



# CITY OF HOUSTON INVITATION TO BID

Issued: November 16, 2012

## **BID OPENING**

Sealed bids, in duplicate, and one (1) additional electronic CD copy of the bids will be received by the City Secretary of the City of Houston, in the City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002, until **10:30 a.m., Thursday, December 13, 2012** and all bids will be opened and publicly read in the City Council Chamber, City Hall Annex, Public Level, 900 Bagby at 11:00 AM on that date for the purchase of:

**LIGHTING MAINTENANCE SERVICES  
FOR THE HOUSTON AIRPORT SYSTEM  
BID INVITATION NO.: S30-L24434  
NIGP CODE: 968-90**

## **BUYER**

Questions regarding this solicitation document should be addressed to Richard Morris at **832.393.8736**, or e-mail to [richard.morris@houstontx.gov](mailto:richard.morris@houstontx.gov).

## **ELECTRONIC BIDDING**

In order to submit a bid for the items associated with this procurement, vendor must fill in the pricing information on the "**PLACE BID**" page.

## **PRE-BID CONFERENCE**

Pre-Bid Conference will be held for all Prospective Bidders at Supply Chain Management, 18600 Lee Road Humble, Texas 77338, Conference Room 113 at 10:00 AM on Wednesday, November 28, 2012. All Prospective Bidders are urged to be present. It is the bidder's responsibility to ensure that they have secured and thoroughly reviewed the solicitation documents prior to the Pre-Bid Conference. Any revisions to be incorporated into this solicitation document arising from discussions before, during and subsequent to the Pre-Bid Conference will be confirmed in writing by Letter(s) of Clarification prior to the bid due date. Verbal responses will not otherwise alter the specifications, terms and conditions as stated herein.

## **SITE VISIT**

Although the site visit is not mandatory, the Bidder is responsible for obtaining the information discussed at the site visit. Site visit at Bush Intercontinental Airport will be held November 28, 2012 immediately following the Pre-Bid Conference. Site visit will start at Supply Chain Management, 18600 Lee Road, Humble, TX 77338 in the main lobby. Transportation will be provided by the Houston Airport System. All Prospective Bidders are urged to be present. Bidding forms, specifications, and all necessary information should be downloaded from the Internet at <https://purchasing.houstontx.gov/>. By registering and downloading this solicitation document, all updates to this solicitation document will be automatically forwarded via e-mail to all registered Bidders. This information may also be obtained from the Supplier Assistance Desk, Strategic Purchasing Division, 901 Bagby (Concourse Level), Houston, Texas 77002. The place of the bid opening may be transferred in accordance with Paragraph (b), (5) of Section 15-3 of The Code of Ordinances, Houston, Texas. The bid opening meeting may be rescheduled in accordance with Paragraph (b), (6) of said Section 15-3. **The City reserves the right to reject any or all bids or to accept any bid or combination of bids deemed advantageous to it.** City Employees are prohibited from bidding on this solicitation in accordance with the Code of Ordinances, Section 15-1.

## **\*CONTENTS:**

SECTION A: OFFER SECTION B: SCOPE OF WORK/SPECIFICATIONS SECTION C: GENERAL TERMS & CONDITIONS

**\*NOTE :** Actual page numbers for each Section may change when the solicitation document is downloaded from the Internet or because of Letters of Clarification. Therefore, Bidders must read the bid document in its entirety and comply with all the requirements set forth therein. To be considered for award, please submit the electronic bid form and the forms listed in Section A, including the Official Signature Page, which must be signed by a company official authorized to bind the company.

**SECTION A**



**LIGHTING MAINTENANCE SERVICES  
FOR THE HOUSTON AIRPORT SYSTEM  
BID INVITATION NO.: S30-L24434  
NIGP CODE: 968-90**

To The Honorable Mayor  
and Members of the City Council  
of the City of Houston (the "City"), Texas:

The undersigned Bidder hereby offers to contract with the City upon the terms and conditions stated in that certain "**Contract for lighting maintenance services for a three-year period with two (2) one-year option periods to extend for the Houston Airport System**" which was distributed by the City together with the "Notice to Bidders" and is hereby incorporated herein by this reference (the "contract"). This offer is made at the prices stated on the electronic bid form. When issued by the City of Houston, Letters of Clarification shall automatically become part of this bid document and shall supersede any previous specifications or provisions in conflict with the Letters of Clarification. It is the responsibility of the Bidder to ensure that it has obtained all such letters. By submitting a bid on this project, Bidder shall be deemed to have received all Letters of Clarification and to have incorporated them into its bid.

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 180<sup>th</sup> 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 181<sup>st</sup> day unless the parties mutually agree to an extension of time in writing.

The City of Houston reserves the option, after bids are opened, to increase or decrease the quantities listed, subject to the availability of funds, and/or make award by line item.

If the City accepts the foregoing offer, this Bidder promises to deliver to the City Purchasing Agent of the City, five (5) original counterparts of said contract duly executed by this Bidder (as "Contractor") in accordance with this paragraph, proof of insurance as outlined in Article II of the contract, all on or before the tenth (10<sup>th</sup>) day following the day this Bidder receives from the City the unsigned counterparts shall be executed so as to make it binding upon the Bidder, and all of the applicable requirements stated in the document entitled "Instructions for Execution of Contract Documents," (which was distributed by the City) shall be complied with.

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 in the best interest of the City.

If the City accepts the foregoing offer, this Bidder shall furnish all labor, supervision, materials, supplies, equipment and tools necessary to provide lighting maintenance services for the City in accordance with attached specifications.

**Documents/forms must be downloaded from the City's Website at <http://purchasing.houstontx.gov/forms.shtml>**

**Additional Required Forms to be included with this Bid:**

In addition to the Electronic Bid Form and the Official Signature Page, the Forms listed in Table 1 **must be completed and submitted to the Office of the City Secretary on or before the date and time the bid is due.** When submitting bids via UPS/FedEx, etc. please label it with the name: Office of the City Secretary, City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002, along with the bid/proposal number:

<b>TABLE 1 - REQUIRED FORMS</b>
Affidavit of Ownership.doc
Fair Campaign Ordinance.doc
Statement of Residency.doc
Conflict of Interest Questionnaire.doc
Pay or Play Program Acknowledgement Form
Pay or Play Certification of Agreement to Comply w' the Program
Contractor's Questionnaire
Hire Houston First Application and Affidavit

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:

<b>TABLE 2 - DOCUMENTS &amp; FORMS</b>
Drug Forms.doc
EEOC.doc
Formal Instructions for Bid Terms.doc
M/WBE.doc
Sample Insurance Over \$50,000.pdf
Insurance Endorsements
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

Questions concerning the bid should be submitted in writing to: City of Houston, Strategic Purchasing Division, 901 Bagby, Room B-500, Houston, TX 77002, Attn: Richard Morris (or) by fax: 832.393.8736 or by e-mail (preferred method) to **[richard.morris@houstontx.gov](mailto:richard.morris@houstontx.gov)**. **no later than 3:00 p.m., Monday, December 3, 2012.**

**CONTRACTOR'S QUESTIONNAIRE**

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 lighting maintenance services that is similar in size and scope to this Contract. **Bidder must have references documenting that it has performed lighting maintenance 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 a factor in determining the Contractor's responsibility.**

1. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City & State: \_\_\_\_\_  
Name & Phone Number of Contact: \_\_\_\_\_ Years of Services: \_\_\_\_\_
  
2. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City & State: \_\_\_\_\_  
Name & Phone Number of Contact: \_\_\_\_\_ Years of Services: \_\_\_\_\_
  
3. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City & State: \_\_\_\_\_  
Name & Phone Number of Contact: \_\_\_\_\_ Years of Services: \_\_\_\_\_

**SITE INSPECTION**

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.

**QUALITY AND WORKMANSHIP**

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.

**PROTEST**

A protest shall comply with and be resolved, according to the City of Houston Procurement Manual [http://purchasing.houstontx.gov/docs/Procurement\\_Manual.pdf](http://purchasing.houstontx.gov/docs/Procurement_Manual.pdf) and rules adopted thereunder. Protests shall be submitted in writing and filed with both, the City Attorney and the Solicitation contact person. A pre-award protest of the ITB shall be received five (5) days prior to the solicitation due date and a post-award protest shall be filed within five (5) days after City Council approval of the contract award.

A protest shall include the following:

- The name, address, e-mail, and telephone number of the protester;
- The signature of the protester or its representative who has the delegated authority to legally bind its company;
- Identification of the ITB description and the ITB or contract number;
- A detailed written statement of the legal and factual grounds of the protest, including copies of relevant documents, etc.; and
- The desired form of relief or outcome, which the protester is seeking

#### **LOBBYING AND OTHER FORMS OF INFLUENCE PROHIBITED**

Neither Bidder(s) nor any person acting on Bidder(s)'s behalf shall attempt to influence the outcome of the award by the offer, presentation or promise of gratuities, favors, or anything of value to any appointed or elected official or employee of the City of Houston, their families or staff members. All inquiries regarding the solicitation are to be directed to the designated City Buyer identified on the first page of the solicitation. Upon issuance of the solicitation through the pre-award phase and up to the award, aside from Bidder's formal response to the solicitation, communications publicly made during the official pre-bid conference, written requests for clarification during the period officially designated for such purpose by the City Buyer, neither Bidder(s) nor persons acting on their behalf shall communicate with any appointed or elected official or employee of the City of Houston, their families or staff through written or oral means in an attempt to persuade or influence the outcome of the award or to obtain or deliver information intended to or which could reasonably result in an advantage to any Bidder. However, nothing in this paragraph shall prevent Bidder from making public statements to the City Council body convened for a regularly scheduled session after the official selection has been made and placed on the City Council agenda for action.

#### **HIRE HOUSTON FIRST**

##### **Designation as a City Business or Local Business**

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

<http://www.houstontx.gov/hbsc/hirehoustonfirstaffidavit.pdf>

##### **Award of a Procurement of \$100,000 or More for Purchase of Goods:**

THE CITY WILL AWARD THIS PROCUREMENT TO A "CITY BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")

- IF THE BID OF THE CITY BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD

THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER.

**Award of Procurement under \$100,000 for Purchase of Goods:**

THE CITY WILL AWARD THIS PROCUREMENT TO A "CITY BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")

- IF THE BID OF THE CITY BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 5% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

**Award of Procurement that may be More or Less than \$100,000 for Purchase of Goods:**

THE CITY WILL AWARD THIS PROCUREMENT TO A "CITY BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")

- IF THE BID OF THE CITY BUSINESS IS LESS THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 5% OF THE LOWEST BID RECEIVED, OR
- IF THE BID OF THE CITY BUSINESS IS MORE THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER.

**Award of Procurement of \$100,000 or More for Purchase of Non-Professional Services , Including Construction Services:**

THE CITY WILL AWARD THIS PROCUREMENT TO A "CITY BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")

- IF THE BID OF THE LOCAL BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A LOCAL BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

**Award of Procurement under \$100,000 Purchase of Non-Professional Services Including Construction Services:**

THE CITY WILL AWARD THIS PROCUREMENT TO A "LOCAL BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES

- IF THE BID OF THE CITY BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 5% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A LOCAL BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

**Award of Procurement that may be More or Less than \$100,000 for Purchase of Non-Professional Services, Including Construction Services:**

THE CITY WILL AWARD THIS PROCUREMENT TO A "LOCAL BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")

- IF THE BID OF THE LOCAL BUSINESS IS LESS THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 5% OF THE LOWEST BID RECEIVED, OR
- IF THE BID OF THE LOCAL BUSINESS IS MORE THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A LOCAL BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

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**SECTION B**  
**SCOPE OF WORK/SPECIFICATIONS**

**1.0**      **BACKGROUND**

- 1.1      This Agreement is for lighting maintenance services for the Houston Airport System (hereinafter referred to as "HAS"). These services serve a vital role in the efficient operation of the Houston Airport System.
- 1.2      The Houston Airport System (HAS) operates the City of Houston's three (3) Airports:
- George Bush Intercontinental Airport/Houston (IAH)
  - William P. Hobby Airport (HOU)
  - Ellington Airport (EFD)
- 1.3      Services requested include on-site staff to perform Work at IAH during shifts as directed by HAS.

**2.0**      **PERFORMANCE WORK STATEMENT**

**2.1**      **GENERAL**

- 2.1.1      For and in consideration of the payment specified in this Agreement, the Contractor shall provide Lighting Maintenance Services, i.e. "The Work" for the Houston Airport System (HAS).
- 2.1.2      Contractor shall provide all services, management, supervision, labor, equipment, tools, instruments, supplies, expendable items, incidentals, insurance, transportation, and training necessary to provide lighting maintenance services.
- 2.1.3      All Work shall be in accordance with the highest standards prevailing in the industry, as well as applicable codes, rules, regulations, laws, and practices governing the Work. These standards will be achieved by continuous improvement through open communications with HAS, regular management reviews and industry guidelines.
- 2.1.4      Contractor shall respond 15 minutes or less at IAH during normal work hours (7am to 3:30 pm) to a request from the Director for emergency services and perform all steps reasonably necessary to protect persons and property from risk of harm due to a problem with the lighting. The Contractor shall give first priority to HAS requests for emergency service.
- 2.1.5      Contractor shall provide designated on-site staff to perform Work at IAH during shifts as directed by HAS.
- 2.1.6      The Work provided by the Contractor under this Agreement shall include Basic Services and Other Work/Services.
- 2.1.7      Contractor shall perform Work at HOU and EFD on an on-call basis.
- 2.1.8      HAS will provide the Contractor with adequate office and storage area at IAH. HAS will not provide an office or a storage facility at HOU or EFD. The Contractor at its own expense

to provide housekeeping services for the office and storage space provided.

**3.0 SCOPE OF BASIC SERVICES:**

3.1 At IAH, the Contractor shall perform daily surveys during daytime hours and report any lamps or fixtures requiring maintenance. Contractor's personnel shall report daily to IAH Facilities Management to establish daily work plans detailing which areas will be serviced and which lighting components will be replaced and/or repaired during the work day. HAS personnel shall pick up or deliver materials needed to complete work.

3.2 In coordination with Facilities Management the Contractor shall submit a Materials Request form to HAS personnel assigned to pick up materials from the warehouse located at Supply Chain Management, 18600 Lee Road, Humble, TX 77338 on IAH property. Contractor is responsible for the material at time of delivery to complete installation. If at any point during transportation or installation the material is damaged, Contractor shall replace material at no additional cost to HAS.

3.3 Labor rates are inclusive of all support staff, tools, equipment including, but not limited to, scissor lifts (at least 15 feet high), bucket trucks, high-reach lifting devices (at least 80 feet high), narrow lift (pass through 36" door, at least 15 feet high), insurance, transportation and other incidentals required to accomplish the Work.

3.4 Contractor shall furnish office equipment, such as computers and printer to receive maintenance requests generated by HAS. Printer shall be located in Contractor's on-site office at IAH. Printer shall be able to print, scan, copy, and fax.

**3.5 SPECIFIC TASKS**

Contractor shall provide properly qualified and licensed personnel to:

3.5.1 Inspect lighting systems to detect components that have electrical and/or mechanical defects, detect lamps and fixtures that are not clean, and detect any dirt or debris on lamps that may contribute to light depreciation.

3.5.2 Replace any lamps, ballasts, wiring, photoelectric cells, sockets, fusing, fixtures and other lighting components that are defective or not operating at optimum levels.

3.5.3 Replace cracked and/or damaged light diffusers and globes with like or acceptable equivalent.

3.5.4 Contractor shall replace light(s) if light does not work or function properly after installation, Contractor shall check ballast prior to reporting light failure to Facilities Management or Airport Communication Center (ACC).

3.5.5 Clean all lamps, fixtures, diffusers, globes, and other light-reflecting surfaces when replacing lamps or ballasts to ensure that any dirt or debris that may contribute to light depreciation is removed.

- 3.5.6 Identify and report discolored light diffusers and globes.
- 3.5.7 Repair light fixtures, including photoelectric cells on individual pole lamps as well as photoelectric cells controlling multiple fixtures.
- 3.5.8 Test and maintain designated emergency lighting systems.
- 3.5.9 Provide quarterly reports of tests and system repairs.

3.6 PREVENTIVE MAINTENANCE (PM)

- 3.6.1 As a part of Basic Services, the Contractor shall perform PM to prevent the occurrence of lighting failures and to keep the lighting in first-class operating condition. The Contractor shall perform PM in accordance with the latest OEM technical and user manuals, service bulletins, service advisories, product/service information updates, and all such other OEM published information pertaining to the maintenance of the lighting, as well as evidenced by Contractor's experience and knowledge of similar or like maintenance and equipment, and as specified herein. The Contractor shall begin providing PM for the lighting maintenance immediately after Contractor's receipt of Notice to Proceed. At the discretion of the Director, the PM can be adjusted as needed.
- 3.6.2 Contractor shall develop routine PM Schedules for the Lighting Maintenance Services in accordance with this Agreement. The Contractor's PM Schedules must include all regular or repetitive maintenance tasks and service intervals. Contractor shall develop routine PM Schedules for the Director's approval. Contractor shall submit its proposed PM Schedules to the Director for approval within thirty (30) days after receipt of the Notice to Proceed. The Contractor's PM Schedules and procedures must cover each functional area and overall operation, must include inspections, and preventive maintenance schedules.
- 3.6.3 PM includes all inspections to detect components that have electrical and/or mechanical defects, scheduled service routines; replacement of worn, damaged, or destroyed lamps, ballasts, wiring, photoelectric cells, sockets, fusing, fixtures, and other lighting components that are defective or not operating at optimum levels. In addition to all OEM requirements and schedules, PM includes, but is not limited to:
  - 3.6.3.1 An annual inspection of all wiring and wiring connections in lighting, identify and repair problems as required to ensure safety and reliability of operation.
  - 3.6.3.2 An annual service inspection of lighting mechanisms, and any other Lighting Maintenance Services to include adjusting and repairing as required to ensure safety and reliability of operation.
  - 3.6.3.3 Thorough cleaning and inspection of all lamps, fixtures, diffusers, globes, and other light-reflecting surfaces as required to ensure safe and efficient operation and appearance.
  - 3.6.3.4 In coordination with Facilities Management replace burnt out bulbs, cracked and/or damaged

light diffusers and globes to maintain an original appearance.

3.7 REMEDIAL MAINTENANCE (RM)

3.7.1 As a part of Basic Services, the Contractor shall perform RM to keep the Lighting Maintenance Services in First Class Condition. The Contractor shall make repairs and replace related components, parts, and appurtenances that have failed, no longer perform reliably, and have worn beyond safe tolerances. Contractor shall respond 30 minutes or less to any defect or malfunction that would reduce the lighting operating efficiency below OEM specifications and specified performance standards. At the discretion of the Director, the RM can be adjusted as needed.

3.7.1.1 Contractor shall notify the Director 30 minutes or less of all lighting problems effecting operations or passenger safety, the action to be taken, and an estimate of a time frame to accomplish the repair. Contractor shall notify the Director again when repairs are completed and the lighting returned to operational status.

3.7.1.2 Contractor shall respond to HAS' requests for emergency service with a journeyman electrician on-site 15 minutes or less after notification for any defect or malfunction that renders the lighting incapable of performing at its normal, acceptable operating level, or for circumstances which impact passenger safety. In such cases, the Contractor shall work continuously without regard for usual business hours until the malfunctions are corrected.

3.8 HAS-FURNISHED MATERIALS

HAS will furnish the following materials to Contractor for the performance of the work. This list may not be all inclusive of materials.

- 3.8.1 Lamps
- 3.8.2 Ballasts
- 3.8.3 Wiring
- 3.8.4 Wire Connector
- 3.8.5 Photoelectric Cells
- 3.8.6 Sockets
- 3.8.7 Fusing
- 3.8.8 Fixtures

3.9 OBTAINING HAS-FURNISHED MATERIALS

3.9.1 Contractor shall coordinate with Facilities Management to obtain materials furnished by HAS and must ensure that adequate materials are at work locations in order to ensure first-class performance of work.

3.9.2 In the event HAS is unable to secure materials the Contractor shall be notified. Contractor shall then place order within two (2) days of notice. Contractor shall be compensated at cost plus mark-up. Contractor shall submit invoice for the same month the parts were used. The

supplier's invoice must be submitted with the contractor's invoice. Contractor shall make every effort to find the best price for HAS.

3.10 **CONTROL OF HAS-FURNISHED MATERIALS**

3.10.1 HAS has the right to conduct inspections on all parts, materials and incidentals furnished to the Contractor under this Agreement.

3.11 **DISPOSAL OF USED PARTS**

3.11.1 Contractor shall dispose of all burn out/worn/defective lighting, scrap parts, and waste or hazardous materials in a safe manner and in accordance with the most recent and effective procedures. The Contractor shall act prudently in all aspects of handling, transporting, and disposal of burn out/worn/defective lighting, scrap parts, and waste or hazardous materials to ensure the highest level of safety to the environment and to public health.

3.11.2 Contractor shall secure all licenses and permits and provide any required documentation associated with hazardous materials as required by law.

3.11.3 Contractor shall ensure that any disposal facilities to which any lighting, scrap, waste, or hazardous materials may be moved are in full compliance with federal, state, and local laws and regulations. The Texas Commission on Environmental Quality, Universal Waste Regulations on recycling is the preferred disposal approach for fluorescent and HID lamps that contain toxic substances.

3.11.4 Burn out, worn, and defective lighting, and parts must not be stored on Airport premises. The Contractor shall notify the Director when these waste or hazardous materials are to be removed from HAS property.

**4.0 SERVICE SURVEYS - IAH**

4.1 Daylight Hours – Daily: Conduct inspections of designated interior and exterior locations for electrical and mechanical discrepancies. Provide HAS with daily reports.

4.2 **SERVICE COVERAGE: (EXHIBIT BB)**

4.3 **WORK SHIFTS**

4.3.1 All work will be directed by Facilities Management who will issue work orders. As service areas increase or decrease, the Contractor shall provide the number of employees required to fulfill Contractor's obligations under this Agreement.

4.3.2 Contractor shall be available to maintain Lighting Maintenance Services, on a 24 hour-per-day, 365 day-per-year basis upon request, including holidays, using Contractor's personnel, subcontractor services, and any other vendors required for providing complete, safe and efficient lighting maintenance services. The Contractor shall ensure that the Lighting Maintenance and

related equipment is operated at all times in accordance with best practices prevailing in the industry, observing OEM recommended procedures and complying with applicable Occupational Safety and Health Act (OSHA) and other applicable municipal, state, and federal safety standards.

4.3.3 On-Site

4.3.3.1 1<sup>st</sup> Shift: One (1) Journeyman Electrician Monday through Friday: 7:00 a.m. to 3:30 p.m. (including 30 minutes of unpaid lunch break) minimum staffing required.

4.3.3.2 3<sup>rd</sup> Shift: One (1) Journeyman Electrician, three (3) Apprentice Electrician(s) Monday through Friday: 11:00 p.m. to 7:30 a.m. (including 30 minutes of unpaid lunch break) minimum staffing required.

Note: 1<sup>st</sup> Shift supervisor shall come in at 7:00 a.m. in order to have 30 minutes to meet with 3<sup>rd</sup> shift crew. It will improve communication.

4.3.4 On-Call Emergency (OCE)

4.3.4.1 Contractor shall respond to Service Requests on any shift within four (4) hours after notification by HAS. The Contractor shall provide enough personnel to complete the work as approved by the Director.

**5.0 RESPONSE REQUIREMENT/SERVICE CREDITS**

5.1 Work Orders should be completed within twenty four (24) business hours after notification by HAS.

5.2 Daily Inspection Reports should be completed within one (1) business day.

5.3 Exterior Lift Work should be completed within seven (7) business days of report.

5.4 Service Credits will be invoked if the Contractor does not complete work within the allotted time as indicated above. A fee of \$50.00 for each 24 business hours until work is completed. Monthly service credits will be an agenda item at each monthly meeting and will be deducted from the following monthly invoice.

5.5 Service Credits will be invoked if Contractor fails to submit reports within fifteen (15) days following the period being reported. A fee of \$50.00 per day until report is provided. Monthly service credits will be an agenda item at each monthly meeting and will be deducted from the following monthly invoice.

5.6 At the Director's discretion, Service Credits may be applied. Multiple Service Credits may be applicable.

**6.0 DEMARCATIION POINTS – CONTRACTOR'S AREA OF RESPONSIBILITY**

- 6.1 Lighting Fixtures: From the power source point of entry into the fixture.
- 6.2 Pole Lights: From the power source point of entry into the electrical junction box at the base of the pole. For all branch circuit conductors, devices, and associated hardware: from the point of entry on the base of the pole, to the point of termination into the fixture being served.

**7.0 OTHER WORK/SERVICES**

7.1 General

Within the general scope of this Agreement, Other Work/Services may be required to meet desired conditions and/or services not covered in the Basic Services of this Agreement. The Contractor shall perform Other Work/Services in accordance with all provisions of this Agreement plus any special provisions issued with authorization for work. With the exception of Emergency Service Requests, where a request may be verbal and followed immediately in writing, all requests for Other Work/Services will be in writing in the form of an Other Service Request (OSR) provided by the Director and signed by the Director. The Contractor shall perform Other Work/Services to the same standards identified for Basic Services.

7.2 Performing Other Work/Services

Other Work/Services shall be performed in accordance with all provisions of this Agreement and any special provisions issued with the Other Service/Request (OSR).

7.2.1 Before issuing an OSR, the Director will first issue a written notice to the Contractor detailing the specific OSR to be performed by the Contractor.

7.2.2 In response to any such written notice, the Contractor shall provide the Director with a written Agreement within three (3) business days of receipt of OSR. The Contractor shall include a description of the services to be performed, applicable labor rates, estimated labor hours, performance schedule, total estimated cost, and any other requirements set forth in the written notice to the Contractor.

7.2.3 Contractor shall furnish all labor, tools, equipment, transportation, and incidentals for accomplishing the described services or as otherwise specified by the Director. The Director will not approve an OSR without a specified completion date. The Contractor shall complete all such Other Work/Services within the time specified in the OSR. The Contractor can request in writing an extension to the completion date. However, the Director may or may not allow the extension. Director's decision is final.

7.2.4 Upon receipt of the Contractor's Agreement, the Director has the option to reject Contractor's Agreement, require resubmission with revised or additional information, or issue an OSR. Should the Director reject the Contractor's Agreement and require resubmission, the Contractor shall resubmit a modified Agreement within three (3) business days of the rejection.

7.2.5 Upon approval by the Director of the modified Agreement, an OSR will be issued. The Contractor shall commence as stated in the OSR. The Contractor shall diligently work to completion in

accordance with the terms and conditions of this Agreement and the approved OSR.

- 7.2.6 Labor costs must not exceed the rate stated in the contract fee schedule.
- 7.2.7 Other Work/Services will be performed on an as-needed basis which include but not limited to the following task:
1. Build scaffold over escalators
  2. HAS – Approved Computerized Maintenance Management Software (CMMS) vendor (Article 9.3.2).
  3. Neon lights manufacturing and replacement in Terminal C and Terminal D. Except if covered under warrants.
- 7.2.8 Prices for equipment, supplies, and sub-contracted requirements which may be required for authorized Other/Work Services shall be the Contractor's actual cost plus mark-up. Copies of invoices from the Contractor's suppliers for these items shall be submitted with Contractor's invoices at the time of submittal to HAS for payment. The mark-up percentage stated shall not increase during the term of this Agreement. The quantity of equipment, parts, and supplies will depend on the needs of HAS.
- 7.2.9 Should a required service exceed \$3,000, the Contractor shall obtain three (3) itemized bids/estimates within three (3) business days from separate/different vendors/suppliers, for the required equipment, supplies, and sub-contracted items. The Contractor shall submit the bids/estimates to the Director and obtain written approval from Director before proceeding with the Work. The Contractor shall be compensated at cost plus mark-up.
- 7.2.10 After completion of Other Work/Services, a copy of the approved OSR shall accompany the monthly invoice.
- 7.2.11 While performing Work on any OSR, if hidden damage or additional cost is discovered, the Contractor shall notify the Director immediately. After determining the extent of hidden damage a supplemental OSR must be submitted.
- 7.2.12 Contractor shall submit to Director, copies of original purchase orders and invoices evidencing Contractor's acquisition costs.
- 7.2.13 In the case of emergency services, the Contractor may perform Other Work/Services upon the verbal approval of the Director. However, during the next business day, the Director will submit a written Emergency Service Request to the Contractor.
- 7.2.14 If it is determined this scope of Work should be covered under Basic Services, any amount paid to the Contractor under Other/Services Request will be reimbursed to the City by the Contractor. The City does not waive any of its rights and remedies whether by statute, at law, in equity, or under this Agreement.
- 7.2.15 Other Work/Services are performed by the on-site crew in conjunction with their regular duties; the Contractor shall not receive additional compensation for their labor.

**8.0 PERSONNEL REQUIREMENTS**

**8.1 GENERAL**

Contractor shall provide a list of all Contractor employees to HAS when updated or as requested. The list must state each employee's name, job title, and assigned responsibilities.

**8.2 STAFFING**

Contractor shall provide the necessary number of personnel, fully competent, qualified, and skilled in all trades and on-site supervisory Work force necessary to fulfill the requirements under this Agreement.

8.2.1 Should the Director determine that the Contractor is not meeting the requirements of this Agreement with the Contractor's on-site crew, then the Director will request Contractor to increase its on-site crew in order to meet its obligations under the Agreement.

8.2.2 Contractor shall provide a Working Supervisor. The Working Supervisor will serve as a point of contact for HAS.

8.2.3 Contractor shall at all times enforce discipline and good order among its employees and shall employ only reliable persons who are skilled and experienced in their assigned task(s) under this Agreement.

8.2.4 Contractor shall replace any personnel assigned to provide services under this Agreement whose conduct is unsatisfactory to the Director.

8.2.5 Contractor shall provide written notification to the Director prior to changing employees. The Contractor may change personnel only with equally qualified and classified personnel at the Director's approval.

8.2.6 All personnel assigned to this project must be exclusive to this Agreement and must not be utilized on any other projects.

**8.3 PERSONNEL QUALIFICATIONS AND APPROVAL**

Contractor's supervisory personnel must have a minimum of five (5) years experience in lighting maintenance for which they are responsible. Electricians and support personnel must have a minimum of three (3) years experience or be certified by an accredited institution in the skills necessary for lighting maintenance for which they are responsible.

**8.3.1 USE OF ON-SITE STAFF- EXTRA WORK**

When Contractor's on-site crew performs Work covered by Change Orders or Other Work/Services, the Contractor shall not be relieved of any responsibilities for performing Basic Services as defined in this Agreement unless otherwise authorized by the Director.

8.3.2 CONTRACTOR'S SUPERVISORY PERSONNEL

Contractor shall provide Supervisory Personnel skilled in lighting maintenance and management and shall be responsible for overall management and coordination of this Agreement to ensure Contractor's duties under this Agreement are carried out and who shall act as the central point of contact with HAS.

8.3.2.1 The 1<sup>st</sup> shift Supervisor shall manage day-to-day operations.

8.3.2.2 The Contractor shall designate in writing to the Director a 1<sup>st</sup> Shift Supervisor for this Agreement. Such 1<sup>st</sup> Shift Supervisor must be approved in writing by the Director before commencing performance herein. The Contractor shall provide a dedicated and qualified 1<sup>st</sup> Shift Supervisor who shall serve as the main point of contact with HAS. The 1<sup>st</sup> Shift Supervisor will be required to be on-site at IAH during 1<sup>st</sup> Shift (7:00 a.m. through 3:30 p.m.) Monday through Friday. The 1<sup>st</sup> Shift Supervisor shall be available and on-call 24 hours daily. If the 1<sup>st</sup> Shift Supervisor is to be temporarily off-site, the Director must be notified in writing and an acting 1<sup>st</sup> Shift Supervisor identified and approved by the Director. The 1<sup>st</sup> Shift Supervisor must be fully authorized by the Contractor to act for the Contractor in all matters. 1<sup>st</sup> Shift Supervisor shall perform inspections, walk-through, and address contractual issues.

8.3.2.3 After execution of this Agreement, the 1<sup>st</sup> Shift Supervisor shall attend regularly scheduled meetings as requested with representatives of HAS to report on the status of the Lighting Maintenance. The 1<sup>st</sup> Shift Supervisor shall prepare a typed meeting agenda covering the topics to be discussed and prepare minutes of the meetings in a form satisfactory to the Director. The 1<sup>st</sup> Shift Supervisor shall issue copies of the minutes to all attendees within five business days following each meeting. HAS will approve the minutes prior to distribution by the Contractor.

8.3.2.4 The 1<sup>st</sup> Shift Supervisor must be able to be reached by HAS or Contractor's on-site crew immediately by cell phone, 24 hours per day, seven (7) days per week.

8.3.2.5 The 1<sup>st</sup> Shift Supervisor shall respond to after-hours emergencies and shall return to the Airport within four hours of notification.

8.3.2.6 Contractor's 1<sup>st</sup> Shift Supervisor shall not be reassigned from this Agreement without prior approval of the Director. Such approval will not be unreasonably withheld so long as the replacement Supervisor is equally experienced and skilled in the Maintenance and Management of lighting being provided under this Agreement.

8.3.2.7 Contractor shall provide the name of the individual designated as 1<sup>st</sup> Shift Supervisor and evidence of the individual's experience to the Director in writing. The Contractor shall provide written notice to the Director fourteen days prior to any subsequent change of 1<sup>st</sup> Shift Supervisor.

8.4 PERSONNEL UNIFORMS

Contractor's personnel assigned to Work under this Agreement shall wear appropriate uniforms, safety shoes, and badges, provided by Contractor, which will reflect positively on the Houston

Airport System. Uniforms must have Contractor's name clearly displayed on the front. HAS has the right to approve the uniforms. The Contractor's employees must be clean, courteous, efficient, and neat in appearance at all times to the satisfaction of the Director.

8.5 SECURITY AND BADGING

8.5.1 Contractor shall comply with all applicable Federal rules governing security at the Airport, as there may be amendments from time to time.

8.5.2 All on-site personnel of Contractor, including subcontractors that perform Work under this Agreement will be required to pass a security background check. The Contractor shall provide at its expense, Airport security-approved clearance for each individual assigned to perform service under this Agreement.

8.5.3 Contractor shall obtain HAS badges for all personnel working at the Airport, at the Contractor's expense. Contractor's personnel must wear an identification badge in the chest area at all times while on Airport property. Currently, the costs of such badges are \$55.00 each at IAH and HOU. The cost of badges at EFD is \$16.00. Costs for the security background check are reflected in the cost of the badges. The Contractor is responsible for the cost of badges, including replacements thereof. Personnel losing badges will be charged for replacement badges at the then current rate. Badge is valid for one year and renewable at the prevailing cost. Current annual renewal cost for each badge is \$16.00. All badges are required to be turned in immediately upon employee separation from work.

8.5.4 Contractor shall comply with FAA and HAS security requirements even though the requirements and costs may change from time to time.

8.5.5 Contractor shall reimburse the City for any fines or penalties incurred by the City as a result of Contractor's non-compliance with security regulations.

8.6 AIRPORT CUSTOMS SECURITY AREA BOND

8.6.1 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). The recommended contractor shall contact the Customs Border Protection Airport Security Office by telephone at 281-230-4641 or 281-230-4643 or email [cbpbadgingauthority@dhs.gov](mailto:cbpbadgingauthority@dhs.gov) in order to obtain the bond form.

8.6.2 The bond amount is determined by calculating \$1,000.00 times the number of employees needed to provide the service.

Example: 10 Employees

Bond Amount: \$10,000

8.7 PUBLIC RELATIONS

8.7.1 Contractor agrees that neither it nor its agents, subcontractors or employees shall issue or make

any statements regarding this Agreement, its performance under this Agreement or on behalf of the City with respect to any incident occurring at the Airport, or at any City facility, except when requested to do so by the Director.

8.8 TRANSPORTATION AND PARKING

8.8.1 Contractor shall park its vehicles in areas designated by the Director at Contractor's cost, if any. The Contractor shall provide all transportation required by Contractor or its subcontractors to perform the Work under this Agreement. All Contractor and subcontractor vehicles must be clearly marked with identification indicating Contractor's/subcontractor's name. Such identification must be placed on both sides of each vehicle and may be removable (i.e. magnetic). All vehicles must be registered with HAS. Parking in the terminal area will be provided to the contractor at the current rate.

9.0 ADMINISTRATIVE TASKS

Contractor shall comply with the following Administrative Tasks:

9.1 RECORDS AND REPORTS

Contractor shall develop and maintain records and reports on the operation and maintenance of the Lighting Maintenance Services. Upon expiration or termination of this Agreement, all records produced and maintained on file shall become the property of the City. The Contractor may retain all original employee and accounting files, but shall furnish a copy of the accounting files to HAS.

9.2 Contractor's record keeping system is subject to approval by the Director, and all records required may be inspected by the Director at any time during normal business hours. Contractor shall provide three hard copies all maintenance records and history to the Sr. Superintendent, Facilities Management Section. Reports must be signed by the 1<sup>st</sup> Shift Supervisor. Such signature is certification that all reports and information are truthful and accurate. Falsification of any records is grounds for termination of this Agreement. Reports are due no later than fifteen (15) days following the period being reported

9.3 MAINTENANCE MANAGEMENT SYSTEM (MMS)

General Description

9.3.1 Contractor shall comply with HAS' Technology policies and best practices regarding the use of HAS infrastructure, technology assets, and HAS Enterprise Asset Management solution (currently Infor Enterprise Edition). The condition and disposition of all Lighting related assets supported, on behalf of HAS, shall be documented and maintained in HAS' Computerized Maintenance Management Software (CMMS) which includes scheduled preventive, corrective maintenance, and all other work order activity. Documented assets shall be in alignment with HAS asset hierarchy principles, location and asset naming convention. Technologies utilized as a result of this agreement are subjected to HAS Technology's governance, security, and life cycles.

9.3.2 HAS will retain all right, title, interest and full ownership of any work, invention, and all Agreement documents including all software, computer applications, preliminary plans, reports,

9.3.3 or any modifications or improvements to the data at all times. In the event that modifications to the Enterprise Asset Management (EAM) database are required to move, enhance or manipulate Lighting asset data, Contractor shall subcontract an HAS-approved CMMS software vendor to perform IT-related tasks under the supervision of the HAS Technology Division and handled through OSR

#### 9.4 REPORTING REQUIREMENTS

Contractor shall provide HAS with reports of the work on a monthly basis in Excel or in a format approved by HAS. The reports shall be structured as follows:

9.4.1 Daily utilization reports are due at the end of 1<sup>st</sup> shift and include shifts 1 and 3 for that day. Electronic version required no later than one (1) business day following report date for approval. Report must include but not to be limited to:

- 9.4.1.1 Part Number
- 9.4.1.2 Quantity
- 9.4.1.3 Area Used
- 9.4.1.4 Outage or Replacement
- 9.4.1.5 Model Number
- 9.4.1.6 Description
- 9.4.1.7 Work Order Number
- 9.4.1.8 Location
- 9.4.1.9 Start Time
- 9.4.1.10 Completion Time

9.4.2 Monthly work order summary report that lists monthly labor hours utilization to include but not be limited to:

- 9.4.2.1 Monthly hours by airport, building location
- 9.4.2.2 Monthly summary by employee name, type of work, airport
- 9.4.2.3 Monthly hours by type of work (i.e. survey, cleaning, repairing, replacing)

9.4.3 Submit Weekly Time Clock Report.

9.4.4 Monthly Employee Personnel List, including supplemental employees and licensing information.

9.4.5 Submit quarterly, report of tests and system repairs on emergency lighting systems.

#### 9.5 INCIDENT REPORT

9.5.1 Contractor shall provide a monthly Incident Report to track and record incidents. Incidents involving lighting problems; and incidents that do not involve lighting problems; such as but not limited to vehicle incidents, personnel incidents or accidents.

9.5.2 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. Contractor shall provide a verbal report to the Director within one normal working day of occurrence. The Contractor shall cooperate with the Houston Airport System Safety Officer, providing written documentation and any information required for their records.

9.6 **TIME CLOCKS**

9.6.1 Contractor shall provide an electronic time clock to be used by all on-site personnel. HAS will have access to the time clock at all times, and time clock will remain the property of HAS at expiration of contract. The time clock shall provide the month, day, year, hour and minute on the timecards. Contractor shall submit a monthly time clock report to verify on-site work hours. Manual inscriptions/corrections and overlapping time punches are not allowed on timecards without HAS approval.

**10.0 TRAINING**

10.1 Contractor shall provide an employee training program covering all phases of the lighting service requirements and maintenance responsibilities detailed in this Agreement. Contractor's training program must include initial training and refresher training. Contractor shall update its training program to keep current with new service bulletins, technical bulletins, advisories, products, procedures, and equipment from time to time. Contractor shall keep accurate records of employee's initial and ongoing training. The Contractor shall provide training at its expense and no additional compensation will be provided by HAS. All training must be conducted on-site.

**11.0 SAFETY GENERAL**

11.1 **SAFETY PROGRAM**

Contractor shall not require any person to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to their health or safety. Contractor shall comply with all provisions of the Occupational Health and Safety Act (OSHA). Contractor shall be completely familiar with, and shall enforce all City, State of Texas and Federal OSHA regulations and requirements as applicable, including but not limited to, the following:

- 11.1.1 Contractor personnel must wear applicable personal protection equipment at all times.
- 11.1.2 Contractor's personnel operating equipment or handling materials must be fully trained in the safe operation of the equipment or materials.
- 11.1.3 Contractor's personnel must follow and apply safety practices prevailing in their applicable industry.
- 11.1.4 Contractor shall mark Work areas in locations accessed by the public with appropriate safety signs to protect the public from injury.

11.1.5 Contractor shall develop, implement and maintain an on-going safety program concerned with lighting maintenance work, and related procedures.

11.1.6 Contractor shall post safety warnings as necessary to ensure safe operations. When the Contractor becomes aware of a hazardous or potentially hazardous condition during the course of performing services, Contractor shall verbally notify the Director. The Contractor shall make such notification immediately upon detection of the condition. The Contractor shall detail conditions along with non-hazardous conditions and recommendations in its quarterly report.

## 11.2 MATERIAL SAFETY DATA SHEETS

11.2.1 MSDS sheets for all chemicals must be kept on site and employees must be advised of their location. The Contractor shall furnish to each Facility Superintendent all MSDS, (OSHA Form 174), for each product used in each facility. A Material Safety Data Sheet must accompany each product shipment to the facilities.

## 11.3 REGULATORY REQUIREMENTS

11.3.1 To protect the life and health of employees and other persons; to prevent damage to property, materials, supplies, and equipment; and to avoid Work interruptions, Contractor shall comply with the latest 29 CFR 1910, Occupational Safety and Health Standards (General Industry Standards) as revised or amended from time to time. Compliance with OSHA and other applicable laws and regulations for the protection of employees is exclusively the obligation of the Contractor, and the City assumes no liability or responsibility for Contractor's compliance or noncompliance with such responsibilities. CONTRACTOR SHALL INDEMNIFY THE CITY FOR ANY CLAIMS, FINES, OR DEMANDS RESULTING FROM CONTRACTOR'S FAILURE TO COMPLY WITH OSHA REQUIREMENTS.

## 11.4 FIRE REGULATIONS

11.4.1 Contractor shall comply with City of Houston Fire Codes. Contractor shall instruct its personnel on the fire regulation. All personnel must be thoroughly familiar with the identification and operation of available firefighting equipment.

## 11.5 ENVIRONMENTAL REQUIREMENTS

11.5.1 Contractor shall comply with all applicable federal, state, and local environmental protection laws, regulations, and standards. The Contractor shall comply with any other statutory requirements for clean air, clean water, toxic substances control, pollution control, resource conservation and recovery. All environmental protection matters or questions must be coordinated with the Houston Airport System Safety Officer.

## 11.6 PHYSICAL SECURITY OF WORK AREAS

11.6.1 Contractor shall be responsible for security of all facilities materials, and equipment utilized during the performance period. In case of forced entry or theft, Contractor shall notify the

11.6.2 Director immediately and assist in the investigation.

11.7 **STOP-WORK**

11.7.1 Contractor shall be responsible for the enforcement of all safety requirements for any Work performed under this Agreement. If the Contractor fails or refuses to promptly comply with safety requirements, the Director may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost due to any such order will be made the subject of a claim for extension of time or for excess costs or damages to the Contractor.

**12.0 HOUSEKEEPING DUTIES**

12.1 Contractor shall provide housekeeping services for facility furnished by HAS for Contractor's use under this Agreement. The Contractor shall also provide housekeeping services for the functional areas comprising the Lighting Maintenance Services. The Contractor shall perform all Work and provide all materials for housekeeping tasks.

12.2 Contractor shall repair HAS-furnished facility to a condition acceptable to HAS for any damage caused by Contractor, its employees or subcontractors as a result of Contractor's use.

**13.0 WARRANTY ADMINISTRATION**

13.1 Contractor shall maintain warranty records and submit documentation and follow-up procedures on all warranty Work. The Contractor shall enforce all warranties on behalf of HAS.

13.2 All warranty periods under this Agreement begin upon beneficial use of the equipment. Beneficial use begins upon installation and acceptance of any component, equipment or system by HAS.

13.3 Contractor shall provide service regardless of whether or not equipment is wholly or partially under warranty.

**14.0 PROTECTIVE EQUIPMENT**

14.1 All Contractor furnished property must meet applicable federal, state, and City laws, codes, and regulations. All Contractor equipment must be clean, properly maintained, and properly secured when not in use. The Contractor shall remove all Contractor-owned items upon expiration or termination of this Agreement. Contractor's equipment includes, but not limited to the following:

14.1.1 Safety equipment

14.1.2 Temporary barricades, stanchions, signs

14.1.3 Protective clothing and gear

**15.0 QUALITY CONTROL (QC)**

15.1 **QC PROGRAM**

Contractor shall implement and maintain a Quality Control Program that will assure the Director

that the Lighting Maintenance Services is in accordance with the highest standards prevailing in the industry and the Contractor at all times adheres to the provisions of this Agreement. The Contractor's QC plan, at a minimum, must include the following:

- 15.1.1 INSPECTION PLAN – The inspection plan must specify areas to be inspected on a scheduled or an unscheduled basis, frequency or inspection, and titles of the Contractor's personnel who will be conducting the inspections. The inspection plan must specify the type and number of inspections to be conducted, and the types of deficiencies to be identified.
- 15.1.2 DEFICIENCY PREVENTION – Contractor's QC Plan must include a method of identifying and correcting deficiencies (and their cause) in order to improve the quality of service performed before the level of performance is unacceptable.
- 15.1.3 INSPECTION FILES – Contractor's QC Plan must include documentation on all inspections conducted by the Contractor and the corrective action taken. The documentation must be made available to HAS at any time it is requested during the term of this Agreement.

## 15.2 HAS QUALITY ASSURANCE

- 15.2.1 HAS may use a variety of inspection methods to evaluate the Contractor's performance including performance review meetings, Facility Management records detailing any late or defective service, and customer complaints.
- 15.2.2 HAS maintains the right to conduct inspections of the lighting, records and logs without prior notice to the Contractor and may use an outside Contractor for this service. A written report of the results of the inspection and recommendations will be forwarded to the Contractor.
- 15.2.3 All deficiencies identified through an inspection require the Contractor to take immediate action. The Contractor shall correct the deficiency and respond in writing stipulating the corrective action(s) taken within ten (10) days of receipt of report unless otherwise authorized by the Director.

## 15.3 QC INSPECTION SHEETS

- 15.3.1 Contractor shall develop a QC Inspection sheet in a format acceptable to the Director. Contractor shall maintain a file of all inspections conducted by the Contractor and the corrective actions taken. This file must be made available to the Director immediately upon request.

## 16.0 INCREASE OR DECREASE OF WORK - INCLUSION/EXCLUSION

- 16.1 Additional service areas within existing facilities may be added to this Agreement to meet changing needs of HAS. Additional lighting or equipment within existing facilities will be incorporated into this Agreement by an Inclusion Notice. Existing service areas may also be excluded from this Agreement to meet the needs of HAS. Lighting or equipment to be excluded will be excluded from this Agreement by means of an Exclusion Notice. Cost adjustments for inclusions or exclusions shall be prorated on a unit cost basis as specified in the Contract Fee Schedule.

**17.0 COORDINATE PERFORMANCE**

17.1 Contractor shall coordinate Performance as follows:

**17.2 HAS CONTACT**

17.2.1 Contractor shall coordinate its performance with such persons as the Director designates in writing to the Contractor. The Contractor shall keep said persons currently advised of developments relating to the performance of this Agreement and Contractor shall at all appropriate times advise and consult with the Director.

**17.3 PRE-PERFORMANCE CONFERENCE**

17.3.1 Prior to commencing performance under this Agreement, the Contractor shall attend a pre-performance conference with the Director and other representatives of HAS. HAS will specify the time and place of such meeting in a written notice to the Contractor. Representatives of the Contractor attending the pre-performance conference shall include key personnel whom the Contractor has assigned to this Agreement together with the Project Manager (as herein described) who shall be authorized to bind the Contractor in matters relating to the following pre-performance conference items. In the above-mentioned notice, the Director will have the right to further designate other representatives of the Contractor who must attend the pre-performance conference and such designated representatives shall attend. Items to be addressed at the pre-performance conference include, but are not limited to, the following:

17.3.1.1 Contract Administration

17.3.1.2 Facility utilization

17.3.1.3 Channels of communication

17.3.1.4 Review of key personnel resumes and certifications

17.3.1.5 Organization and function charts reflecting the line of management authority

17.3.1.6 Procedures to be used to ensure Agreement requirements are met (Quality Control Program)

17.3.1.7 Phase-in and Start-up schedules

**17.4 COORDINATION OF MEETINGS**

17.4.1 Throughout the term of this Agreement and any extensions thereto, the Contractor shall meet with HAS, on a frequency determined by the Director, to identify and resolve performance issues. Notice of any such performance meeting may be given by the Director to the Contractor either orally or in writing and will designate the time, date, location, Contractors attendees, and general purpose. The Contractor's designated attendees shall be present at any such performance meeting for its duration and shall prepare minutes. The meeting minutes must be transcribed by the Contractor in typewritten form and must be submitted to the Director for approval within five (5) days of any such meeting. The Director will have the right to dispute the accuracy of the minutes and will note any discrepancies in the minutes prior to approval. Once approved, the original will be retained by HAS and a copy thereof submitted to the Contractor.

**17.5 SCHEDULE OF PERFORMANCE**

- 17.5.1 Contractor shall begin performance under this Agreement on the date specified in a written Notice to Proceed signed by the Director, and shall diligently perform Work activities in strict compliance with this Agreement.

**18.0 PHASE-IN/PHASE-OUT SERVICES**

- 18.1 Contractor shall provide phase-In and phase-out services as follows:

CONTRACTOR'S PHASE-IN

- 18.2 Contractor may have up to a 30-day phase-in period to accomplish a smooth and successful transition of operations and services. Contractor's Phase-in period begins upon receipt of a Start Phase-In Notice from the Director (such notice not to be construed as an official Notice to Proceed, but being anticipatory of phase-in only).
- 18.3 The Contractor shall provide a list of personnel within ten (10) days after Notice to Proceed that will be utilized to supplement the on-site staff for absences, such as vacations and sick leave.
- 18.4 The incumbent Contractor will be responsible for performing the duties and services listed in its contract during Contractor's Phase-in period, and will be available for a maximum of ten (10) days to answer questions and resolve issues or any misunderstandings.
- 18.5 During the Phase-in period, Contractor shall arrange to have necessary supervisory, technical, and other personnel on site to observe the HAS Lighting Maintenance System.
- 18.6 Contractor may use this Phase-in period to recruit and transfer personnel, train personnel, arrange for security badges, establish management procedures, set up records, and otherwise prepare for the assumption of technical control without disruption of operations.
- 18.7 During the Phase-in Period, the Contractor shall develop and implement a full project schedule detailing the responsibilities of assigned personnel and submit it to the Director for approval.
- 18.8 Contractor shall have no responsibilities for operating or maintaining the lighting systems during the Phase-in period. The Phase-in period will end at issuance of the official Notice to Proceed, at which time Contractor shall assume full responsibility for the maintenance of the Lighting System.

CONTRACTOR'S PHASE-OUT

- 18.9 Contractor recognizes that the services provided under this Agreement are vital to HAS's overall efforts to provide safe and efficient Lighting System operation and maintenance services; that continuity thereof must be maintained at a consistently high level without interruption; that upon expiration or termination of this Agreement a successor may continue these services; that its successor contractor will need Phase-in training; and that Contractor must cooperate in order to effect an orderly and efficient transition.

- 18.10 Accordingly, the Contractor will be required to provide Phase-out services for up to 30 calendar days prior to the expiration or termination of this Agreement to its successor contractor at no extra charge to HAS.
- 18.11 Phase-out orientation comprises a maximum of thirty (30) days, 8 hours per day. Orientation will include system operations and maintenance procedures, record keeping and reports. The Contractor shall provide the services called for by this Agreement during its Phase-out period. The Contractor shall cooperate with its successor contractor in allowing as many personnel as practical to remain on the job in order to enhance the continuity and consistency of the services under this Agreement.
- 18.12 The Contractor agrees to disclose necessary personnel records and allow its successor to conduct on-site interviews with its employees, provided Contractor obtains the consent of said employees to disclose their records and to conduct such interviews and provided such disclosure and interviews are conducted in accord with all applicable laws, statutes, rules, regulations, and ordinances which have been passed, enacted or promulgated by any governmental body having jurisdiction over such matters.

**19.0 INVOICING**

- 19.1 Contractor shall submit its invoices in accordance with the specifications and shall invoice for work accepted by an HAS representative.
- 19.2 The Contractor shall submit each invoice for any services performed within thirty (30) calendar days after the completion of services. HAS will certify the correctness of each invoice and arrange for payment. The invoice must be identified by the agreement name and agreement number. Certification and/or payment does not preclude HAS from indicating that a particular certification or payment was incorrect. In addition, it does not preclude HAS from recovering excess payments. The invoices shall 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
- 19.3 Contractor shall provide separate monthly invoices for any completed work at each Airport.
- 19.4 Invoices submitted for services performed as the result of Change Orders shall require copies of the applicable Change Order attached to the original invoice.
- 19.5 Invoices submitted for services performed as the result of Other Work/Services shall include a copy of the Director's written request attached to the original invoice.
- 19.6 Invoices submitted as a result of Contractor's purchase of materials/parts shall include a copy of supporting documentation. Submit invoice for any purchased materials/parts within thirty (30)

calendar days after purchase.

19.7 No payment for services shall be payable by HAS for any services for which the Contractor fails to complete all the scheduled work as specified, or fails to obtain an approved work schedule prior to beginning work.

19.8 Optional Invoice Requirement

19.8.1 The Houston Airport System will accept invoices submitted electronically along with required support information as described in Section 19.0. Each invoice should be in a TIFF format. Multiple invoices can be submitted in a single email.

19.8.1.1 Requirements are as follows:

19.8.1.2 Submit invoices in "TIFF" format.

19.8.1.3 Submit to [has.accountspayable@houstontx.gov](mailto:has.accountspayable@houstontx.gov)

**21.0 DISPUTES**

21.1 In all cases of misunderstanding and disputes, the terms of this Agreement governs.

**22.0 DAMAGE TO CITY PROPERTY**

22.1 Contractor shall pay for the repair and/or replacement of property that was damaged or destroyed due to carelessness or neglect of the Contractor, its agents or employees.

**23.0 CONTINGENCIES**

23.1 HAS must meet certain objectives of readiness for emergencies, natural disaster, and other contingencies and must react to such contingencies without delay. Such reaction may have an impact upon Contractor's operation. In order to plan for such events, Contractor shall prepare Contingency Plans as follows:

23.1.1 Natural disasters such as a major storm, flood, high winds, etc.

23.1.2 Labor dispute or strike by Contractor personnel. The Plan must be updated on an annual basis, or as changes occur, and submitted to the Director.

23.1.3 Plans must take into account passenger safety, rowdiness, vandalism, intoxication, fire, smoke, power outages, etc.

**24.0 ESTIMATED QUANTITIES NOT GUARANTEED**

24.1 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 Agreement. The quantities may vary depending upon the actual needs of the user Department. The quantities specified herein are good faith estimates of usage during the term of this Agreement. Therefore,

24.2 the City shall not be liable for any contractual agreements/obligations the Contractor enters into based on the City purchasing all of the quantities specified herein.

**25.0 CONTRACTOR'S FINANCIAL OBLIGATION**

25.1 Contractor shall make timely payments to all suppliers and/or sub-contractors that furnishing labor, materials and/or furnishings related to this Agreement.

**26.0 TEXAS DRIVER'S LICENSE**

26.1 Contractor's employees performing Work for the City must possess a valid Texas driver's license for the type of vehicle or equipment operated. The Contractor shall ensure its employees meet this requirement.

**27.0 ADDITIONS & DELETIONS**

28.1 The City, by written notice from the Director to the Contractor, at any time during the term of this Agreement, 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 performed. 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 this Agreement shall be in accordance with this Agreement 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 agreement, 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.

**28.0 WARRANTY OF SERVICES**

29.1 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.

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

29.2 Contractor shall warrant that all services performed under this Agreement shall, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Agreement. 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.

29.3 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

- 29.4 Contractor the cost occasioned to the City thereby, or make an equitable adjustment in the agreed price.
- 29.5 If the City does not require correction or re-performance, the City shall make an equitable adjustment to agreed price.

**30.0 INTERLOCAL AGREEMENT:**

- 30.1 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.

**31.0 PERFORMANCE BOND**

- 31.1 The successful Contractor shall furnish and maintain throughout the Agreement term a Performance Bond in the amount of 100% of the annual applicable Agreement year. Contractor shall renew this bond for each renewal year of this Agreement in an amount equal to the Agreement amount for the applicable renewal term. The bond shall be conditioned upon Contractor's full and timely performance of this Agreement and must be issued by a corporate surety authorized to write surety bonds in the State of Texas and be in the form set out in the Sample Contract.
- 31.2 The Performance Bond shall be in the same form as that distributed by the City, all duly executed by the bidder (as "Principal") and by a corporate surety company licensed to do business in the State of Texas. The surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department.

"Rest of This Page Left Intentionally Blank"

**EXHIBIT “BB”**

**AREAS COVERED FOR BUSH INTERCONTINENTAL AIRPORT UNDER THIS AGREEMENT  
INCLUDE, BUT NOT LIMITED TO:**

LOCATION	RESPONSIBILITY	EXCEPTION
Terminal 2800 N. Terminal Rd.      A	All exterior–pole lights and graphic signs/tug tunnel/ramp, ITT tunnel and wall packs	
Terminal 3100 N. Terminal Rd.      B	All exterior pole lights and graphic signs, APM Platform, ITT tunnel station, wall packs tunnel to Central Plant.	
Terminal 3500 N. Terminal Rd. Basement Level      C	All interior & exterior including ground lights, pole and graphic signs/tug tunnel/ramp	Leased office/storage space, food court/vendor/concessions area lighting. Jet bridges, elevators, air handler rooms, parking lots and garages, Centerpoint street lights and airline ticket counters. Unless directed by the Director.
Terminal 3700 N. Terminal Rd. Sub level corridor to ITT Train, Basement Level      D	All interior & exterior including ground lights, pole and graphic signs/tunnel/ramp	Leased office/storage space, food court/vendor/concessions area lighting. Jet bridges, elevator, air handler rooms, parking lots and garages, Centerpoint street lights and airline ticket counters. Unless directed by the Director.
Terminal 3870 N. Terminal Rd. Basement Level      FIS	All interior & exterior including ground lights, booth, pole and graphic signs	Leased office/storage space, food court-vendor/concessions area lighting. Jet bridges, elevator, air handler rooms. Centerpoint street lights and airline ticket counters. Unless directed by the Director.
ITT Train Level	All interior & exterior stairwell lighting & signs	As directed by the director or his designee. From Terminal A-B, B-C, C-FIS.

REVISED DECEMBER 20, 2012

APM Maintenance Facility	Exterior lighting	As directed by the Director.
FAA Maintenance facility 18843 Colonel Fisher Rd.	All interior & exterior including ground lighting, and graphic signs	As directed by the Director.
Fire Stations: 92, 54, 99	All interior & exterior including ground lights, parking pole lights, street graphic signs and rooftop obstruction lights	As directed by the Director.
Supply Chain Management and Warehouses 18600 Lee Rd.	All interior & exterior including ground lights, parking pole/obstruction lighting, and street graphic signs	As directed by the Director.
Security Gates and Security Booths	All interior & exterior including pole/graphic sign	As directed by the Director.
JFK/Will Clayton/AOA & General Service Roads/ Hardy Toll Ramp	Graphic Signs/Designated pole lights, light spikes radiant fountain lights	As directed by the Director.
Planning and Design Construction Satellite Office Lee Rd.	Interior & exterior lighting	As directed by the Director.
HAS Electrical Warehouse & Security Office Lee Rd.	Interior & exterior lighting/parking lot	As directed by the Director.

**SECTION C  
GENERAL TERMS & CONDITIONS**

**THE STATE OF TEXAS**

**BID #** \_\_\_\_\_

**COUNTY OF HARRIS**

**ORDINANCE #** \_\_\_\_\_

**CONTRACT #** \_\_\_\_\_

**I. PARTIES**

**1.0 ADDRESS**

THIS AGREEMENT for **LIGHTING MAINTENANCE SERVICES** ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation and \_\_\_\_\_ ("Contractor or Vendor"), a Texas Home-Rule City doing business in Texas.

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

**City**

City Purchasing Agent for Director  
of the Houston Airport System  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251

**Contractor**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

The Parties agree as follows:

**2.0 TABLE OF CONTENTS**

2.1 This Agreement consists of the following sections:

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**EXHIBITS**

- \* A. DEFINITIONS
- \* B. SCOPE OF SERVICES
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- \* C. EQUAL EMPLOYMENT OPPORTUNITY
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- \* E. DRUG POLICY COMPLIANCE AGREEMENT
- \* F. CERTIFICATION OF NO SAFETY IMPACT POSITIONS
- \* G. DRUG POLICY COMPLIANCE DECLARATION
- \* H. FEES AND COSTS
- \* I. CITY'S CONTRACTORS PAY OR PLAY PROGRAM
- \* J. PERFORMANCE BOND

\* Note: These Exhibits shall be inserted into the contract Agreement at the time of contract execution.

**3.0 PARTS INCORPORATED**

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

**4.0 CONTROLLING PARTS**

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

**5.0 DEFINITIONS**

5.1 Certain terms used in this Agreement are defined in Exhibit "A."

**6.0 SIGNATURES**

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

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

\_\_\_\_\_

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

By: \_\_\_\_\_  
Name:  
Title:  
Federal Tax ID Number: \_\_\_\_\_

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS  
Signed by:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Mayor

APPROVED:

COUNTERSIGNED BY:

\_\_\_\_\_  
City Purchasing Agent

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

DATE COUNTERSIGNED:

\_\_\_\_\_

This contract has been reviewed as to form by the undersigned legal assistant and has been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Legal Assistant

## II. DUTIES OF CONTRACTOR

### 1.0 SCOPE OF SERVICES

- 1.1 In consideration of the payments specified in this Agreement, Contractor shall provide all supervision, labor, tools, equipment, permits, parts, expendable items, material, and supplies necessary to perform the services described in Exhibit "B" & "BB."

### 2.0 RELEASE

- 2.1 PRIME CONTRACTOR/SUPPLIER 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.

### 3.0 INDEMNIFICATION

- 3.1 PRIME CONTRACTOR/SUPPLIER 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:
- 3.1.1 PRIME CONTRACTOR/SUPPLIER AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 2.1-3.2, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
  - 3.1.2 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND
  - 3.1.3 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.
  - 3.1.4 PRIME CONTRACTOR/SUPPLIER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS CONTRACT AND FOR FOUR YEARS AFTER THE CONTRACT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000.00 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.
- 3.2 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.

**4.0 INDEMNIFICATION PROCEDURES**

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

4.1.1 a description of the indemnification event in reasonable detail, and

4.1.2 the basis on which indemnification may be due, and

4.1.3 the anticipated amount of the indemnified loss.

4.2 This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. 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 Prime Contractor/Supplier is prejudiced, suffers loss, or incurs expense because of the delay.

4.3 Defense of Claims

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

4.3.2 Continued Participation. If Prime Contractor/Supplier 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. Prime Contractor/Supplier 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 Prime Contractor/Supplier 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.

**5.0 INSURANCE**

5.1 Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have 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. Contractor shall maintain the following insurance coverage in the following amounts:

5.1.1 Commercial General Liability insurance including Contractual Liability insurance:  
\$500,000 per occurrence; \$1,000,000 aggregate

5.1.2 Workers' Compensation including Broad Form All States endorsement:  
Statutory amount

5.1.3 Automobile Liability insurance  
\$1,000,000 combined single limit per occurrence  
Defense costs are excluded from the face amount of the policy

5.1.4 Employer's Liability

Bodily injury by accident	\$100,000 (each accident)
Bodily injury by disease	\$100,000 (policy limit)
Bodily injury by disease	\$100,000 (each employee)

5.2 All insurance policies must require by endorsement, that the insurance carrier waives any rights of subrogation against the City, Contractor shall give 30 days written notice to the Director if any of its insurance policies are cancelled, materially changed or non-renewed. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or sole discretion, may:

5.2.1 immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or

5.2.2 purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

5.2.3 All certificates of insurance submitted by Contractor shall be accompanied by endorsements for additional insured coverage in favor of the City for Commercial General Liability and Automobile Liability policies; and waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and Worker's Compensation/Employers' Liability policies. For a list of pre-approved endorsement forms see <http://purchasing.houstontx.gov/forms.shtml>. The Director will consider all other forms on a case-by-case basis.

**6.0 WARRANTIES**

6.1 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.

6.2 With respect to any parts and goods furnished by it, Contractor warrants:

6.2.1 that all items are free of defects in title, material, and workmanship,

6.2.2 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,

6.2.3 that each replacement item is new in accordance with original equipment manufacturers 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

6.2.4 that no item or its use infringes any patent, copyright, or proprietary right.

**7.0 LICENSES AND PERMITS**

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

**8.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE**

8.1 Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out

in Exhibit "C."

**9.0 M/WBE COMPLIANCE**

- 9.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("M/WBE") 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 11% of the value of this Agreement to M/WBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the Mayor's Office of Business Opportunity (MOBO) and will comply with them.
- 9.2 Contractor shall require written subcontracts with all M/WBE subcontractors and shall submit all disputes with M/WBEs to binding arbitration to be conducted in Houston, Texas if directed to do so by the OBO Director. M/WBE subcontracts must contain the terms set out in Exhibit "D."

**10.0 DRUG ABUSE DETECTION AND DETERRENCE**

- 10.1 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.
- 10.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):
  - 10.2.1 a copy of its drug-free workplace policy,
  - 10.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "E," together with a written designation of all safety impact positions, and
  - 10.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F."
- 10.3 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 "G." 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.
- 10.4 Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee workforce.
- 10.5 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

**11.0 ENVIRONMENTAL LAWS**

- 11.1 Contractor shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), the Texas Commission on Environmental Quality ("TCEQ"), and

any other governmental agency with the authority to promulgate environmental rules and regulations ("Environmental Laws"). Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply.

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

## **12.0 CITY'S CONTRACTOR PAY OR PLAY PROGRAM**

- 12.1 The requirement and terms of the City of Houston Pay or Play Policy, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 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.
- 12.2 The Pay or Play Program for various departments will be administered by the City of Houston Office of Business Opportunity designee and for a Department specific contract; the Department's designated contract administrator will administer the Pay or Play Program.

## **13.0 CONTRACTOR'S PERFORMANCE**

- 13.1 Contractor shall make citizen satisfaction a priority in providing services under this Agreement. Contractor shall train its employees to be customer service-oriented and to positively and politely interact with citizens when performing contract services. Contractor's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the Director's opinion, Contractor is not interacting in a positive and polite manner with citizens, he or she shall direct Contractor to take all remedial steps to conform to these standards.

## **14.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS**

- 14.1 Contractor shall make timely payments in accordance with applicable state and federal law to all persons and entities supplying labor, materials or equipment for the performance of this Agreement including Contractor's employees.
- 14.2 Failure of Contractor to pay its employees as required by law shall constitute a default under this contract for which the Contractor and its surety shall be liable on Contractor's performance bond if Contractor fails to cure the default as provided under this Agreement.
- 14.3 Contractor shall defend and indemnify the City from any claims or liability arising out of Contractor's failure to pay its subcontractors as required by law. Contractor shall submit disputes relating to payment of M/WBE subcontractors to arbitration in the same manner as any other disputes under the M/WBE subcontract.

### **III. DUTIES OF CITY**

#### **1.0 PAYMENT TERMS**

- 1.1 The City shall pay and Contractor shall accept fees provided in Exhibit "H" for all services

rendered and the Deliverables furnished by Contractor. The fees must only be paid from Allocated Funds, as provided below.

**2.0 TAXES**

2.1 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.

**3.0 METHOD OF PAYMENT**

3.1 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 upon receipt of an approved invoice.

**4.0 METHOD OF PAYMENT - DISPUTED PAYMENTS**

4.1 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.

**5.0 LIMIT OF APPROPRIATION:**

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

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

5.3 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."

5.4 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.

**6.0 CHANGES**

- 6.1 At any time during the Agreement Term, the City Purchasing Agent or 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.
- 6.2 The City Purchasing Agent or Director will issue the Change Order in substantially the following form:

**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 City Purchasing Agent or Director]

- 6.3 The City Purchasing Agent or Director may issue more than one Change Order, subject to the following limitations:
  - 6.3.1 Council expressly authorizes the City Purchasing Agent or Director to approve a Change Order of up to \$50,000. A Change Order of more than \$50,000 over the approved contract amount must be approved by the City Council.
  - 6.3.2 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.
  - 6.3.3 The total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.
- 6.4 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 City Purchasing Agent's or Director's decision regarding a time extension is final.

- 6.5 A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.
- 6.6 Change Orders are subject to the Allocated Funds provisions of this Agreement.

#### **IV. TERM AND TERMINATION**

##### **1.0 CONTRACT TERM**

- 1.1 This Agreement is effective on the Countersignature Date and expires three (3) years after the starting date specified in the Notice to Proceed unless sooner terminated according to the terms of this Agreement.

##### **2.0 NOTICE TO PROCEED**

- 2.1 Contractor shall begin performance under this Agreement on the date specified in a Notice to Proceed from the City Purchasing Agent.

##### **3.0 RENEWALS**

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

##### **4.0 TIME EXTENSIONS**

- 4.1 If Department requests an extension of time to complete its performance, then the City Purchasing Agent may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

##### **5.0 TERMINATION FOR CONVENIENCE BY THE CITY**

- 5.1 The City Purchasing Agent or 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.
- 5.2 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 III unless the fees exceed the allocated funds remaining under this Agreement.
- 5.3 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.

## **6.0 TERMINATION FOR CAUSE BY CITY**

- 6.1 If Contractor defaults under this Agreement, the City Purchasing Agent or 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 Contractor's default is cumulative of all rights and remedies, which exist now or in the future. Default by Contractor occurs if:
- 6.1.1 Contractor fails to perform any of its duties under this Agreement;
  - 6.1.2 Contractor becomes insolvent;
  - 6.1.3 All or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
  - 6.1.4 A receiver or trustee is appointed for Contractor.
- 6.2 If a default occurs, the City Purchasing Agent or Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent or Director, at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent or Director allows Contractor to cure the default and Contractor does so to the City Purchasing Agent's or 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 City Purchasing Agent or Director may terminate this Agreement on the termination date, at no further obligation of the City.
- 6.3 To effect final termination, the City Purchasing Agent or 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.

## **7.0 TERMINATION FOR CAUSE BY CONTRACTOR**

- 7.1 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.
- 7.2 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.

## **8.0 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS**

- 8.1 Upon expiration, or termination of this Agreement, Contractor is permitted ten (10) days within which to remove contractor-owned material and equipment from the City's premises. The City shall make such material and equipment readily available to Contractor. The time period may be extended upon approval by the Director. The City reserves the right to deny any extension of time.

**V. MISCELLANEOUS**

**1.0 INDEPENDENT CONTRACTOR**

- 1.1 Contractor shall perform its obligations under this Agreement as an independent Contractor and not as an employee of the City.

**2.0 FORCE MAJEURE**

- 2.1 Timely performance by both parties is essential to this Agreement. However, neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.
- 2.2 This relief is not applicable unless the affected party does the following:
  - 2.2.1 uses due diligence to remove the Force Majeure as quickly as possible, and
  - 2.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.
- 2.3 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.
- 2.4 If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director may terminate this Agreement by giving 30 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.**

**3.0 SEVERABILITY**

- 3.1 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.

**4.0 ENTIRE AGREEMENT**

- 4.1 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.

**5.0 WRITTEN AMENDMENT**

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

**6.0 APPLICABLE LAWS**

6.1 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.

6.2 Venue for any litigation relating to this Agreement is Harris County, Texas.

**7.0 NOTICES**

7.1 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 the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

**8.0 NON-WAIVER**

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

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

**9.0 INSPECTIONS AND AUDITS**

9.1 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 4 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

**10.0 ENFORCEMENT**

10.1 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.

**11.0 AMBIGUITIES**

11.1 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.

**12.0 SURVIVAL**

12.1 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.

**13.0 PARTIES IN INTEREST**

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

**14.0 SUCCESSORS AND ASSIGNS**

14.1 This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets 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.

**15.0 BUSINESS STRUCTURE AND ASSIGNMENTS**

15.1 Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the City Purchasing Agent's or 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.

15.2 Contractor shall not delegate any portion of its performance under this Agreement without the City Purchasing Agent's or Director's prior written consent.

**16.0 REMEDIES CUMULATIVE**

16.1 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.

**17.0 CONTRACTOR DEBT**

17.1 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, she 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 therefore.

**EXHIBIT A  
[DEFINITIONS]**

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

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

**“Acceptable”** means that services, equipment and performance meet or exceed the requirements of this Agreement.

**“Acceptance”** shall be determined by the Director and occurs when the Director determines that the unit of Work specified under this Agreement is complete and acceptable.

**“Acceptable Equivalent”** means any equipment, part or product that complies with existing industry standards governing its manufacture or use, and that is a functional equivalent of any equipment, part, product or specification described herein, or, which functionally satisfies an approved, negotiated or specified use made a part hereof.

**“Agreement”** means this contract between the parties, including all exhibits and any written amendments authorized by City Council and Contractor.

**“Air Operations Area (AOA)”** means any area of the airport used or intended to be used for the landing, takeoff, or surface maneuvering of aircraft. An air operations area shall include such paved and unpaved areas that are used or intended to be used for unobstructed movement of aircraft in addition to its associated runway, taxi-way or apron.

**“Airport(s)”** George Bush Intercontinental Airport/Houston (IAH), William P. Hobby Airport (HOU) and Ellington Airport (EFD).

**“ASC”** means the Airport Services Complex located at 4500 Will Clayton Parkway, at George Bush Intercontinental Airport/Houston.

**“Basic Services”** means those services described in Section B – Scope of Work/Specifications.

**“City”** is defined as the City of Houston a home rule city.

**“Company or Contractor”** means the entity to whom the City awards this Contract.

**“Contract or Agreement”** means the Agreement and all amendments authorized by City Council and Contractor or change orders authorized by this Agreement between the City and Contractor whereby Contractor shall provide all specified Work in connection with the Agreement, in the manner provided by the Agreement.

**“Director”** means the Director of the Houston Airport System or the City Purchasing Agent, or their designee in writing. The Agreement designates certain functions to be performed by the Director.

**“EFD”** means Ellington Airport.

**“Emergency Service Request”** means a request from the director to Contractor to perform remedial maintenance or other work services due to a Major Failure or services deemed necessary by the Director. Contractor must respond to in accordance with the Response Times set forth in Section B (Scope of Work).

**“Equipment”** means all machinery, together with the necessary supplies for upkeep and maintenance, and also all tools and apparatus necessary for the proper and acceptable completion of the specified Work.

**“First Class Condition”** refers to the quality of systems, parts, equipment and related components and appurtenances including replacements (“elements”). It also refers to the condition of the wear and operation of the elements. When referring to the quality of the elements, First Class Condition means of a quality equal to or better than the elements as originally installed. When referring to the wear and operation of the elements, First Class Condition means a standard that is within the manufacture’s published tolerances for safe, reliable operation, or if no published tolerances, within generally accepted tolerances within the lighting system and equipment maintenance industry.

**“Furnish”** means supply and deliver to Project Site, ready for uploading, unpacking, assembly, installation, use, etc., as applicable in each instance, except as otherwise defined in greater detail.

**“HOU”** means William P. Hobby Airport.

**“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.

**“IAH”** means George Bush Intercontinental Airport/Houston.

**“Maintenance Facilities”** means the shop and office facilities provided to the Contractor by the City as set forth herein.

**“Maintenance Service”** means Preventive Maintenance (PM) and Remedial Maintenance (RM).

**“Manufacturer”** means the original manufacturer or producer of a part or component.

**“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.

**“OEM”** means the Original Equipment Manufacturer.

**“Other Service Request (OSR)”** is the form used to request Other Work/Services within the scope of this Agreement.

**“Other Work/Services”** means those services described in Section B – Scope of Work as Other Work/Services and other services related to operations and maintenance services, other than Basic Services. Such services are only provided upon the Director’s written request.

**“Preventive Maintenance (PM)”** means scheduled maintenance activities recommended by the manufacturer and by industry best practice standards. They include, but are not limited to, proper, inspections, installation, testing, and operation procedures, determined by regularly scheduled work, etc.

**“Remedial Maintenance (RM)”** means repair of equipment and systems with parts, materials, and labor to restore performance to the designed function in the event of any lighting system breakdown where the lighting system is unable to perform its designed function. RM includes repairs and replacement of related components, parts and appurtenances that have failed, no longer perform reliably, or have worn beyond safe tolerances.

**“Repair”** means to restore to good or sound working condition.

**“Response Time”** means the maximum elapsed time in which Contractor must respond to a Service Request. The maximum elapsed time is measured from Contractor’s receipt of a Service Request to Contractor’s arrival at the specified work site.

**“Routine”** means those services that do not involve an Emergency Service Request.

**“Schedule”** the planned periods of time the Contractor shall be allowed to perform contract Work on the pavement as determined by the Director and local airfield requirements.

**“Service”** means to provide the labor, tools, equipment, and all items required to minimize maintenance requirements and ensure proper equipment performance based on manufacturer’s recommended procedures.

**“Straight Time”** is defined as being between the hours of 7:00 a.m. through 4:30 p.m.; Monday through Friday.

**“Taxiway”** means the portion of the Air Operations Area of an Airport that has been designated by HAS for movement of aircraft to and from the airport’s runways and aircraft parking areas.

**“Work”** means all services to be provided by the Contractor under this Agreement.

REVISED DECEMBER 20, 2012

**EXHIBIT B**  
**SCOPE OF SERVICES**

(To be inserted by the City at the time of contract execution)

**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.

REVISED DECEMBER 20, 2012

**EXHIBIT D**  
**[M/WBE SUBCONTRACT TERMS]**

(To be inserted by the City at the time of contract execution)

REVISED DECEMBER 20, 2012

**EXHIBIT E**  
**[DRUG POLICY COMPLIANCE AGREEMENT]**

(To be inserted by the City at the time of contract execution)

**EXHIBIT F  
[CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS  
IN PERFORMANCE OF A CITY CONTRACT]**

I, \_\_\_\_\_  
**(Name - Print/Type)** **(Title)**

as an owner or officer of \_\_\_\_\_ (Contractor) have authority to bind the Contractor with respect to its bid, and I 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 this City Contract. Contractor agrees and covenants that it shall immediately notify the City's Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**CONTRACTOR'S CERTIFICATION OF NON-APPLICATION OF  
CITY OF HOUSTON DRUG DETECTION AND DETERRENCE PROCEDURES  
FOR CONTRACTORS**

I, \_\_\_\_\_  
**(Name - Print/Type)**

as an owner or officer of \_\_\_\_\_ (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has fewer than fifteen (15) employees during any 20-week period during a calendar year and also 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 this City Contract. Safety impact position means a Contractor's employment position involving job duties that if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health or safety of the employee, co-workers, and/or the public.

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**EXHIBIT G**  
**[DRUG POLICY COMPLIANCE DECLARATION]**

(To be inserted by the City at the time of contract execution)

REVISED DECEMBER 20, 2012

**EXHIBIT H  
[FEES AND COSTS]**

(To be inserted by the City at the time of contract execution)

REVISED DECEMBER 20, 2012

**EXHIBIT I**  
**[PAY OR PLAY]**

(To be inserted by the City at the time of contract execution)

**Exhibit "J"**

**PERFORMANCE BOND**

**THE STATE OF TEXAS**                   :  
   :  
**COUNTY OF HARRIS**                   :

\_\_\_\_\_, ("Principal") and \_\_\_\_\_, ("Surety"), shall pay to the City of Houston, Texas ("City"), the sum of \$\_\_\_\_\_ in accordance with the terms and conditions stated below:

On or about this date, the Principal executed a \_\_\_\_\_ Agreement in writing with the City for \_\_\_\_\_ ("Agreement"), which is incorporated into this Bond.

The conditions of this obligation are that if the Principal performs its obligations under the terms of the Agreement and this Bond in all respects, then this obligation is void and has no further force and effect; otherwise this obligation remains in effect and the sum of \$\_\_\_\_\_ is payable to the City on demand.

The Surety relieves the City and its representatives from the exercise of any diligence whatever in securing the Principal's compliance with the terms of the Agreement, and the Surety waives any notice to it of the Principal's default or delay in the performance of the Agreement. The Surety shall take notice of and is held to have knowledge of all acts or omissions of the Principal, its agents, and representatives in all matters pertaining to the Agreement.

The City and its representatives may at any time, without notice to the Surety, make any changes in the terms and conditions of the Agreement, or extend it, and may add to or deduct from the Principal's obligations under the Agreement. Such changes, if made, do not in any way relieve, release, condition, or limit the obligation in this Bond and undertaking or release the Surety therefrom.

SURETY AND PRINCIPAL AGREE TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, AND REPRESENTATIVES FROM ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, DAMAGES, FINES, AND EXPENSES ARISING OUT OF OR RESULTING FROM ANY FAILURE ON THE PART OF THE PRINCIPAL, ITS AGENTS, AND REPRESENTATIVES, TO FULLY PERFORM UNDER THE AGREEMENT, INCLUDING ANY CHANGES OR EXTENSIONS TO IT.

If the City brings any suit or other proceeding at law on the Agreement or this Bond, or both, the Principal and the Surety shall pay to the City the additional sum of 10 percent of whatever amount the City recovers, which sum of 10 percent is agreed by all parties to be indemnity to the City for the expense of and time consumed by its City Attorney, his or her assistants, and office staff, and other costs and damages to the City. The amount of 10 percent is fixed and liquidated by the parties because the exact damage to the City would be difficult to ascertain.

This Bond and all obligations created under it shall be performable in Harris County, Texas, and all are non-cancelable. This Bond must be automatically renewed annually on the anniversary of the effective date of the Bond for the term of the Agreement and any extensions, unless the Surety gives the Principal and the City 30 days written notice before the renewal date that the Surety will not renew this Bond, in which case the Principal shall provide the City with a replacement bond (in the same form as this Bond) before the renewal date. The provisions of V.T.C.A., Government Code Section 2253, as amended, control even though the Statute may not be applicable.

All notices required or permitted by this Bond must be in writing and are deemed delivered on the

earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out on the signature page of this Bond or at such other address as the receiving party designates by proper notice to the sending party.

This Bond is effective on \_\_\_\_\_ and is binding on the Principal and the Surety, their heirs, executors, administrators, successors and assigns, jointly and severally.

EXECUTED in multiple originals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST/SEAL: (if a corporation)

WITNESS: (if not corporation)

\_\_\_\_\_  
(Name of Principal)

\_\_\_\_\_  
(Address of Principal)

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

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

ATTEST/SEAL  
SURETY WITNESS:

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

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

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

REVIEWED:

This Bond has been reviewed as to form by the undersigned Paralegal and has been found to meet established Legal Department criteria.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Paralegal