractor shall perform its obligations under this specification and related Agreement in strict compliance with Environmental Laws.

9.0 MONTHLY REPORTS:

- 9.1 During the term of the Agreement, monthly report shall be issued by the Contractor which each monthly invoice summarizing waste removal/disposal activities including but not limited to volumes of waste picked-up and transported.

SPECIFICATIONS / SCOPE OF WORK
SOLICITATION NO.: S44-L24129

10.0 SAFETY:

- 10.1 Contractor shall be completely familiar with, and shall enforce all City, State of Texas and Federal OSHA regulations and requirements as applicable for services performed herein.
- 10.2 Contractor personnel shall wear applicable personal protection equipment at all times.
- 10.3 Contractor personnel operating equipment and /or handling materials shall be fully trained in the safe operation of the equipment or materials.

11.0 ACCIDENT REPORTS

- 11.1 Contractor shall comply with all OSHA reporting requirements for record keeping and reporting of all accidents resulting in death, injury, occupational disease, or adverse environmental impact. The Contractor shall provide a verbal report to the Director within one normal working day of occurrence. Contractor shall cooperate with the Houston Airport System Safety Officer, providing written documentation and any information required for their records

12.0 CONTRACTOR'S LIABILITY/PROPERTY DAMAGE:

- 12.1 In addition to any insurance which is required by statute or City Ordinance, the Contractor understands that it will be liable to the City for any damage caused to City property or any individual or accident caused by Contractor or may occur in the course of performance of Work.
- 12.2 Contractor is responsible for their equipment damaging City property. Contractor shall replace or repair any City property damaged by their negligence at no cost to the City.

13.0 INVOICE

- 13.1 Contractor shall submit its invoices monthly for work completed on form(s) approved in advance by IAH Management; invoices must be accompanied by supporting documents requested by IAH Management.
- 13.2 Each invoice submitted must be in duplicate and each copy must include required attachments. The invoice must be identified by the Agreement number. All invoices are to be delivered or mailed to the following location:

City of Houston
Houston Airport System
Finance Division/Accounts Payable
P.O. Box 60106
Houston, Texas 77205-0106

- 13.3 The Houston Airport system will accept invoices submitted electronically along with required form(s) approved by IAH Management. Each invoice should be in a TIFF format. Multiple invoices can be submitted in a single email.
- 13.4 Requirements are as follows:
 - 13.4.1 Submit invoices in "TIFF" format
 - 13.4.2 Submit to has.accountspayable@cityofhouston.net

14.0 SECURITY AND BADGING

- 14.1 Contractor shall comply with all applicable Federal rules governing security at the Airport, as may be amended from time to time.
- 14.2 All on-site personnel of Contractor, including sub-contractor's, who perform services under the Agreement, are required to undergo a fingerprint-based criminal history records check. Fingerprints are collected at the Airport

SPECIFICATIONS / SCOPE OF WORK

SOLICITATION NO.: S44-L24129

Badging Office and submitted electronically for investigation. The Project Manager shall have additional training at HAS to approve badging requests for Contractor personnel.

- 14.3 Contractor shall obtain HAS security badges for its personnel performing services on-site, including its sub-contractor's personnel. On-site personnel shall wear identification badges at all times while on Airport property. The cost of badges, which is subject to change, is currently \$55.00 each at (IAH). Costs for the fingerprint-based criminal history records check are reflected in the cost of the badges. Contractor is responsible for the cost of badges, including replacements thereof. Contractor personnel losing badges will be charged for replacement badges at the then current rate. Badge yearly renewal cost is \$16.00.
- 14.4 Contractor acknowledges that fines or penalties associated with non-compliance with security regulations must be reimbursed to HAS.
- 14.5 Airport Customs Security Area Bond:
- 14.5.1 Contractor shall obtain an Airport Customs Security Area Bond in order to have access to the Federal Inspection Station (FIS) located at George Bush Intercontinental Airport (IAH).
- 14.5.2 The recommended bidder must contact the Customs Border Protection (CBP) Airport Security Office by telephone at 281-230-4641 or 282-230-4643 or email cbpbadgingauthority@dhs.gov in order to obtain the bond form.
- 14.5.3 The bond amount is determined by calculating \$1,000.00 times the number of employees needed to provide the service.

15.0 PRE-PERFORMANCE CONFERENCE

- 15.1 Prior to commencing performance under the Agreement, Contractor shall attend a pre-performance conference with representatives of HAS. HAS will specify the time and place of such meeting in a written notice to Contractor. Representatives of Contractor attending the pre-performance conference must include the Contractor's supervisors. Items to be addressed at the pre-performance conference include, but are not limited to, the following:
- 15.2 Channels of communication
- 15.3 Facilities utilization (including access routes, etc.)

16.0 COORDINATION MEETINGS

- 16.1 Throughout the Term of the Agreement and any extensions hereto, Contractor shall meet with the Director, as determined necessary by him, to identify and resolve performance issues. Notice of any such coordination meeting may be given by the Director to Contractor either orally or in writing and will designate the time, date, location, Contractor attendees, and general purpose. Contractor's designated attendees must be present at any such performance meeting for its duration and must take minutes. The meeting minutes must be transcribed by Contractor in approved typewritten form and must be submitted to the Director for his approval within five (5) days of any such meeting. The Director has the right to dispute the accuracy of the minutes and will note the discrepancies in the minutes prior to his approval. Once approved, the original will be retained by HAS and copies will be provided to all attendees

17.0 ADDITIONS & DELETIONS:

- 17.1 The City, by written notice from the City Purchasing Agent to the Contractor, at any time during the term of this contract, may add or delete like or similar equipment, supplies, locations and/or services to the list of equipment, supplies, locations, and/or services to be provided. Any such written notice shall take effect on the date stated in the notice from the City. Similar equipment, supplies, services, or locations added to the contract shall be in accordance with the contract specification/scope of services, and the charges or rates for items added shall be the same as specified in the fee schedule. In the event that the additional equipment, supplies, locations and/or services are not identical to the item(s) already under contract, the charges therefore will then be the Contractor's normal and customary charges or rates for the equipment, supplies, locations and/or services classified in the fee schedule.

SPECIFICATIONS / SCOPE OF WORK
SOLICITATION NO.: S44-L24129

18.0 ESTIMATED QUANTITIES NOT GUARANTEED:

18.1 The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of services during the term of this Contract. The quantities may vary depending upon the actual needs of the Department. The quantities specified herein are good faith estimates of usage during the term of this Contract. Therefore, the City shall not be liable for any contractual agreements/obligations the Contractor enters into based on the City purchasing all the quantities specified herein.

19.0 INTERLOCAL AGREEMENT:

19.1 Under the same terms and conditions hereunder, the Contract may be expanded to other government entities through inter-local agreements between the City of Houston and the respective government entity that encompass all or part of the products/services provided under this contract. Separate contracts will be drawn to reflect the needs of each participating entity.

20.0 WARRANTY OF SERVICES:

20.1 *Definitions:* "Acceptance" as used in this clause, means the act of an authorized representative of the City by which the City assumes for itself, approval of specific services, as partial or complete performance of the Contract.

20.1.1 "Correction" as used in this clause, means the elimination of a defect.

20.2 Notwithstanding inspection and acceptance by the City or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this Contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Contract. The City shall give written notice of any defect or nonconformance to the Contractor within a one-year period from the date of acceptance by the City. This notice shall state either (1) that the Contractor shall correct or re-perform any defective or non-conforming services at no additional cost to the City, or (2) that the City does not require correction or re-performance.

20.3 If the Contractor is required to correct or re-perform, it shall be at no cost to the City, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the City may, by contract or otherwise correct or replace with similar services and charge to the Contractor the cost occasioned to the City thereby, or make an equitable adjustment in the Contract price.

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

TABLE OF CONTENTS

| | |
|---|----|
| I. PARTIES | 13 |
| A. <u>ADDRESS</u> | 13 |
| B. <u>TABLE OF CONTENTS</u> | 14 |
| C. <u>PARTS INCORPORATED</u> | 16 |
| D. <u>CONTROLLING PARTS</u> | 16 |
| E. <u>SIGNATURES</u> | 17 |
| II. DEFINITIONS | 18 |
| III. DUTIES OF CONTRACTOR..... | 19 |
| A. <u>SCOPE OF SERVICES</u> | 19 |
| B. <u>DUTY TO INSPECT</u> | 19 |
| C. <u>INVOICING</u> | 19 |
| D. <u>PAYMENT OF EMPLOYEES AND SUBCONTRACTORS</u> | 20 |
| E. <u>RELEASE</u> | 20 |
| F. <u>INDEMNIFICATION</u> | 21 |
| G. <u>SUBCONTRACTOR'S INDEMNIFICATION</u> | 22 |
| H. <u>INDEMNIFICATION PROCEDURES</u> | 22 |
| I. <u>ENVIRONMENTAL LAWS</u> | 23 |
| J. <u>INSURANCE</u> | 27 |
| K. <u>TAXES, LICENSES, LAWS, RULES AND PERMITS</u> | 29 |
| L. <u>WARRANTIES</u> | 30 |
| N. <u>COMPLIANCE WITH LAWS</u> | 30 |
| O. <u>COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE</u> | 30 |
| Q. <u>PERFORMANCE BOND</u> | 31 |
| R. <u>DRUG ABUSE DETECTION AND DETERRENCE</u> | 31 |
| S. <u>AIRPORT SECURITY</u> | 32 |
| T. <u>PAY OR PLAY</u> | 32 |
| IV. DUTIES OF CITY | 33 |
| A. <u>PAYMENT TERMS</u> | 33 |
| B. <u>TAXES</u> | 33 |
| C. <u>METHOD OF PAYMENT- DISPUTED PAYMENTS</u> | 33 |
| D. <u>LIMIT OF APPROPRIATION</u> | 33 |
| E. <u>CHANGES</u> | 34 |
| F. <u>ACCESS TO SITE</u> | 36 |
| V. TERM AND TERMINATION..... | 36 |
| A. <u>CONTRACT TERM</u> | 36 |
| B. <u>NOTICE TO PROCEED</u> | 37 |
| C. <u>RENEWALS</u> | 37 |
| D. <u>TERMINATION FOR CONVENIENCE BY THE CITY</u> | 37 |
| E. <u>TERMINATION FOR CAUSE BY CITY</u> | 37 |
| F. <u>TERMINATION FOR CAUSE BY CONTRACTOR</u> | 38 |
| VI. MISCELLANEOUS | 39 |
| A. <u>INDEPENDENT CONTRACTOR</u> | 39 |
| B. <u>FORCE MAJEURE</u> | 39 |
| C. <u>SEVERABILITY</u> | 40 |
| D. <u>ENTIRE AGREEMENT</u> | 40 |
| E. <u>WRITTEN AMENDMENT</u> | 40 |
| F. <u>APPLICABLE LAWS</u> | 41 |
| G. <u>NOTICES</u> | 41 |
| H. <u>CAPTIONS</u> | 41 |
| I. <u>NON-WAIVER</u> | 41 |
| K. <u>ENFORCEMENT</u> | 42 |

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

| | |
|--|----|
| L. <u>AMBIGUITIES</u> | 42 |
| M <u>SURVIVAL</u> | 43 |
| N. <u>PUBLICITY</u> | 43 |
| O. <u>PARTIES IN INTEREST</u> | 43 |
| P. <u>SUCCESSORS AND ASSIGNS</u> | 43 |
| Q. <u>BUSINESS STRUCTURE AND ASSIGNMENTS</u> | 43 |
| R. <u>REMEDIES CUMULATIVE</u> | 44 |
| S. <u>CONTRACTOR DEBT</u> | 44 |

EXHIBITS:

- A- SCOPE OF SERVICES
- B- FEES
- C- EQUAL EMPLOYMENT OPPORTUNITY
- D- MWBE SUBCONTRACT TERMS
- E - PERFORMANCE BOND
- F - DRUG POLICY COMPLIANCE AGREEMENT
- G- CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS
- H- DRUG POLICY COMPLIANCE DECLARATION
- I - PAY OR PLAY PROGRAM

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

C. Parts Incorporated

The above described sections and exhibits are incorporated into this Agreement.

D. Controlling Parts

If a conflict among the sections or exhibits arises the Sections control over the Exhibits.

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GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

E. Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original.

ATTEST/SEAL(if a corporation):
WITNESS (if not a corporation):

CONTRACTOR

By: _____
Name:
Title:

By: _____
Name:
Title:
Tax Identification No: _____

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

Director, Houston Airport System

City Controller

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

Assistant City Attorney
L.D. File No.

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

II. DEFINITIONS

As used in the Agreement, the following terms have the meanings set out below:

“Approval” means the Director’s final written authorization for a task to commence, but does not mean the work performed is acceptable.

“Approved” means the task or completed portion thereof has been reviewed by HAS and has been found acceptable.

“Basic Services” means those services described in Exhibit “A” of the Agreement.

“City” is defined in herein and includes its successors and assigns.

“Company or Contractor” means the successful Bidder to whom HAS awards the Agreement.

“Contract or Agreement” means this Agreement, including all exhibits, change orders and any written amendments authorized by City Council, thereto made and entered into by and between the Houston Airport System and the Contractor whereby the Contractor shall provide all specified Work in connection with the Agreement, in the manner and form as provided by the Agreement Documents.

“Contract Award Notice” means the official notification substantiated by the Notice to Proceed issued by the Director to the Contractor.

“Deliverables” means reports, manifests and training certifications.

“Director” means the Director of the Houston Airport System, or his designee. The Agreement designates certain functions to be performed by the Director. For the purposes of the Agreement those functions are assigned to the Assistant Director of Aviation, Technical Services Division. The Assistant Director of Aviation, Technical Service Division may delegate certain functions to other HAS employees, with the approval of the Director.

“Effective Date” is defined as date contract is countersigned by the City Controller.

“Hours of Operation” are defined in the Performance Work Statement and require the successful Bidder to work continuously during the hours specified without regard to holidays. No holidays are to be observed during the Term of the Agreement.

“Houston Airport System (HAS)” means the property and facilities of the City of Houston Department of Aviation which include, but are not limited to, George Bush Intercontinental Airport/Houston (IAH), William P. Hobby Airport (HOU), Ellington Airport (EFD), and the Houston Airport System Administration Buildings.

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

“IAH” means George Bush Intercontinental Airport/Houston.

“Materials” means any substance specified for use in the accomplishment of the Work.

“Notice to Proceed” means a written communication from the Director to Contractor instructing Contractor to begin performance.

“REGULATED WASTE” means USDA Regulated Waste as described in 7 CFR 330.400 and 9 CFR 94.5.

“Work” all services to be provided by the Contractor as defined by the specifications herein.

III. DUTIES OF CONTRACTOR

A. Scope of Services

In consideration of the payments specified in this Agreement, Contractor shall provide all goods and services necessary to perform the Basic Services.

B. Duty to Inspect

Contractor represents that it or its agent has inspected all sites affected by this Agreement and that it is not entitled to additional compensation for its failure to accurately account for all of the work required to be performed under this Agreement.

C. Invoicing

Contractor shall submit its invoices monthly for work completed on form(s) approved in advance by IAH Management; invoices must be accompanied by supporting documents requested by IAH Management.

Each invoice submitted must be in duplicate and each copy must include required attachments. The invoice must be identified by the Agreement number. All invoices are to be delivered or mailed to the following location:

City of Houston
Houston Airport System
Finance Division/Accounts Payable
P.O. Box 60106
Houston, Texas 77205-0106

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

The Houston Airport system will accept invoices submitted electronically along with required form(s) approved by IAH Management. Each invoice should be in a TIFF format.

Multiple invoices can be submitted in a single email.

Requirements are as follows:

- (1) Submit invoices in "TIFF" format
- (2) Submit to has.accounts payable@cityofhouston.net

D. Payment of Employees and Subcontractors.

Contractor shall make timely payments to all persons and entities supplying labor, materials, services, or equipment for the performance of this Agreement.

CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS. Contractor shall submit disputes relating to payment of MWBE subcontractors.

E. RELEASE

CONTRACTOR 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.

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

F. INDEMNIFICATION

CONTRACTOR 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, ATTORNEY'S 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:

- 1) CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
- 2) THE CITY'S ACTUAL OR ALLEGED SOLE OR CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND**
- 3) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.**

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES.

G. SUBCONTRACTOR'S INDEMNIFICATION

CONTRACTOR 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.

H. INDEMNIFICATION PROCEDURES

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

- (a) a description of the indemnification event in reasonable detail,
- (b) the basis on which indemnification may be due, and
- (c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

- (a) Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim.

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(b) Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) 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, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) 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.

I. Environmental Laws

1) Contractor shall comply with all federal, state, and local statutes, ordinances, regulations, rules, policies, codes, or guidelines now or hereafter in effect, as they may be amended from time to time, that govern Hazardous Materials or relate to the protection of human health, safety, or the environment, including but not be limited to:

- (a) the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq.;
- (b) the Safe Drinking Water Act, 42 U.S.C. Section 300(f) et seq.;
- (c) the Oil Pollution Control Act of 1990, 33 U.S.C. Section 270 et seq.;
- (d) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Section 9601 et seq., and as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. Law No. 99-499, 100 Stat. 1613;
- (e) the Toxic Substances Control Act, 15 U.S.C., Section 2601 et seq.;
- (f) the Clean Air Act as amended, 42 U.S.C. 7401 et seq.;
- (g) the Clean Water Act, 33 U.S.C., Section 1251, et seq.;

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

- (h) the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801 et seq.;
- (i) the Resources Conservation and Recovery Act, 42 U.S.C., Section 6901 et seq.;

and those substances defined as hazardous waste or as hazardous substances under the laws of Texas and/or the United States or in regulations promulgated under these laws (collectively, "Environmental Laws").

(2) Within 10 days of receipt of an invoice, Contractor shall reimburse the City for any fines or penalties that may be levied against the City by the Environmental Protection Agency, the Texas Commission on Environmental Quality, or any other governmental agency for Contractor's (or its agents' and employees') failure to comply with the Environmental Laws.

(3) Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to or from the Airport, or any other areas or facilities subject to this Agreement, except in strict compliance with the Environmental Laws. "Hazardous Materials" include, but are not limited to:

- (a) all substances, materials, wastes, pollutants, oils, or governmentally regulated substances or contaminants defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws,
- (b) asbestos and asbestos-containing materials, petroleum products including crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste, or
- (c) any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, distributed, disposed of, or released.

(4) The Airport is subject to the National Pollution Discharge Elimination System Program ("NPDES"), and the regulations, 40 CFR Part 122, relating to stormwater discharges, for operations at the Airport. Contractor is familiar with these NPDES stormwater regulations, and shall conduct operations in accordance with 40 CFR Part 122, as amended from time to time. Contractor understands that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations.

(5) Close cooperation is necessary to ensure compliance with any NPDES stormwater discharge permit terms and conditions, as well as to ensure safety and to minimize costs. Contractor shall implement "Best Management Practices" as defined in 40 CFR, Part 122.2, as amended from time to time, if necessary to minimize the exposure of stormwater to significant materials generated, stored, handled, or otherwise used by Contractor as defined in the federal stormwater regulations.

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

(6) The City's NPDES stormwater discharge permit and any subsequent amendments, extensions, or renewals are incorporated into this Agreement. Contractor shall be bound by all applicable portions of the permit.

(7) Contractor shall implement the NPDES requirements at its sole expense, unless otherwise agreed to in writing between the City and Contractor. Contractor shall meet all deadlines that may be imposed or agreed to by the City and Contractor. Time is of the essence.

(8) If either party asks, the other party shall provide any non-privileged information submitted to a government entity(ies) under applicable NPDES stormwater regulations.

(9) Contractor appoints the City as its agent to negotiate with the appropriate governmental entity(ies) any modifications to the City's permit.

(10) Contractor shall participate in any City organized task force or other work group established to coordinate stormwater activities at the Airport.

(11) The City may enter upon Contractor's Premises at any time for purposes of inspection to ensure that Contractor is complying with this Section and any other provisions in this Agreement without committing a trespass.

(12) The City's remedies with regard to Environmental Requirements are cumulative and survive termination of this Agreement.

(13) **WITH NO INTENT TO LIMIT CONTRACTOR'S INDEMNIFICATION TO THE CITY SET FORTH IN SECTIONS G AND I, CONTRACTOR SHALL PROTECT, DEFEND AND INDEMNIFY THE CITY AND ITS OFFICERS, AGENTS, AND EMPLOYEES AGAINST ANY LOSS, COST, CLAIM, DEMAND, PENALTY, FINE, SETTLEMENT, LIABILITY, OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEYS' AND CONSULTANTS' FEES, COURT COSTS, AND LITIGATION EXPENSES) RELATED TO:**

(a) ANY INVESTIGATION, MONITORING, CLEANUP, CONTAINMENT, REMOVAL, STORAGE, OR RESTORATION WORK PERFORMED BY THE CITY OR A THIRD PARTY DUE TO CONTRACTOR'S, ITS EMPLOYEES', OR AGENTS' USE OR PLACEMENT OF HAZARDOUS MATERIALS (OF WHATEVER KIND OR NATURE, KNOWN OR UNKNOWN) ON THE AIRPORT PREMISES, OR ANY OTHER AREAS IMPACTED BY THIS AGREEMENT;

(b) ANY ACTUAL, THREATENED, OR ALLEGED HAZARDOUS MATERIALS CONTAMINATION OF THE AIRPORT PREMISES BY CONTRACTOR, ITS EMPLOYEES, OR AGENTS;

(c) THE DISPOSAL, RELEASE, OR THREATENED RELEASE OF HAZARDOUS MATERIALS BY CONTRACTOR, ITS EMPLOYEES, OR AGENTS AT THE AIRPORT THAT AFFECTS THE SOIL, AIR, WATER, VEGETATION, BUILDINGS, PERSONAL PROPERTY, OR PERSONS;

(d) ANY PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO HAZARDOUS MATERIALS USE BY CONTRACTOR, ITS EMPLOYEES, OR AGENTS AT THE AIRPORT; OR

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

(e) ANY VIOLATION BY CONTRACTOR, ITS EMPLOYEES, OR AGENTS OF ANY ENVIRONMENTAL LAWS.

THIS INDEMNITY IS NOT APPLICABLE TO LOSSES, CLAIMS, PENALTIES, FINES, SETTLEMENTS, LIABILITIES, AND EXPENSES THAT RESULT FROM CONDITIONS EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT.

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GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

(14) Subject to the appropriation of funds by City Council to perform obligations set forth in this Section, if during performance of Services, Contractor's employees or agents encounter any asbestos or other hazardous substance (as defined by any applicable state, federal or local hazardous waste or environmental law or regulation) at any location where Contractor is to perform services under this Agreement, upon written notice from Contractor, the City agrees to take all necessary steps, at its own expense, to remove or contain the asbestos or other hazardous substance and to test the premises to ensure that exposure does not exceed the lawful exposure limit for the protection of workers. Contractor may suspend performance of services impacted by the asbestos or hazardous substance locations under this Agreement until the removal or containment has been completed and approved by the appropriate governmental agency and City. Performance obligations under this Agreement may be extended for the period of delay caused by said cleanup or removal upon mutual agreement of the parties. City's failure to remove or contain hazardous substances shall entitle Contractor to terminate this Agreement without further liability, in which event City shall permit Contractor to remove any equipment that has not been accepted, shall reimburse Contractor for expenses incurred in performing this Agreement until termination and shall complete payment for any portion of the System that Contractor has been accepted.

J. Insurance

Contractor shall maintain in effect certain insurance coverage, which is described as follows:

- (1) Minimum Insurance Requirements. Contractor shall maintain the following insurance coverage in the following amounts:

| <u>(Coverage)</u> | <u>(Limit of Liability)</u> |
|---|--|
| Workers' Compensation | Statutory for Workers' Compensation |
| Employer's Liability | Bodily Injury by accident \$500,000 (each accident) Bodily Injury by Disease \$500,000 (policy limit) Bodily Injury by Disease \$500,000 (each employee) |
| Commercial General Liability: Including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations | Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence and \$2,000,000 aggregate |
| Automobile Liability Insurance for vehicles Contractor uses in performing under this Agreement, including Employer's Non-Owned and Hired Auto Coverage) | \$1,000,000 combined single limit for (1) any auto or (2) all owned, hired, and non-owned autos |
| Professional Liability Coverage | \$1,000,000 per claim/aggregate |

Defense costs are excluded from the face amount of the policy.
 Aggregate Limits are per 12-month policy period
 unless otherwise indicated.

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

If professional liability coverage is written on a "claims made" basis, Contractor shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of 2 years after substantial completion, or a project liability policy for the Project covered by this Agreement with a duration of two years after substantial completion.

(2) Form of Policies.

The insurance may be in one or more policies of insurance, the form of which must be approved by the Director and City Attorney; however, such approval shall never excuse non-compliance with the terms of this Section.

(3) Issuers of Policies

The issuer of any policy shall have (1) a Certificate of Authority to transact insurance business in Texas or (2) 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 edition Best's Key Rating Guide.

(4) Insured Parties

Each policy, except those for Workers' 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 replacements.

(5) Deductibles

Contractor shall be responsible for and bear any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, agents, or employees.

(6) Cancellation

CONTRACTOR SHALL NOTIFY THE DIRECTOR IN WRITING 30 DAYS PRIOR TO ANY CANCELLATION OR MATERIAL CHANGE TO CONTRACTOR'S INSURANCE COVERAGE. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled or nonrenewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, in his sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin to terminate for default.

(7) Subrogation

Each policy, except Professional Liability, must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees.

(8) Endorsement of Primary Insurance

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

Each policy, except Workers' Compensation and Professional Liability, must contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement.

(9) Liability for Premium

Contractor shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.

(10) Subcontractors

Contractor shall require all subcontractors to carry insurance naming the City as an additional insured and meeting all of the above requirements except amount. The amount must be commensurate with the amount of the subcontract, but in no case shall it be less than \$500,000 per occurrence. Contractor shall provide copies of insurance certificates to the Director.

(11) Proof of Insurance

(a) Prior to commencing any services and at any time during the Term of work hereunder, Contractor shall furnish the Director with Certificates of Insurance, along with an Affidavit from Contractor confirming that the Certificate accurately reflects the insurance coverage that will be available during the term of the Contract. If requested in writing by the Director, the Contractor shall furnish the City with certified copies of the actual insurance policies. Failure of Contractor to provide certified copies as requested may be deemed, in the Director's and/or City Attorney's discretion, to constitute a breach of this Contract.

(b) Notwithstanding the requirements set forth above, it is the intention of the parties hereto that Contractor, throughout the Term of this Agreement, continuously and without interruption, maintain in force the required insurance coverages set forth above. Failure of Contractor to comply with this requirement shall constitute a default of Contractor allowing the Director, at his option, to terminate work under this Agreement. Contractor agrees that the City shall never be argued to have waived or be estopped to assert its right to terminate this Contract hereunder because of any acts or omissions by the City regarding its review of insurance documents provided by Contractor, its agents, employees or assigns.

(12) Other Insurance

Contractor will, upon request, furnish to the City adequate evidence or provisions for Social Security and Unemployment Compensation Insurance, to the extent such provisions are applicable to the Contractor's operations hereunder.

K. Taxes, Licenses, Laws, Rules and Permits

The Contractor shall pay, prior to delinquency, all taxes of whatever character that may be levied, assessed or charged upon the Contractor or the property, real and personal, owned by the Contractor; provided, however, the Contractor shall have the right to contest any such taxes. Contractor shall comply with all laws, codes, rules, regulations and ordinances relating to its performance under this Agreement, including any which may impose requirements more stringent than, or inconsistent with,

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

this Agreement. Nothing in this Agreement abrogates or diminishes the regulatory or police powers of the City.

L. Warranties

Contractor represents and warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement. With respect to any parts and goods furnished by it, Contractor warrants:

- (1) that all items are free of defects in title, material, and workmanship,
- (2) that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,
- (3) that each replacement item is new in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and
- (4) that no item or its use infringes any patent, copyright, or proprietary right.

M. Licenses and Permits

Contractor shall obtain, maintain and pay for all licenses, permits, and certificates required by any statute, ordinance, rule, or regulation.

N. Compliance with Laws

Contractor shall comply with all applicable state and federal laws and regulations; the City Charter and Code of Ordinances; and HAS' rules and regulations.

O. Compliance with Equal Opportunity Ordinance

Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "C."

P. MWBE Compliance

Contractor 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. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 0 % of the value of this

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

Agreement to MWBEs. Contractor 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.

Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration in Houston, Texas if directed to do so by the OBO Director.

MWBE subcontracts must contain the terms set out in Exhibit "D."

Q. Performance Bond

Contractor shall furnish and maintain a performance bond for \$ 0 conditioned on Contractor's full and timely performance of the Agreement (and payment of subcontractors). If the City exercises any option period, Contractor shall maintain a Performance Bond in the amount of \$ N/A for the option period exercised. The bond must be in substantially the form attached as Exhibit "E" and issued by a corporate surety authorized and admitted to write surety bonds in Texas. If the amount of the bond exceeds \$100,000, the surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability in excess of \$100,000 by a reinsurer listed on the U.S. Treasury list.

R. Drug Abuse Detection and Deterrence

(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. Contractor 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.

(2) Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

- (a) a copy of its drug-free workplace policy,
- (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "F," together with a written designation of all safety impact positions and,
- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "G."

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

If Contractor 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 "H." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 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 Contractor begins work under this Agreement.

(3) Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

(4) Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

S. Airport Security

Contractor shall comply with all HAS, TSA, FAA and any other governmental agency security directives, rules and regulations. The Federal Aviation Administration may assess fines and/or penalties for Contractor's non-compliance with the provisions of 49 CFR 1540 and 1542 entitled "Airport Security," as amended from time to time, or by agencies for noncompliance with laws or regulations applicable to Contractor's operations. Within 10 days after receiving written notice from the Director stating the amount of any fine or penalty, Contractor shall reimburse the City for any fine or penalty assessed against the City because of Contractor's non-compliance with 49 CFR 1540 and 1542 or other applicable laws or regulations.

to arbitration in the same manner as any other disputes under the MWBE subcontract.

T. Pay or Play

The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement.

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

IV. DUTIES OF CITY

A. Payment Terms

The City shall pay and Contractor shall accept fees provided in Exhibit "B" for all services rendered and the Deliverables furnished by Contractor. The fees must only be paid from Allocated Funds, as provided below.

B. Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor'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.

C. Method of Payment- Disputed Payments

The City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Director, showing the specific tasks completed in the preceding month and the corresponding prices. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice. If the City disputes any items in an invoice Contractor 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 Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

D. Limit of Appropriation

- (1) The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

- (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 \$_____ to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

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) The City makes a supplemental allocation by issuing to Contractor 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.

\$ _____

- (4) City Council delegates to the Director the authority to approve up to \$ _____ in supplemental allocations for this Agreement without returning to Council.

(5) 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. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor'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.

E. Changes

- (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 or she may find necessary to accomplish the general purposes of this Agreement. Contractor 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.
- (2) The Director will issue the Change Order in substantially the following form:

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

CHANGE ORDER

TO: [Name of Contractor]
FROM: City of Houston, Texas (the "City")
DATE: [Date of Notice]
SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] 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 Contractor provide the following:

**[Here describe the additions to or changes to the equipment
or services and the Change Order Charges applicable to each.]**

Signed:

[Signature of Director]

- (3) The Director may issue more than one Change Order, subject to the following limitations:
 - (a) Council expressly authorizes the Director to approve a Change Order of up to \$50,000. A Change Order of more than \$50,000 must be approved by the City Council.
 - (b) If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.
 - (c) The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.
- (4) Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The Director's decision regarding a time extension is final.
- (5) A product or service provided under a Change Order is subject to inspection, acceptance, or rejection

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

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.

- (6) Change Orders are subject to the Allocated Funds provisions of this Agreement.

F. Access to Site

The Airport will provide access to the pick-up site. Subject to FAA, TSA and HAS rules and regulations, Contractor may enter and leave work sites at all reasonable times without charge. Contractor and its employees may use the common areas and roadways at the Airport where the work sites are located. This excludes parking for Contractor's personnel and does not extend to any restricted area of the Airport, including without limitation, the AOA, which requires the Director's prior written approval and an HAS escort. Contractor shall repair any damage caused by it or its employees, suppliers or subcontractors as a result of their use of the common areas.

G. Inspection of Contractor Equipment

The Airport will assume no responsibility for the Contractor's property.

IAH Management has the right to inspect equipment, containers, and/or trucks for disrepair/contamination. If found to be in poor condition (disrepair, contaminated, etc), equipment/trucks/containers will not be loaded and turned away with costs borne by the Contractor, at the sole discretion of IAH Management. The Airport will not be responsible for any costs associated with delays caused by delivery of inadequate equipment/trucks/containers.

V. TERM AND TERMINATION

A. Contract Term

Unless sooner terminated in accordance with the terms and conditions herein, the term of this Agreement shall commence on the Effective Date and shall continue for a term of three (3) years.

B. Notice to Proceed

Contractor shall begin performance under this Agreement on the date specified in a Notice to Proceed from the Director.

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

B. Renewals

Upon expiration of the initial Term and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two successive one-year terms on the same terms and Conditions. If the Director of the City Department elects not to renew this Agreement, the City Purchasing shall notify Contractor in writing of non-renewal at least 30 days before the expiration of the then-current term.

D. Termination for Convenience by the City

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

On receiving the notice, Contractor 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, Contractor 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 Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section IE unless the fees exceed the allocated funds remaining under this Agreement. TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR 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.

E. Termination for Cause by City

If Contractor defaults under this Agreement, the Director may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by

Contractor occurs if:

- (1) Contractor fails to perform any of its duties under this Agreement;
- (2) Contractor becomes insolvent;
- (3) all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
- (4) a receiver or trustee is appointed for Contractor.

If a default occurs, the Director may, but is not obligated to, deliver a written notice to Contractor 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 the Director allows Contractor to cure the default and Contractor does so to the Director's satisfaction before the termination date, then the termination is ineffective. If Contractor 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.

To effect final termination, the Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

F. Termination for Cause by Contractor

Contractor 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 Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date. The date must be at least 30 days after the Director receives notice. Contractor, 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 Contractor may terminate its performance under this Agreement on the termination date.

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

VI. MISCELLANEOUS

A. Independent Contractor

Contractor is an independent contractor and shall perform the services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Contractors' performance under this Agreement. All personnel Contractor uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all worker's compensation benefits coverage.

C. Force Majeure

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 Contractor. 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 Contractor, 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 Contractor to extra Reimbursable Expenses or payment.
2. This relief is not applicable unless the affected party does the following:

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

- (a) uses due diligence to remove the Force Majeure as quickly as possible and to continue its performance notwithstanding the Force Majeure; and
 - (b) provides the other party with prompt written notice of the cause and its anticipated effect.
3. The Director will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days. The decision of the Director is final.
 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.
 5. If the Force Majeure continues for more than 14 days, the Director may terminate this Agreement by giving 7 days' written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.**

C. Severability

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

D. Entire Agreement

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind exist between the Parties regarding this Agreement.

E. Written Amendment

Unless otherwise specified elsewhere in this Agreement, this Agreement maybe amended only by written instrument executed on behalf of the City (by authority of an ordinance duly adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

F. Applicable Laws

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction. Venue for any litigation relating to this Agreement is Harris County, Texas.

G. Notices

All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom notice is given at its address set out in Section A of this Agreement or at such other address as the receiving party designates by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

H. Captions

Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

I. Non-Waiver

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.

An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

J. Inspections and Audits

City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least four years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

Notwithstanding anything herein to the contrary, the City shall have the right to audit all costs and underlying expenses relating to the Contractor's performance under this Agreement, including but not limited to, the Cost of the Work. It is understood and agreed by the City that should an audit be conducted of salaries, the City shall take all reasonable precautions to ensure confidentiality of the salary cost information obtained.

K. Enforcement

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

L. Ambiguities

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

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

M. Survival

Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

N. Publicity

Contractor shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the Director.

O. Parties In Interest

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

P. Successors and Assigns

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

Q. Business Structure and Assignments

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

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

R. Remedies Cumulative

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

S. Contractor Debt

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

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

EXHIBIT "A"

SCOPE OF SERVICES

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

EXHIBIT "B"

FEES

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

EXHIBIT "C"
EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

EXHIBIT "D"

MWBE SUBCONTRACT TERMS

NON-APPLICABLE

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

EXHIBIT "E"

PERFORMANCE BOND

NON-APPLICABLE

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT

SOLICITATION NO.: S44-L24129

EXHIBIT "F"

DRUG POLICY COMPLIANCE AGREEMENT

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

(Name of Company) (Contractor)

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

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

Contractor Name

Signature

Title

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT

SOLICITATION NO.: S44-L24129

EXHIBIT "G"

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

I, _____, _____,
(Name) (Title)

as an owner or officer of _____ (Contractor)
(Name of Company)

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

in performing _____.
(Project)

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

(Date)

(Typed or Printed Name)

(Signature)

(Title)

**GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129**

EXHIBIT "H"

DRUG POLICY COMPLIANCE DECLARATION

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

(Name of Company) (Contractor)

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

This reporting period covers the preceding 6 months from _____ to _____, 20____.

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

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

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

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

_____ From _____ to _____ the following testing has 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
Initials consistent with the Mayor's Policy and Executive Order No. 1-31.

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

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

(Date)

(Typed or Printed Name)

(Signature)

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S44-L24129

EXHIBIT "I"

PAY OR PLAY PROGRAM

(Will Be Inserted In Original Contract)

**RESPONSIVENESS & RESPONSIBLENESS EVALUATION ASSESSMENT
SOLICITATION NO.: S44-L24129**

To simplify the review process and to obtain the maximum degree of comparability, the Offeror(s) must provide the responses to the items set forth below and include this information as requested in their bid packet; to allow for the evaluation committee to conduct a thorough assessment of the Offeror(s) experience and capabilities. Moreover, Offeror(s) are encouraged to include additional relevant and supporting information to demonstrate their qualifications.

1.0 EXPERTISE/EXPERIENCE/QUALIFICATION STATEMENT:

- 1.1 Provide a brief statement describing the Offeror's background information, history, resources and/or track record. Please limit to three (3) pages.
- 1.2 Provide an organizational chart of proposed team or staff for this project.
- 1.3 Provide resumes of key personnel whom will be responsible for the delivery of the services/project.
- 1.4 Provide copies of key personnel certifications and/or licenses.

2.0 FINANCIAL STATEMENTS:

- 2.1 Submit your company's audited annual financial statements, in accordance with and as defined in the Financial Accounting Standards Board (FASB) regulation(s) for the past two years. In addition, include your and Dunn & Bradstreet Report or Federal Tax Forms Filed to the Internal Revenue Service (IRS) for the past two years.

3.0 SITE INSPECTION:

- 3.1 The City of Houston reserves the right to inspect the bidder's current place of business to evaluate equipment condition and capabilities, staff experience, training and capabilities, and storage capabilities as they relate to the performance of this contract.

4.0 QUALITY AND WORKMANSHIP:

- 4.1 The bidder must be able to demonstrate upon request that it has satisfactorily performed services similar to the services specified herein. The bidder will provide records of warranty and repair services upon request by City. The City of Houston shall be the sole judge as to whether the services performed are similar to the scope of services contained herein and whether the bidder is capable of performing such services.

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EVALUATION AND SELECTION PROCESS
SOLICITATION NO.: S44-L24129

1.0 EVALUATION SUMMARY:

1.1 An evaluation committee will develop a short list of Offeror(s) based upon the initial review of each Bid received. The short listed Offeror(s) may be scheduled for a structured oral presentation, demonstration, site visit and/or interview. Such presentations will be at no cost to the City of Houston. At the end of the oral presentation, demonstration and/or interview, the evaluation of the short listed Offeror(s) will be completed. However, the evaluation committee reserves the right to issue letter(s) of clarity when deemed necessary to any or all Offeror(s). The oral presentations, demonstrations, site visits and/or interview may be recorded and/or videotaped.

2.0 SELECTION PROCESS:

2.1 The award of this Contract(s) will be made to the respondent(s) offering the response which best meets the needs of the City. The City may make investigations, as it deems necessary, to determine the capabilities of the Offeror(s) to create, modify and implement the required application modules. The Offeror(s) shall furnish to the City such data as the City may request for this purpose. The City reserves the right to reject any offer if the evidence submitted by or the investigation of the Offeror(s) fails to satisfy the City or the Offeror(s) is deemed unqualified to provide the services contemplated. Each Offeror will be evaluated on the basis of the following evaluation criteria that are listed in order of importance below:

| | | |
|-------|---|-----|
| 2.1.1 | Expertise/Qualifications & Reputation | 35% |
| 2.1.2 | Price | 30% |
| 2.1.3 | General Conformity with Statement of Work | 20% |
| 2.1.5 | Financial Strength & Stability of Offeror | 15% |

* Hire Houston First Preference Points (City Business = five (5) extra percentage points or Local Business = three (3) extra percentage points and Non-City and Non-Local Business will receive zero (0) extra percentage points).

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EXHIBIT I – CONTRACTOR’S QUESTIONNAIRE
SOLICITATION NO.: S44-L24129

In order to receive bid award consideration, the bidder must be able to demonstrate that they are currently providing or have had at least one contract, as a prime contractor, for the required Services that is similar in size and scope to this BVB requirements. Bidder must have references documenting that it has performed the required BVB services. The reference(s) should be included in the space provided below. Please attach another piece of paper if necessary. **Bidder’s capability and experience shall be evaluated and a factor in determining the Contractor’s responsibility.**

LIST OF PREVIOUS CUSTOMERS

1. Name: _____ Phone No.: _____
Address: _____
Contract Award Date: _____ Contract Completion Date: _____
Contract Name/Title: _____
Project Description: _____

2. Name: _____ Phone No.: _____
Address: _____
Contract Award Date: _____ Contract Completion Date: _____
Contract Name/Title: _____
Project Description: _____

3. Name: _____ Phone No.: _____
Address: _____
Contract Award Date: _____ Contract Completion Date: _____
Contract Name/Title: _____
Project Description: _____

**EXHIBIT II – MINORITY/WOMEN BUSINESS ENTERPRISES
CONTRACT REQUIREMENTS
SOLICITATION NO.: S44-L24129**

NON-APPLICABLE