

THE STATE OF TEXAS :  
:  
COUNTY OF HARRIS :

4600011467  
2012-0199

**AGREEMENT FOR TELECOMMUNICATIONS SERVICES**

**I. PARTIES**

A. Address

**THIS AGREEMENT FOR TELECOMMUNICATIONS SERVICES FOR THE HOUSTON AIRPORT SYSTEM** ("Agreement") between the **CITY OF HOUSTON, TEXAS** ("City"), a home-rule city of the State of Texas, and **NETVERSANT SOLUTIONS, LLC** ("Contractor"), a Delaware corporation authorized to do business in Texas. This Agreement is made on the date countersigned by the City Controller ("Effective Date")

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

<u>City</u>	<u>Contractor</u>
Director, Houston Airport System or Designee City of Houston P.O. Box 60106 Houston, Texas 77205-01061	NetVersant Solutions, LLC Attn: Mark Davis, Senior Vice President 2180 North Loop West, Ste 550 Houston, TX 77018

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

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C. Parts Incorporated

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

D. Controlling Parts

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

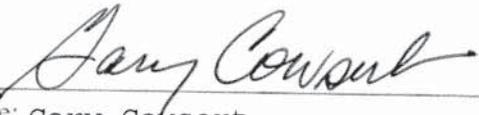
E. Signatures

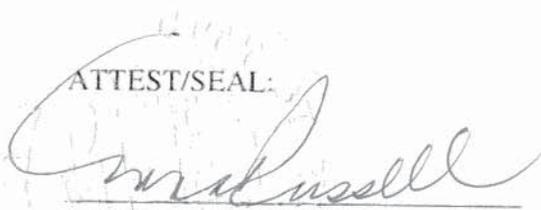
The Parties have executed this Agreement in multiple copies, each of which is an original.

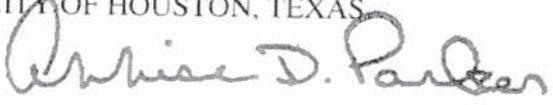
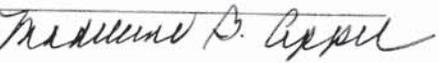
CONTRACTOR

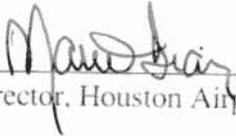
ATTEST/SEAL(if a corporation):  
WITNESS (if not a corporation):

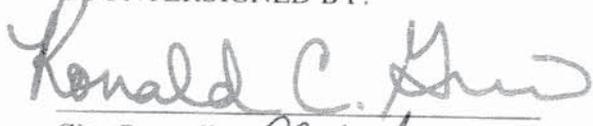
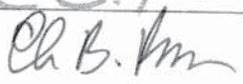
By:   
Name: Mark Davis  
Title: Sr. Vice President  
Tax Identification No: 26-3702088

By:   
Name: Gary Cowsert  
Title: Chief Executive Officer

ATTEST/SEAL:  
  
City Secretary

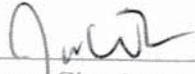
CITY OF HOUSTON, TEXAS  
  
Mayor 

APPROVED:  
  
Director, Houston Airport System

COUNTERSIGNED BY:  
  
City Controller 

APPROVED:  
  
Purchasing Agent

DATE COUNTERSIGNED:  
3-1-12

APPROVED AS TO FORM:  
  
Assistant City Attorney  
L.D. File No. 0041200013001

## II. DEFINITIONS

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

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

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

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

**"AOA"** means the Air Operations Area and includes, but is not limited to, runways, ramps, taxiways and aprons.

**"ASC"** means the Airport Services Complex located at 4500 Will Clayton Parkway.

**"Basic Services"** mean those services which shall be performed as described in Exhibit "A" of the Agreement.

**"Business Days"** mean all days of a calendar year except Saturdays, Sundays and City Council approved City holidays, unless Contractor receives written notice(s) from the Director on a preceding Thursday modifying the work days for the following week(s) and Contractor agrees, in which case, the modified work days become Business Days only for the period of time designated in such notice.

**"City"** is defined in the preamble of this Agreement and includes its successors and assigns.

**"Contractor"** is defined in the preamble of this Agreement and includes its successors and assigns.

**"Director"** means the Director of the Houston Airport System or the City Purchasing Agent or their designee in writing. This Agreement designates certain functions to be performed by the Director. For purposes of this Agreement, those functions are assigned to the Deputy Assistant Director, Information Technology Division.

**"Documents"** mean notes, manuals, notebooks, plans, computations, computer databases and diskettes, software, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Agreement.

**"EFD"** means Ellington Airport.

**"Emergency Service Request"** means a verbal request from the Director to Contractor to perform remedial maintenance due to a Major Failure, a Minor Failure, or a Non-critical Failure that Contractor must respond to in accordance with the Response Times set forth in Section 7.2 of Exhibit "A."

**"FAA"** means the Federal Aviation Administration.

**"Fee Schedule"** sets forth the fees the City pays Contractor for its services as defined in Exhibit "B".

**"First Class Condition"** refers to the quality of systems, parts, equipment and related components, 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 before execution of this Agreement. When referring to the wear and operation of the elements, First Class Condition means a standard that is within the manufacturer's published tolerances, or if no published tolerances, within generally accepted tolerances within the telecommunications industry.

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

**"HOU"** means William P. Hobby Airport.

**"Houston Airport System"** 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.

**"Houston Airport System Technology Specifications"**, as amended from time to time, are listed on HAS SharePoint website and incorporated herein by reference.

**"IAH"** means George Bush Intercontinental Airport/Houston, which includes, but is not limited to, Terminal A (2800 North Terminal Road), Terminal B (3100 North Terminal Road), Terminal C (3500 North Terminal Road), Terminal D (3701 North Terminal Road), Terminal E (3950 North Terminal Road) and the Federal Inspection Services (FIS) Building (3870 North Terminal Road).

**"IDF"** means Intermediate Distribution Frame.

**"MAC"** means move, add, or change order(s) that are required as part of the normal day to day activities in managing a telecommunications system when telecommunications terminal equipment and station lines have to be rearranged, increased or decreased as a result of normal business activity. By way of example, and not by way of limitation, MACs include individual telephone changes; installing new telephones and associated cabling and programming to make operational; removing existing telephones; and modifying existing telephones.

**"Major Failure"** is any System failure severe enough to impair HAS' ability to maintain operation and administration functions of the Airports. By way of example, and not by way of limitation, Major Failures include:

1. call center positions cannot receive or place calls;
2. 20% or more of all telephone or data ports are unable to place or receive calls;
3. 20% or more of the trunks are inoperative;
4. an attached processor or server is unable to send, receive or retrieve information; or
5. any other outage determined to be a Major Failure by the Director.

**"MDF"** means Main Distribution Frame.

**"Minor Failure"** means any system failure that adversely affects more than one station, but does not render the phone system inoperable or completely useless. By way of example and not by way of limitation, Minor Failures include station card and trunk card failures, inoperative bulbs, inoperative handset cords, or any other failure determined to be a Minor Failure by the Director.

**"Non-critical Failure"** is any failure which affects only an isolated station. By way of example and not by way of limitation, Non-critical Failures include station equipment failures, station wiring failures, or any other failure determined to be a Non-critical Failure by the Director.

**"Normal Business Hours"** means 7:00 a.m. to 5:00 p.m., Monday through Friday unless Contractor receives a written notice from the Director on a preceding Thursday modifying the work hours for the following week(s) and Contractor agrees in which case, the modified work hours become the Normal Business Hours only for the period of time designated in such notice.

**"Notice to Proceed"** means a written communication from the Director to Contractor instructing Contractor to begin performance.

**"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 or types of systems and equipment described in Exhibit "A" as Other Work/Services.

**"Parties"** mean all entities set out in the Preamble who are bound by this Agreement.

**"Patch"** means a small addition to the original software code, written to bypass or correct a problem.

**"Preventive Maintenance" or "PM"** means periodic or scheduled maintenance in accordance with manufacturer's maintenance specifications, industry standards, professional association recommendations, and as set forth in this Agreement.

**"Remedial Maintenance" or "RM"** means the repair of equipment with parts, materials, and labor to restore performance to the designed function in the event of any breakdown or stoppage of equipment where the equipment is unable to perform its designed function.

**"Resale of Services"** means the resale of telecommunications services by HAS to internal third parties at IAH, HOU and EFD.

**"Response Time"** means the maximum elapsed time in which Contractor must respond to an Emergency Service Request. The maximum elapsed time is measured from Contractor's receipt of an Emergency Service Request to Contractor's arrival at the specified work site.

**"Substantial Completion"** means the stage in the progress of the work when the work or designated portion thereof is sufficiently complete in accordance with the Agreement and OSR so that the City can occupy or utilize the work product for its intended use.

**"Telecommunication System" or "System"** means all equipment, software, cabling, connectivity, and instruments, and all appurtenances thereto identified in this Agreement.

**"TSA"** means Department of Homeland Security, Transportation Security Administration.

**"Update"** means a Patch or fix to the existing system operating at current functionality or a revised edition of the current software. Updates are included in the cost of Basic Services.

**"Upgrade"** means hardware or software to improve the current system for additional functionality and/or expansion/increases of capacity.

**"Urgent Service Request"** is defined as a non-remedial maintenance request for immediate action. An urgent service request may be issued outside of Normal Business Hours, in which case additional labor charges will apply. (See Section 7.2.1 of Exhibit "A.")

### III. DUTIES OF CONTRACTOR

#### A. Scope of Services

- (1) In consideration of the payment specified in this Agreement, Contractor shall provide all labor, supervision, parts, equipment, materials, tools, instruments, expendable items, supplies, reports, transportation, insurance, subcontracts, bonds, and incidentals necessary to perform the Basic Services and, if requested, Other Work/Services described in the Scope of Work set forth in Exhibit "A". Contractor shall not be paid for travel time to and from the job site.
- (2) Contractor acknowledges that all services it provides herein shall be delivered consistent with the FAA's "Policy and Procedures Concerning the Use of Airport Revenue," 64 Fed. Reg. 7696 (Feb. 16, 1999) and 49 U.S.C. 47107 (b) which requires that all revenue generated by a public airport which receives FAA grant funds must be expended for the capital or operating costs of the airport.
- (3) Contractor acknowledges that HAS intends to engage in the Resale of Services.

B. Duty to Inspect

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

C. Invoicing

Contractor shall submit its invoices on forms approved in advance by the Director. Each invoice must be accompanied by support documents as may be requested by the Director. Each invoice Contractor submits must be in duplicate and each copy must include required support documents. Each invoice must be identified by the Contract name and Contractor number. All invoices are to be delivered or mailed to the following location:

The City of Houston  
Houston Airport System  
Accounts Payable Section  
P.O. Box 60106  
Houston, Texas 77205-0106

D. Payment of Subcontractors

Contractor shall make timely payments to all persons and entities supplying labor, materials, services, or equipment for the performance of this Agreement. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.** Contractor shall submit disputes relating to payment of MWBE subcontractors to arbitration in the same manner as any other disputes under the MWBE subcontract.

E. Personnel of Contractor

Contractor shall provide sufficient, fully qualified personnel to meet the performance requirements set forth in Exhibit "A". Contractor shall replace any of its personnel or subcontractors whose work product is deemed unsatisfactory by the Director.

F. RELEASE

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

G. INDEMNIFICATION

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

- (1) **CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR")**

ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

- (2) THE CITY'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND
- (3) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

H. SUBCONTRACTOR'S INDEMNIFICATION

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

I. INDEMNIFICATION -PATENT, COPYRIGHT, TRADEMARK AND TRADE SECRET INFRINGEMENT

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

CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.

WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY

AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

**J. INDEMNIFICATION PROCEDURES**

- (1) Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:
- (a) a description of the indemnification event in reasonable detail,
  - (b) the basis on which indemnification may be due, and
  - (c) the anticipated amount of the indemnified loss.

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

(2) Defense of Claims

- (a) Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.
- (b) Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

K. Insurance

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

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

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

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

- (2) Form of Policies.

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

- (3) Issuers of Policies

The issuer of any policy shall have (1) a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide.

(4) Insured Parties

Each policy, except those for Workers' Compensation, Employer's Liability, and Professional Liability, must name the City (and its officers, agents, and employees) as Additional Insured parties on the original policy and all renewals or replacements.

(5) Deductibles

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

(6) Cancellation

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

(7) Subrogation

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

(8) Endorsement of Primary Insurance

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

(9) Liability for Premium

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

(10) Subcontractors

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

(11) Proof of Insurance

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

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

(12) Other Insurance

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

L. Taxes, Licenses, Laws, Rules and Permits

The Contractor shall pay, prior to delinquency, all taxes of whatever character that may be levied, assessed or charged upon the Contractor or the property, real and personal, owned by the Contractor; provided, however, the Contractor shall have the right to contest any such taxes. Contractor shall comply with all laws, codes, rules, regulations and ordinances relating to its performance under this Agreement, including any which may impose requirements more stringent than, or inconsistent with, this Agreement. Nothing in this Agreement abrogates or diminishes the regulatory or police powers of the City.

M. Warranties

Contractor warrants that it shall perform all work in a good and workmanlike manner meeting the standards of quality prevailing in Harris County, Texas, for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.

With respect to any parts, instruments, equipment, and goods it furnishes, Contractor warrants:

- (1) that all items are free of defects in title, design, material, and workmanship,
- (2) that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,
- (3) that each replacement item is new, in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new),
- (4) that no item or its use infringe any patent, copyright, or other proprietary rights; provided, however, in the event Contractor becomes aware of such an infringement, Contractor's sole obligation and the City's sole remedy shall be the Contractor's indemnification obligations in accordance with Section III.H.; and
- (5) that for one year from the date of any installation ("Warranty Period"), Contractor shall provide all parts, instruments, equipment, and goods required to complete all Preventive and Remedial Maintenance required under this Agreement at no cost to the City. This warranty is in addition to Contractor's obligation to provide Basic Services under this Agreement. When the manufacturer's warranty period for any parts, instruments, equipment, and goods is greater than one (1) year, the City must claim directly against the manufacturer unless the City is at that time under a maintenance contract with Contractor, provided such warranties are assigned to the City. Any warranty applicable to parts, instruments, equipment, goods and software provided to the City pursuant to this Agreement would be owned by the City.

Contractor shall manage and enforce on the City's behalf (excluding litigation) all manufacturer warranties issued before the Effective Date of this Agreement, during the Term of this Agreement, and any extensions. Contractor shall not be entitled to any additional compensation for the management and enforcement of these manufacturer warranties. If Contractor does not exhaust all remedies, excluding litigation, against a manufacturer who fails to honor all or a part of a warranty, it shall not receive additional compensation from the City for the labor and material costs it incurs to repair or replace the item that otherwise would have been under warranty.

N. Maintenance Audit

- (1) At any time during the term of this Agreement or any extensions, the Director, without notice to the Contractor and at HAS' expense, may provide for a third party maintenance audit. After a minimum of 15 days to review the findings of the audit, Contractor shall rectify any legitimate deficiencies in performance discovered by such audit for which Contractor is responsible to the Director's reasonable satisfaction at no cost to the City within 10 days after the review of such audit findings. Further, the Contractor shall provide the Director with a written explanation for such deficiency in performance and a plan to prevent future deficiencies within 15 days of completion of the review of such audit findings. Failure of the Contractor to timely rectify legitimate deficiencies or provide a written explanation and plan to the Director shall be grounds for termination for cause as provided in Section V. If Contractor disagrees with such audit findings then Contractor shall commence the dispute resolution process described in Section R to obtain a final ruling on the audit findings.
- (2) At any time during the term of this Agreement or any extensions, the Director, without notice to the Contractor, may conduct his own inspections of Contractor's work performance, equipment, inventory, logs and work sites. Contractor shall rectify any deficiencies discovered by such inspection to the Director's reasonable satisfaction within 10 days following completion of its review of the Director's findings at no cost to the City if caused by the Contractor or its subcontractors.

O. Confidentiality

Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, data, and documents (collectively, "the Information") that they receive, prepare, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information other than in furtherance of the services under this Agreement, unless the Director authorizes it in writing or as may be required by law. Contractor shall establish procedures to ensure confidentiality of the Information and to prevent its unauthorized use and disclosure. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors who perform work under this Agreement, which bind them to maintain the confidentiality of the Information.

P. Use of Work Products

Contractor conveys and assigns to the City its entire interest and full ownership worldwide in and to any work, invention, and all Documents, and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively "Proprietary Rights") that Contractor, its agents, employees, contractors, and subcontractors (collectively "Authors") develop, write, or produce under this Agreement (collectively "Works"). Works do not

include Contractor, or third party Documents, ideas, "know how," works or inventions of Contractor or third party Documents developed by them in the ordinary course of their business and not expressly commissioned for the City under this Agreement, and shall remain the property of Contractor or the third party, as applicable. Third party software is licensed to the City pursuant to the licensor's license and not included within Works.

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

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

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

Contractor may retain copies of the Works for its archives. Contractor shall not otherwise use, sell, license, or market the Works.

Q. Licenses and Permits

Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by this Agreement, any statute, ordinance, rule, or regulation. This requirement includes, without limitation, certification of the on-site technicians. Contractor shall immediately notify the Director of any suspension, revocation, or other detrimental action against required licenses or certifications.

R. Compliance with Laws

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

S. Compliance with Equal Opportunity Ordinance

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

T. Minority and Women Business Enterprises

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

Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 20% of the value of this Agreement to MWBEs. The City's policy does not require Contractor to in fact meet or exceed this goal, but it does require Contractor to objectively demonstrate that it has made good faith efforts to do so. To this end, Contractor shall maintain records showing:

- (1) subcontracts and supply agreements with Minority Business Enterprises,
- (2) subcontracts and supply agreements with Women's Business Enterprises, and
- (3) specific efforts to identify and award subcontracts and supply agreements to MWBEs. Contractor shall submit periodic reports of its efforts under this Section to the Affirmative Action Director in the form and at the times he or she prescribes.

Contractor shall require written subcontracts with all MWBE subcontractors and suppliers and shall submit all disputes with MWBE subcontractors to binding arbitration in Houston, Texas, if directed to do so by the Affirmative Action Director. All agreements must contain the terms set out in Exhibit "E." If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, then the subcontract must also be signed by the attorneys of the respective parties.

U. Performance Bond

Contractor shall furnish a performance bond and a payment bond for \$3,080,183.76 (50% of the total contract amount for the initial term of the Agreement) conditioned on Contractor's full and timely performance of the Agreement (and payment of subcontractors). The bond(s) must be in a form approved by the City Attorney (substantially the form attached as Exhibit "G") and issued by a corporate surety authorized and admitted to write surety bonds in Texas. If the amount of the bond exceeds \$100,000, the surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability in excess of \$100,000 by a reinsurer listed on the U.S. Treasury list.

If option periods are exercised Contractor shall furnish a performance bond and a payment bond for 50% of the contract amount for the option term(s) of the Agreement.

V. Drug Abuse Detection and Deterrence

- (1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
- (2) Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"),
  - (a) a copy of its drug-free workplace policy,
  - (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit H," together with a written designation of all safety impact positions and,
  - (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "I."
- (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 "J". 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.
- (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 work force.
- (5) Contractor shall require that its subcontractors comply with the Executive Order and Contractor shall secure and maintain the required documents for City inspection.

W. Environmental Laws

- (1) Contractor shall comply with all federal, state, and local statutes, ordinances, regulations, rules, policies, codes, or guidelines now or hereafter in effect, as they

may be amended from time to time, that govern Hazardous Materials or relate to the protection of human health, safety, or the environment, including but not be limited to:

- (a) the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq.;
- (b) the Safe Drinking Water Act, 44 U.S.C. Section 300(f) et seq.;
- (c) the Oil Pollution Control Act of 1990, 33 U.S.C. Section 270 et seq.;
- (d) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Section 9601 et seq., and as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. Law No. 99-499, 100 Stat. 1613;
- (e) the Toxic Substances Control Act, 15 U.S.C., Section 2601 et seq.;
- (f) the Clean Air Act as amended, 42 U.S.C. 7401 et seq.;
- (g) the Clean Water Act, 33 U.S.C., Section 1251, et seq.;
- (h) the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801 et seq.;
- (i) the Resources Conservation and Recovery Act, 42 U.S.C., Section 6901 et seq.;

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

- (2) Within 10 days of receipt of an invoice, Contractor shall reimburse the City for any fines or penalties that may be levied against the City by the Environmental Protection Agency, the Texas Commission on Environmental Quality, or any other governmental agency for Contractor's (or its agents' and employees') failure to comply with the Environmental Laws.
- (3) Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to or from the Airport, or any other areas or facilities subject to this Agreement, except in strict compliance with the Environmental Laws. "Hazardous Materials" include, but are not limited to,:
  - (a) all substances, materials, wastes, pollutants, oils, or governmentally regulated substances or contaminants defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws,
  - (b) asbestos and asbestos-containing materials, petroleum products including crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste, or
  - (c) any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, distributed, disposed of, or released.

- (4) The Airport is subject to the National Pollution Discharge Elimination System Program ("NPDES"), and the regulations, 40 CFR Part 122, relating to stormwater discharges, for operations at the Airport. Contractor is familiar with these NPDES stormwater regulations, and shall conduct operations in accordance with 40 CFR Part 122, as amended from time to time. Contractor understands that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations.
- (5) Close cooperation is necessary to ensure compliance with any NPDES stormwater discharge permit terms and conditions, as well as to ensure safety and to minimize costs. Contractor shall implement "Best Management Practices" as defined in 40 CFR, Part 122.2, as amended from time to time, if necessary to minimize the exposure of stormwater to significant materials generated, stored, handled, or otherwise used by Contractor as defined in the federal stormwater regulations.
- (6) The City's NPDES stormwater discharge permit and any subsequent amendments, extensions, or renewals are incorporated into this Agreement. Contractor shall be bound by all applicable portions of the permit.
- (7) Contractor shall implement the NPDES requirements at its sole expense, unless otherwise agreed to in writing between the City and Contractor. Contractor shall meet all deadlines that may be imposed or agreed to by the City and Contractor. Time is of the essence.
- (8) If either party asks, the other party shall provide any non-privileged information submitted to a government entity(ies) under applicable NPDES stormwater regulations.
- (9) Contractor appoints the City as its agent to negotiate with the appropriate governmental entity(ies) any modifications to the City's permit.
- (10) Contractor shall participate in any City organized task force or other work group established to coordinate stormwater activities at the Airport.
- (11) The City may enter upon Contractor's Premises at any time for purposes of inspection to ensure that Contractor is complying with this Section and any other provisions in this Agreement without committing a trespass.
- (12) The City's remedies with regard to Environmental Requirements are cumulative and survive termination of this Agreement.
- (13) **WITH NO INTENT TO LIMIT CONTRACTOR'S INDEMNIFICATION TO THE CITY SET FORTH IN SECTIONS G AND I, CONTRACTOR SHALL PROTECT, DEFEND AND INDEMNIFY THE CITY AND ITS OFFICERS, AGENTS, AND EMPLOYEES AGAINST ANY LOSS, COST, CLAIM, DEMAND, PENALTY, FINE, SETTLEMENT, LIABILITY, OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEYS' AND CONSULTANTS' FEES, COURT COSTS, AND LITIGATION EXPENSES) RELATED TO:**
  - (a) **ANY INVESTIGATION, MONITORING, CLEANUP, CONTAINMENT, REMOVAL, STORAGE, OR**

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

- (b) ANY ACTUAL, THREATENED, OR ALLEGED HAZARDOUS MATERIALS CONTAMINATION OF THE AIRPORT PREMISES BY CONTRACTOR, ITS EMPLOYEES, OR AGENTS;
- (c) THE DISPOSAL, RELEASE, OR THREATENED RELEASE OF HAZARDOUS MATERIALS BY CONTRACTOR, ITS EMPLOYEES, OR AGENTS AT THE AIRPORT THAT AFFECTS THE SOIL, AIR, WATER, VEGETATION, BUILDINGS, PERSONAL PROPERTY, OR PERSONS;
- (d) ANY PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO HAZARDOUS MATERIALS USE BY CONTRACTOR, ITS EMPLOYEES, OR AGENTS AT THE AIRPORT; OR
- (e) ANY VIOLATION BY CONTRACTOR, ITS EMPLOYEES, OR AGENTS OF ANY ENVIRONMENTAL LAWS.

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

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

X. Airport Security and Fines

(1) All on-site personnel of Contractor, including subcontractors, who perform services under this Contract, are required to undergo a fingerprint-based criminal history records check. Fingerprints will be collected at the Airport Badging Office and submitted electronically for investigation. Contractor shall obtain HAS security badges for its personnel performing services on-site, including its subcontractors' personnel. On-site personnel shall wear identification badges at all times while on Airport property. The cost of badges is subject to change. Costs for the fingerprint-based criminal history records check are reflected in the cost of the badges. Contractor is responsible for the cost of badges, including replacements thereof. Contractor personnel and its subcontractors losing badges will be charged for replacement badges at the then current rate.

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

Y. Conflicts of Interest

If a potential or actual conflict of interests arises between the City's interests and the interests of other clients Contractor represents, Contractor shall immediately notify the City Attorney and Mayor by fax transmission or telephone and request consent. The City shall be deemed to consent to the conflict unless the Mayor or City Attorney sends a written notice that the City declines to consent within 3 business days after the City receives the notice. If the City does not consent, Contractor shall immediately take steps to resolve the conflict.

#### IV. DUTIES OF CITY

A. Payment Terms

(1) The City shall pay to Contractor, and Contractor accepts the fees specified in Exhibit "B," Fee Schedule, for services rendered and the Deliverables furnished by Contractor and its subcontractors under this Agreement. The fees must only be paid from Allocated Funds, as provided below. If hourly rates and fees for Other Work/Services are not stated in Exhibit "B", the rates will be based on the Parties' written agreement. Additionally, if System Upgrades/Modifications are not specified in Exhibit "B", the hourly rates and fees will be based on the Parties' written

Agreement. All such rates and fees must be ordinary and reasonable for the type of work performed.

- (2) If the City pays Contractor for work performed by any subcontractor or for parts, supplies, equipment, or materials provided by any supplier, and Contractor withholds or has withheld payment to the subcontractor or supplier because of a deficiency in the quality or quantity of that subcontractor's or supplier's work or materials, the City may withhold a corresponding amount from any pending or future payments to Contractor until the next regular payment to Contractor occurring after the City receives reasonable documentation that the deficiency has been remedied.
- (3) All invoices must be approved by the Director. The invoices will be paid within 30 days after receipt and approval by the Director. All payments must be made by check made payable to Contractor. The Director will not unreasonably delay or withhold payment or approval of any invoice. Neither partial payments made nor approval of invoices or services by the Director constitute final acceptance or approval of the Contractor's services to which the partial payment or approval relates. Such payments do not relieve Contractor of any of its obligations under this Agreement.

B. Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

C. Method of Payment - Disputed Payments

If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

D. Limit of Appropriation

- (1) The City's duty to pay money to Contractor for any purpose under this Agreement is limited in its entirety by the provisions of this Section.
- (2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated the sum of \$1,500,000.00 to be used for capital expenditures as identified in Exhibit A and has additionally allocated an initial sum of \$669,412.60 for non-capital expenditures during the remainder of the current fiscal year under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies.

- (3) 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.

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- (4) City Council delegates to the Director, in his or her sole discretion, the authority to approve up to \$9,820,214.32 in supplemental allocations for this Agreement without returning to Council. Contractor expressly agrees and understands that Director cannot be compelled to approve any supplemental allocation.
- (5) The Original Allocation plus all supplemental allocations are the Allocated Funds. For purposes of Change Orders in Section IV.E. (3)(c) below, the Original Agreement amount is \$11,989,626.92. Funds are not allocated unless and until the funds have been (1) approved by the Director and (2) certified by the City Controller, as required by Article II, Section 19a of the City Charter, notwithstanding any delegation of authority by City Council. This agreement is not an allocation of funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement and it has no other remedy in law or in equity against the City and no right to damages of any kind.

E. Changes

- (1) At any time during the Agreement Term, the Director may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.

accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.

- (2) The Director will issue the Change Order in substantially the following form:

**CHANGE ORDER**

TO: [Name of Contractor]  
FROM: City of Houston, Texas (the "City")  
DATE: [Date of Notice]  
SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:

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

Signed:

[Signature of Director]

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

F. Access to Site

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

## V. TERM AND TERMINATION

A. Contract Term

Unless sooner terminated in accordance with the terms and conditions herein, the term of this Agreement shall commence on the Effective Date and shall continue for three consecutive years from the date set forth in the Notice to Proceed ("Term"). Performance begins on the date specified in the Notice to Proceed issued by the Director. Contractor acknowledges that time is of the essence of this Agreement.

B. Renewals

If the Director, at his or her sole discretion, makes a written request for renewal to Contractor at least 30 days before expiration of the then-current term and if sufficient funds are allocated, then, upon expiration of the initial term, this Agreement may be renewed for two successive one-year terms upon the same terms and conditions. The Director has the discretion to approve one 90 day extension without 30 day notice.

C. Termination for Convenience by City

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

On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section IV.A unless the fees exceed the allocated funds remaining under this Agreement.

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

D. Termination for Cause by City

If Contractor defaults under this Agreement, the Director may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:

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

- (4) a receiver or trustee is appointed for Contractor.

If a default occurs, the Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The Director, at his or her sole option, may extend the termination date to a later date. If the Director allows Contractor to cure the default and Contractor does so to the Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate this Agreement on the termination date, at no further obligation of the City.

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

E. Termination for Cause by Contractor

Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date. The date must be at least 30 days after the Director receives the 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.

## VI. MISCELLANEOUS

A. Independent Contractor

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

B. Force Majeure

(1) Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Agreement. Force Majeure means:

fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to extra Reimbursable Expenses or payment.

(2) This relief is not applicable unless the affected party does the following:

- (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
- (b) provides the other party with prompt written notice of the cause and its anticipated effect.

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

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

(5) If the Force Majeure continues for more than 14 days from the date performance is affected, the Director may terminate this Agreement by giving 7 days' written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

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

C. Severability

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

D. Entire Agreement

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

E. Written Amendment

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance 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.

F. Applicable Laws

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

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

G. Notices

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

H. Captions

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

I. Non-Waiver

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

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

J. Inspections and Audits

City representatives may perform, or have performed, (1) audits of Contractor's books and records; and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep such books and records available for this purpose for at

least seven (7) years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

K. Enforcement

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

L. Ambiguities

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

M. Survival

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

N. Publicity

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

O. Parties In Interest

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

P. Successors and Assigns

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

Q. Business Structure and Assignments

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

Contractor shall not delegate any portion of its performance under this Agreement without the Director's written consent, which shall not be unreasonably withheld.

R. Dispute Resolution

For purposes of this Section "Project Administrator" means the person the Director designates to monitor the progress of all Parties' performance under this Agreement.

Except as may otherwise be provided by law, a dispute that (1) does not involve a question of law; (2) arises during the performance of this Agreement; and (3) is not resolved between the Project Administrator and Contractor must be handled as described below:

- (a) The Project Administrator shall put its decision in writing and mail or otherwise furnish Contractor with a copy. Contractor may abide by the decision or may appeal the decision to the Director.
- (b) If Contractor desires to appeal a decision of the Project Administrator, Contractor must submit a written appeal to the Director. Contractor must file its written appeal within 7 working days following receipt of the Project Administrator's original decision. The Director shall provide Contractor with a written response to the appeal within 14 working days following its receipt. The decision of the Director is final.

S. Remedies Cumulative

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

T. Contractor Debt

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

U. Pay or Play

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

## EXHIBIT A - SCOPE OF WORK

### 1.0 BACKGROUND

1.0 The Houston Airport System (HAS) operates the City of Houston's three (3) major airports: George Bush Intercontinental Airport/Houston (IAH); William P. Hobby Airport (HOU), and Ellington Airport (EFD). Management of the Airport system includes coordination with FAA, air carriers, and other Federal and State agencies to maintain the highest standards of service and safety to Airport patrons. Communications serves a vital role in the efficient operation of the Houston Airport System. First-class communications capability is essential for safety and uninterrupted Airport operations.

### 2.0 GENERAL

2.1 The Contractor shall provide Basic PBX Maintenance Services in accordance with this Agreement, and upon written notice, of the Director and/or his designee, provide Other Work/Services at IAH, HOU, and EFD.

2.1.1 Basic Services includes the following:

2.1.1.1 Basic PBX Maintenance Services consist of on-site maintenance, administration, and routine installation activities to support multiple Avaya CS1000 PBX Systems, multiple fiber and carrier remote units, telephone instruments, software updates, Call Accounting software, NICE Inform IP Recording Systems software, Call Pilot Centralized Voice Mail and Avaya Call Center Software Server, Amcom 911 System, and all ancillary equipment which is related or connected to the operation of the telephone systems.

2.1.2 Other Work/Services include, but are not limited to, the following:

2.1.2.1 Systems, equipment, software, and cable services, required to meet desired conditions and/or repairs not covered in the Basic PBX Maintenance Services.

### 2.2 Audit

2.2.1 Provide tool for management and administration of communications system to include the following data to be provided:

2.2.1.1 Inventory of the major communications system hardware and software components.

2.2.1.2 Pinpoint End-of-Life and other unsupported equipment.

2.2.1.3 Traffic Analysis- to include system resources, networks, trunks, processors and security.

2.2.1.4 Backup Service – Off site backup for communication system configuration.

2.2.2 Audit will be conducted bi-annually as requested by the Director and/or his designee. The Audit will be done in electronic file form, 30 days after receiving the request in writing by the Director and/or his designee. The Audit procedure used by the Contractor shall be submitted with the Agreement.

## EXHIBIT A - SCOPE OF WORK

- 3.0 **BASIC SERVICES**
- 3.1 Basic PBX Maintenance Services
  - 3.1.1 Beginning on the start date specified in the Notice to Proceed, Contractor shall provide on-site personnel during Normal Business Hours (7:00 a.m. to 5:00 p.m.) to perform System maintenance in strict compliance with the terms and conditions of the Agreement throughout its term. System maintenance services include, but are not limited to, Preventive Maintenance, Remedial Maintenance, MAC's, ISI Call Accounting (Infotel Select version 7.1.2), PBX Network Fault & Performance Monitoring, NICE Inform IP Recording Software, Avaya CS 1000 PASS Plus and other connectivity responsibilities described herein. All software problems and the applicable updates and patches of software shall be offered at no cost to the City within a mutually agreed upon timeframe upon release from the manufacturer.
    - 3.1.1.1 Avaya CS1000 PASS Plus includes the following locations:
      - 3.1.1.1.1 Terminal D PBX - IAH George Bush Intercontinental
      - 3.1.1.1.2 Administration Building PBX – IAH George Bush Intercontinental
      - 3.1.1.1.3 HOU PBX – HOU William P. Hobby
      - 3.1.1.1.4 Call Pilot (located in Terminal D) – IAH George Bush Intercontinental
      - 3.1.1.1.5 Contact Center Manager 7.0 (located in Terminal D) – IAH George Bush Intercontinental and HOU – William P. Hobby Airport.
    - 3.1.2 Contractor shall pay all of its Administrative/Overhead Cost including, but not limited to, payroll (vacation, sick time, training, etc.) processing orders, tracking invoices, sales quotations, and engineering documents. Such costs shall not be billed to the City.
    - 3.1.3 Contractor shall provide onsite personnel, including but not limited to, those below:
      - 3.1.3.1 One (1) On-Site Coordinator/Administrative Coordinator
      - 3.1.3.2 In addition to the requested on-site staff, HAS anticipates that the following Contractor tasks will be required to ensure contractual compliance. These management and administrative tasks should be performed at no additional cost. However, HAS acknowledges that these tasks would be more productively performed by an on-site resource who can be actively engaged in the day-to-day operations at HAS. Therefore, HAS is willing to provide an on-site work space for the "Site Coordinator" upon request from Contractor.
      - 3.1.3.3 The On-Site Coordinator/ Administrative Coordinator shall perform the following duties:
        - 3.1.3.3.1 Oversee technician, System Support Specialists, and on-site sub-contractors at IAH, HOU, and EFD.

## EXHIBIT A - SCOPE OF WORK

- 3.1.3.3.2 Dispatch technicians via HAS Work Order system.
- 3.1.3.3.3 Establish and adjust priorities as requested by the Director and/or his designee or as workload requires.
- 3.1.3.3.4 Perform quality control inspections.
- 3.1.3.3.5 Analyze technician workload and efficiency; produce reports for HAS.
- 3.1.3.3.6 Process payroll (vacation, sick, training)
- 3.1.3.3.7 Process orders
- 3.1.3.3.8 Track invoices.
- 3.1.3.3.9 Provide sales quotations & engineering documentation.
- 3.1.3.3.10 Perform other tasks requested by the Director and/or his designee.
- 3.1.3.4 Two (2) System Support Specialists.
  - 3.1.3.4.1 Requirements include minimum of three years telecommunications experience with certifications/knowledge in the following:
    - PBX Feature Administration
    - Basic ACD, AVAYA Contact Center Management System 7.0 or higher
    - Call Pilot & Call Pilot Application Builder
    - Microsoft: Excel, Word
  - 3.1.3.4.2 The System Support Specialist shall perform the following duties:
    - 3.1.3.4.2.1 Project coordination (large moves, System upgrades & interfaces, etc.).
    - 3.1.3.4.2.2 Ability to perform PBX software programming. Basic ACD programming, Call Pilot Voicemail mailboxes and menu applications, NICE Inform and Call Center software programming.
    - 3.1.3.4.2.3 Coordination of multi-vendor services (i.e. long distance trouble shooting, tenant trunking issues, and service requests).
    - 3.1.3.4.2.4 Must be proficient in reviewing and processing HAS work orders for repairs, moves, add and changes before assigning to Communication Technicians.
    - 3.1.3.4.2.5 Complete work orders and update Director and/or his designee, 911 System, Call Pilot, cable records and tenant billing.
    - 3.1.3.4.2.6 Must be proficient in using HAS work order system for completion of service request with the contractual service level agreement.

## EXHIBIT A - SCOPE OF WORK

- 3.1.3.4.2.7 Complete monthly billing for tenants via HAS billing system.
- 3.1.3.4.2.8 Assign Long Distance authorization codes.
- 3.1.3.4.2.9 Schedule and maintain HAS reservation log for multiple conference bridge lines.
- 3.1.3.4.2.10 Provide end user training on various telephones, voicemail, NICE Inform, Contact Center Manager 7.0.
- 3.1.3.4.2.11 Perform other tasks requested by the Director and/or his designee.
- 3.1.3.5 Three (3) Communications Technicians
  - 3.1.3.5.1 Requirements include minimum of 5 years telecommunications experience with certifications/knowledge in the following:
    - Avaya CS 1000 7.5 Installation & Maintenance
    - Avaya CS 1000 Dialing Plan Design & IP Peer Networking
    - Avaya CS 1000 NARS/BARS
    - Avaya Contact Center Management System 7.0 or higher
    - ACD
    - Call Pilot Release 5.0 or higher
    - Microsoft: Word, Excel
  - 3.1.3.5.2 The Communications Technicians shall perform the following duties:
    - 3.1.3.5.2.1 Responsible for the installation, modification, configuration and testing of analog, digital and IP communications equipment.
    - 3.1.3.5.2.2 Install, repair, perform moves, adds, and changes on all products/systems and applications. e.g. Avaya CS 1000, Call Pilot voicemail, Contact Center Manager 7.0, Element Manager, Telephony Manager, Signaling Server, PRI, D-Channels, NICE Inform System, Amcom 911 System, as well as all other peripherals and ancillary equipment.
    - 3.1.3.5.2.3 Trunk Administration and Routing including SIP Trunking.
    - 3.1.3.5.2.4 Multi-Tenant software.
    - 3.1.3.5.2.5 ACD.
    - 3.1.3.5.2.6 Maintain multi-site numbering plan.
    - 3.1.3.5.2.7 Perform preventative maintenance on PBX; submit weekly PM Reports.
    - 3.1.3.5.2.8 Perform routine battery inspections for PBX, Fiber Remotes, etc.

## EXHIBIT A - SCOPE OF WORK

- 3.1.3.5.2.9 Perform software patch updates for PBX, Call Pilot, Contact Center Manager 7.0, Signaling Server.
- 3.1.3.5.2.10 Upgrades software/hardware for PBX, Call Pilot, Contact Center Manager 7.0, Signaling Server.
- 3.1.3.5.2.11 Complete work orders for adds, moves, changes and repairs.
- 3.1.3.5.2.12 Update completed work orders with details for Director and/or his designee, 911 system and cable records.
- 3.1.3.5.2.13 Must be proficient in using HAS Work Order system for completion of service request in with the contractual service level agreement. Must have knowledge of wiring standards for various circuit extensions, paging systems, radios systems, copper, fiber, coaxial cable and other HAS specific technology applications.
- 3.1.3.5.2.14 Work closely with HAS Desktop staff on installation of desktop applications that are PBX related.
- 3.1.3.5.2.15 Perform other tasks requested by Director and/or his designee.
- 3.1.3.6 Two (2) Communications Technicians Assistant requirements must include minimum of 3 years telecommunications experience, understanding of basic telephony and wiring. Microsoft: Word, Excel
  - 3.1.3.6.1 The Communications Technicians Assistants shall perform the following duties:
    - 3.1.3.6.1.1 Install, repair and move telephone sets, circuits, courtesy phones, call boxes, AED's.
    - 3.1.3.6.1.2 Troubleshoot/Test voice and data.
    - 3.1.3.6.1.3 Basic PBX software changes.
    - 3.1.3.6.1.4 Complete work orders for adds, moves, changes and repairs.
    - 3.1.3.6.1.5 Must be proficient in using HAS work order system for completion of service request in accordance with the contractual service level agreement.
    - 3.1.3.6.1.6 Update completed work orders with details for Director and/or his designee, 911 system, and cable records.
    - 3.1.3.6.1.7 Perform other tasks requested by the Director and/or his designee.
- 3.1.3.7 Contractor shall supply, Two (2) Cable Technicians. (Shall be employed by a Systimax Elite or Prestige partner).
  - 3.1.3.7.1 Contractor shall supply all necessary tools and equipment for the safe and timely installation of low voltage cabling systems designated in this contract.

## EXHIBIT A - SCOPE OF WORK

- 3.1.3.7.2 Cable Technicians to be Certified IPatch Support Specialist (CISS). (Systimax courses SP5500 and ND5510)
- 3.1.3.7.3 The Contractor shall provide Systimax warranty certificates for all work preformed.
- 3.1.4 Contractor shall adhere to all HAS Technology Specifications. The specifications are subject to change by HAS periodically to maintain current technology standards. Contractor is required to comply with changes to the HAS Technology specifications within 30 days of notice of revisions. "Notice of revisions" shall be accomplished by way of posting revised electronic documents to designated areas within the HAS data network or on HAS SharePoint website, and will be posted with revision dates. Contractor shall have access to these areas and must proactively verify Contractor is using the most current specifications each time cabling, conduit or equipment is installed.
- 3.1.5 The Contractor shall establish a final written and electronic set of cable records for all work preformed, as required by the Director and/or his designee and shall provide it within 15 days of HAS acceptance (i.e. substantial completion) of each cable installation. These cable records shall include, but are not necessarily limited to, iPatch cable schedule spreadsheets, test results and AutoCAD drawings showing all cable paths and labels. Cable records shall be submitted in a format specified by HAS.
- 3.1.6 Cable Technicians shall perform the following duties:
- Install low voltage horizontal cabling.
  - Install backbone fiber and low voltage copper cabling.
  - Install conduit and pathways for low voltage backbone and horizontal cabling.
  - Install equipment associated with the installation of low voltage backbone and horizontal cabling.
  - Terminate, label, test and document the installation of all low voltage backbone and horizontal cabling.
  - Perform other tasks requested by the Director and/or his designee or designated representative.
- 3.1.7 Beginning on the start date specified in the Notice to Proceed, System maintenance is to be performed by the full-time on-site personnel during Normal Business Hours (7:00 a.m. to 5:00 p.m.) at the monthly rates specified in the Fee Schedule (Exhibit B). The monthly rates shall include the on-site labor and supervision for any work performed during Normal Business Hours as well as Remedial Maintenance performed after Normal Business Hours and all supplies, parts, instruments, and equipment required to complete all Preventive and Remedial Maintenance as itemized herein. Hardware required to perform SRS-related software upgrades is covered by SRS, and will be provided at no additional charge. HAS will purchase all other hardware upgrades by the OSR process, as described in 4.0.

## EXHIBIT A - SCOPE OF WORK

- 3.1.8 When requested by HAS, under an approved OSR, as specified herein, supplies, parts, instruments, or equipment required to complete MAC's will be supplied by the Contractor at prices specified in the Fee Schedule (Exhibit B).
- 3.2 **PREVENTIVE MAINTENANCE (PM)**
- 3.2.1 The Contractor shall perform PM on the Telecommunication System in accordance with standards, procedures, and frequencies recommended by the original equipment manufacturer ("OEM") as required for keeping the System in a First Class Condition. The Contractor's PM shall include all procedures designed to reduce product failure and extend useful product life. Contractor shall submit PM procedures, itemized by task, schedule, and report format for approval by the Director and/or his designee prior to the start date.
- 3.2.2 The Contractor's PM shall include all supplies, parts (including replacement of sub-component parts) labor, and incidentals required to prevent the occurrence of an internal or external System failure. PM shall include (but not be limited to) replacing worn, damaged, or destroyed parts; inspecting, testing, cleaning and adjusting System components as necessary to maintain a fully operational System.
- 3.2.3 The Contractor PM shall also include any software/database management required to keep memory or disk storage at optimum levels.
- 3.2.4 Contractor shall test the PBX batteries for the back-up power system in accordance with standards, procedures, and frequencies recommended by Avaya. Any batteries not meeting the required specifications shall be replaced by and at the expense of the Contractor. Contractor shall submit a PM schedule for battery testing.
- 3.2.5 PM responsibilities on the part of the Contractor shall begin immediately after the start date as specified in the Notice to Proceed.
- 3.2.6 Upon initiation of any PM procedures, the Contractor shall proceed continuously to completion as rapidly as possible.
- 3.2.7 Contractor shall submit completed PM reports to the Director and/or his designee within 5 working days of completing PM activity.
- 3.2.8 All components shall be routinely examined at least once each month and replaced if found defective.
- 3.2.9 All service-affecting preventative maintenance shall be conducted and scheduled with HAS personnel designated by the Director and/or his designee at least seven (7) calendar days in advance. The Contractor shall notify HAS personnel designated by the Director and/or his designee in writing of planned Preventive Maintenance schedules.

## EXHIBIT A - SCOPE OF WORK

### 3.3 **REMEDIAL MAINTENANCE (RM)**

3.3.1 RM applies whether or not there is actually an outage and whether or not any outage involved is caused by an internal failure. HAS requires continuous telecommunications capability for ongoing operations. Accordingly, whenever HAS places a trouble call to the Contractor, or when the Contractor receives an alarm directly from the system(s) or Contractor's Technical Assistance Center, the Contractor shall respond in an appropriate manner, dispatching Contractor's maintenance personnel to arrive at the premises with their tools and spare parts within the appropriate time period specified in 7.2, Response Times.

3.3.2 If an outage is caused by internal failure, the Contractor shall perform RM to correct internal failures and return the System to full operating condition. (If temporary replacement of a component is made, permanent repairs or replacement shall be completed as soon as possible thereafter). Once the Contractor begins major on-site corrective maintenance, it shall continue uninterrupted as long as reasonable progress, as determined by the Director and/or his designee, is being made until the System is operational.

3.3.3 If an outage is not caused by an internal failure, or if there is no outage at all, RM shall be completed when the Director and/or his designee accepts completed work to repair the defect. This work may be a System diagnosis and report. The Director and/or his designee will promptly confirm HAS acceptance in writing.

### 3.4 **MOVES/ADDS/CHANGES (MACS)**

3.4.1 The Contractor shall be responsible for, but not necessarily limited to the following MAC items:

3.4.1.1 Individual and Group telephone moves.

3.4.1.2 Installing new telephones and associated cabling and programming to make operational. Cable installation will be performed by cabling Service sub-contractors.

3.4.1.3 Removing existing telephones.

3.4.2 Modify existing PBX database by certified personnel trained in System Administration, including (but not limited to):

3.4.2.1 Set-based feature changes including analog, digital and IP phones.

3.4.2.2 Attendant Console.

3.4.2.3 Automatic Call Distribution (ACD).

3.4.2.4 Contact Center Manager 7.0 Administration and Scripting.

3.4.2.5 Group Call configuration for Emergency Notification Systems/

## EXHIBIT A - SCOPE OF WORK

- 3.4.2.6 Interpreting and changing Systems Configuration definitions for system hardware and software parameters.
- 3.4.2.7 System Speed Call feature for abbreviated dialing.
- 3.4.2.8 Configure or change Customer Data lock capabilities.
- 3.4.2.9 Tenant Service.
- 3.4.2.10 Paging access.
- 3.4.2.11 Trunk Administration, including Analog, DTV/PRI transmission, SIP
- 3.4.2.12 Foreign Exchange Trunks.
- 3.4.2.13 Fiber Intergroup Switching.
- 3.4.2.14 ISDN Calling Line ID enhancements.
- 3.4.2.15 Maintain Multi-Site Numbering Plan or modify/design new numbering plan.
- 3.4.2.16 Trunk Access Restriction (TARG).
- 3.4.2.17 Trunk Group Access Restriction (TGAR).
- 3.4.2.18 Authorization Codes.
- 3.4.2.19 Network Alternate Routing Selection (BARS/NARS).
- 3.4.2.20 Coordinated Dialing Plan
- 3.4.2.21 Call Details.
- 3.4.2.22 Music Broadcast.
- 3.4.2.23 Recorded Announcement (RAN).
- 3.4.2.24 Call Pilot Voice Mail user administration.
- 3.4.2.25 Voice Mail Remote Notification assignments and schedule.
- 3.4.2.26 Voice Mail Network and Access administration
- 3.4.2.27 Signaling Server/NRS Database
- 3.4.2.28 911 Emergency Services Administration (ESA)
- 3.4.2.29 NICE Inform System

## EXHIBIT A - SCOPE OF WORK

3.4.2.30 Amcom 911 System

3.4.3 The Contractor shall be responsible for maintaining the existing System connectivity as well as for maintaining connectivity to ancillary transmission equipment, non-switching equipment, and data equipment, although such connectivity may not be directly related to the Telecommunication System. When no additional connectivity (i.e. cable) is available to establish new connectivity, the installation of new connectivity will be performed as Other Work/Services.

### 4.0 OTHER WORK/SERVICES

4.1 Within the general scope of the Agreement, Other Work/Services may be required for systems, equipment, and cable services to meet desired conditions and/or services not covered in the Basic Services of the Agreement. Other Work/Services shall be performed in accordance with all provisions of the Agreement plus any special provisions issued with authorization for work that are consistent with this Agreement. Other Work/Services shall be provided by Contractor on an "as needed" basis and then, only after receipt of a written Other Work/Services Request ("OSR"), signed by the Director and/or his. Other/Work Services include, but are not limited to, the following:

4.1.1 Optional Upgrades/Modifications.

4.1.2 Defibrillator Communications Installation.

4.1.3 Additional telephones and/or software phones as needed for replacements and expansion.

4.1.4 New software upgrades not included in the Agreement.

4.1.5 Cards to support new telephones and features.

4.1.6 Peripheral Upgrades/Modifications.

4.1.7 Cabling materials and services for voice, data, and video devices.

4.1.8 Repair or replace components damaged by vandalism, force majeure, or other third parties as determined by the Director and/or his designee.

4.2 With the exception of certain defined and priced Other Work/Services priced in the Fee Schedule (Exhibit B), prior to issuing an OSR, the Director and/or his designee will first issue a written notice to Contractor detailing the specific Other Work/Services to be performed by the Contractor.

4.3 In response to any such written notice, Contractor shall provide the Director and/or his designee with a written proposal within five (5) business days of receipt of the notice. Such proposal shall include, but not be limited to, a description of the services to be performed, applicable labor rates set forth in the Fee Schedule (Exhibit B), estimated labor hours, performance schedule, total estimated cost, and any other requirements set forth in the Director and/or his designee's written notice to Contractor.

## EXHIBIT A - SCOPE OF WORK

- 4.4 Upon receipt of the proposal, the Director and/or his designee shall have the options to reject the proposal and require resubmission with revised or additional information, or issue an OSR. Contractor will resubmit a modified proposal within two (2) business days of receipt of the Director and/or his designee's written rejection.
- 4.5 Upon approval by the Director and/or his designee of the modified proposal, an OSR will be issued. Contractor shall commence performance on the date set forth in the OSR issued under this Section and shall complete the work in accordance with the terms and conditions of this Agreement and the approved proposal.
- 4.6 For Emergency Service Requests issued after Normal Business Hours (7:00 a.m. to 5:00 p.m.), Contractor may perform Other Work/Services upon the verbal approval of the Director and/or his designee. However, as soon as it is reasonably practical thereafter, HAS shall issue within one business day a written OSR relating to the verbal Emergency Service Request.
- 4.7 Other Service Request (OSR) Forms - With the exception of Emergency Service Requests issued after Normal Business Hours, or Urgent Service Requests, where a request may be verbal and followed immediately in writing, all requests for Other Work/Services will be in writing in a form provided by the Director and/or his designee and signed by the Director or his designated representative.
- 4.8 Other Work/Service Labor Compensation Limits – The Contractor may be compensated for labor under the Other Work/Services' rate schedule for MAC's, only when the on-site technician's workload is such that the work cannot be completed during Normal Business Hours and an additional technician(s) is required or when the work is performed after Normal Business Hours. Additional compensation for labor must be approved in writing in advance of work being performed with the only exception being emergency services as described above.
- 4.9 Compensation For Other Work/Services - Compensation for Other Work/Services may include the following:
- 4.9.1 Labor - Additional labor needed (help for the On-site Technician) for MAC activities that occur during or after Normal Business Hours. The Contractor's mark-up on cost of parts and sub-contracted labor shall be as shown in the Fee Schedule (Exhibit B), exclusive of tax, freight, and travel.
- 4.9.2 Parts, Supplies, Equipment - When MAC orders requested by HAS require parts, supplies, or equipment; Contractor will be compensated for parts, supplies, or equipment as specified below only if the additional compensation is approved in writing in advance of parts being installed in accordance with the established Other/Work Services procedures.

## EXHIBIT A - SCOPE OF WORK

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

5.1 During the Contract Term, the existing telecommunications PBX equipment or systems may be upgraded and/or new equipment or systems may be added to meet the changing needs of the HAS. At HAS's option, such upgrades or additions may be supplied and installed by the telecommunications services Contractor or others. The Contractor shall be responsible for maintenance of any upgrades and/or new equipment or systems following completion of installation, acceptance, and the warranty period. Such system upgrades, new equipment or components installed as an integral part of existing systems without increasing overall system requirements more than 5% are to be maintained by Contractor without additional compensation. Cost adjustments for inclusion or exclusion of equipment that increases or decreases overall system requirements by more than 5% shall be at the rates stipulated in the Fee Schedule (Exhibit B), or if not stated therein, ordinary and reasonable rates as mutually agreed upon between the Director and/or his designee and Contractor. A per Port monthly fee will apply during the term of this Agreement for increase or decrease in the number of in-use ports by more than 5%.

#### 5.1.1 Inclusion Notice

5.1.1.1 Inclusion Notices for additional HAS equipment will describe the additional unit(s) by manufacturer, model, serial number, HAS property tag numbers where applicable, and a brief description of the unit. Contractor shall be responsible for all parts and labor to maintain or replace the unit once the unit is added to the Agreement.

#### 5.1.2 Exclusion Notice

5.1.2.1 Any equipment or service that is subject to the Agreement may be excluded from the Agreement by means of an Exclusion Notice. Price adjustment as a result of exclusion shall be mutually agreed upon by both parties in accordance with Section 5.0 above. The Exclusion Notice will describe the unit by manufacturer and serial number, and include a brief description of the unit to be excluded.

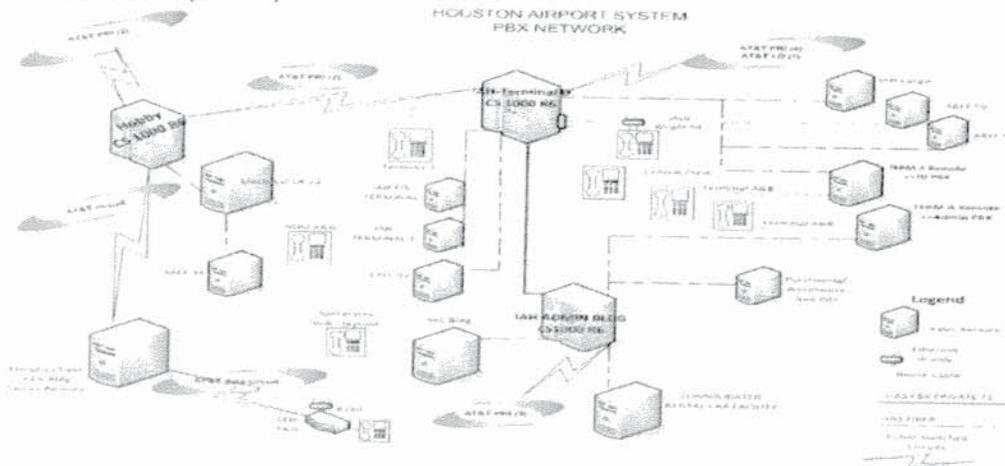
5.2 From time to time during a City of Houston construction project, Contractor may be required to move or add new equipment, etc. on Houston Airport System property. The Contractor may be required to enter into an agreement with a construction Contractor. The Contractor will be reimbursed for this work performed via an allowance in the construction contract as long as the City of Houston has appropriated and authorized the funds. At the time of system acceptance, the Houston Airport System will process an inclusion notice to incorporate new equipment into this agreement. Maintenance costs will commence upon expiration of the warranty period and in accordance with this agreement.

### 6.0 GENERAL REQUIREMENTS

6.1 The Contractor shall begin maintenance of the Telecommunication Systems and ancillary equipment on the start date specified in the Notice to Proceed and shall complete all requirements of such maintenance in accordance with the terms of this Agreement.

## EXHIBIT A - SCOPE OF WORK

- 6.2 The Contractor's on-site personnel must be able to communicate with the HAS Technology Specifications located on HAS SharePoint website.
- 6.3 The Contractor's on-site personnel will be expected to retrieve and update the status of work assignments via City-provided computers and applications such as Altiris (for work order/trouble tickets), Microsoft Outlook (email system), and Network Engineer (cable management system).
- 6.4 The Contractor's on-site technicians may be expected to maintain/update cable management records in the cable management application (Network Engineer) on an individual work order/trouble ticket basis. Contractor's Cabling Services technicians shall be required to periodically perform physical cable inventories and assist with the reconciliation of the cable management database.
- 6.5 The Contractor's on-site technicians will be required to monitor/update/repair/poll the Call Detail Recording interfaces from the PBX to the Call Accounting application.
- 6.6 The following details are provided in Exhibit C for PBX System Details and Locations.
- 6.6.1 Drawing 1 graphically depicts existing and proposed future PBX equipment and device locations (below).



- 6.6.2 Table 1 provides a detailed description of the IAH- Administration Building CS 1000 PBX system, Serial No. Z02012, capacity, the existing Fiber IPE and Multi-IPE Remote system capacities, proposed future system capacities IAH- Terminal D CS 1000 PBX system, Serial No. J00110, capacity, associated Fiber Multi-IPE and Carrier IPE Remote systems and devices, HOU CS 1000 PBX system, Serial No. Z00922, and associated Fiber IPE Remote system and Carrier Remote system. (below)
- 6.6.3 The following information from a LD22-SLT report reflects resources available as of February, 2011: TABLE 1)

**EXHIBIT A - SCOPE OF WORK**

TABLE 1	IAH TOTAL	IAH LEFT	IAH USED	HOU TOTAL	HOU LEFT	HOU USED	ADMIN TOTAL	ADMIN LEFT	ADMIN USED
Traditional Telephones	3496	817	2679	1872	1117	755	1728	532	1196
IP Users	296	49	247	160	43	117	208	44	164
ACD Agents	500	443	57	20	11	9	60	56	4
Telephony Svc's	25	25	0	25	25	0	25	25	0
PCA	5	4	1	5	2	3	5	0	5
AST	2025	2000	25	26	18	8	26	26	0
SIP CTI TR87	25	25	0	25	25	0	25	25	0
SIP Access Ports	10	10	0	11	0	11	10	0	10
RAN CDN	10	10	0	4	4	0	0	0	0
MUS CON	0	0	0	0	0	0	2	2	0
TN's	32760	2928 1	3479	32760	31664	1096	32760	31127	1633
ACDN	24000	2383 3	167	24000	23928	72	24000	23897	103
AML	16	13	3	16	14	2	16	15	1
LTID	32760	3276 0	0	32760	32760	0	32760	32760	0
RAN RTE	512	512	0	512	512	0	512	512	0
ATTENDANT CONSOLES	32760	3276 0	0	32760	32757	3	32760	32758	2
BRI DSL	10000	1000 0	0	10000	10000	0	10000	10000	0
DATA PORTS	32760	3276 0	0	32760	32759	1	32760	32760	0
PHANTOM PORTS	32760	3272 2	38	32760	32739	21	32760	32746	14
TRADITIONAL TRUNKS	32760	3245 0	310	32760	32656	104	32760	32631	129
DCH	255	246	9	255	250	5	255	248	7

**7.0 PERFORMANCE/TECHNICAL REQUIREMENTS**

7.1 Sub-Standard Performance Action

7.1.1 If Contractor fails to provide the services in accordance with the required service levels, the City shall not pay Contractor for such sub-standard service.

7.1.2 Where Contractor has failed to provide service levels in accordance with this Agreement, Contractor shall not charge HAS for service that does not meet contract specifications. Contractors shall: