

**Request for Proposals (RFP)
For
Job Order Contract
Construction Services
Relating to
Citywide Facilities**

**Proposal Submittal Date
September 21, 2006**

**City of Houston
Building Services Department
Design & Construction Division**

August 2006

**REQUEST FOR PROPOSALS (RFP)
FOR
JOB ORDER CONTRACT
CONSTRUCTION SERVICES
CITYWIDE FACILITIES**

I. PURPOSE

The City's Building Services Department (BSD) invites the submittal of Proposals from Contractors interested in providing Job Order Contract (JOC) construction services for the construction, repair, rehabilitation or alteration of various Citywide Facilities for work of a recurring nature where the delivery times and quantities are indefinite, and Work Orders are issued on the basis of pre-described and pre-priced tasks. The maximum amount of Work to be awarded during the 5-year term of the Agreement is \$20 million. The guaranteed minimum amount of Work to be awarded during the term of this Agreement is \$50,000. Each Work Order will be a minimum amount of \$1,500 and a maximum amount of \$350,000.

II. PRE-PROPOSAL MEETING

A pre-proposal meeting will be held at City Hall Annex 900 Bagby, 2nd Floor Conference Room 246 Wednesday September 13, 2006, at 9:00 a.m., to discuss this solicitation. Attendance at the meeting is not mandatory.

Before the pre-proposal meeting date, the City will welcome any written questions submitted, faxed or e-mailed to:

Phil Golembiewski, P.E. City Engineer
Building Services Department
900 Bagby, Second Floor
Houston, Texas 77002
Fax: 713-437-6859
Philip.Golembiewski@cityofhouston.net

The City will not be bound by any information conveyed verbally. The City will provide, in writing, any clarifications, changes and/or other information, deemed to be necessary, as addenda to this RFP. Addenda will only be provided to pre-proposal meeting attendees and known RFP holders registered with BSD.

III. OBJECTIVE

BSD proposes to retain a highly qualified Contractor with experience in JOC work in occupied facilities to provide the services described herein. Those firms that participate in this RFP process will be referred to as "Proposer." The successful "Proposer" will be referred to, in the RFP, as the "Contractor".

IV. PROJECT DESCRIPTION

The Director of BSD (Director) will issue Work Orders on an as-needed basis as may be required. Work will be done in a wide variety of trades including, but not limited to, carpentry, masonry, concrete, paving, roofing, excavation, steam fitting, plumbing, sheet metal, painting, demolition, welding, HVAC, electrical, mechanical, asbestos abatement, hazardous material handling, carpeting, flooring, drywall finishing, hardware, doors, glazing, landscaping and telecommunications cabling services. The specific work requirements will be identified in the Work Orders.

V. SCOPE OF WORK

Contractor shall furnish all labor, materials, tools, supplies, equipment, transportation, insurance, Bonds, subcontracts, supervision, management, reports, incidentals, and quality control, and shall perform all operations necessary and required for construction management and construction work, which will be defined in each Work Order.

VI. PROPOSAL ORGANIZATION AND SELECTION CRITERIA

- 1.0 To enable the City to efficiently evaluate Proposals, it is MANDATORY that Proposer follows the required format in preparing its Proposal. Proposals that do not conform to the prescribed format will not be evaluated.
- 2.0 The Proposal shall consist of **six** standard binders. The binders shall be submitted in a sealed box. Proposer shall clearly identify the Project, Proposal Submittal Date, and Proposer's name on the outside of the box.
- 3.0 Binders are used to ensure that pages are not lost. Each binder shall be of adequate size to fit all information being submitted. Pages shall be no larger than letter-size (8½" by 11"). Tabbed sections, as defined below, shall separate information provided. Elaborate binders and dividers are not required nor wanted.
- 4.0 The selection criteria and corresponding point values are set out in Tabbed Sections I thru X.
- 5.0 Each of the binders shall be organized in the following order:

- A.** Outside Cover of Binder: This shall clearly identify the Project, Proposal Submittal Date, and Proposer's name.
- B.** Tabbed Section I: Coefficient Factors (40 points).
Copy of Proposer's properly completed Proposal Form with attachments (Attachment A of this RFP). Proposer will be evaluated on Coefficient Factors.
- C.** Tabbed Section II: Experience (13 points).
Provide at least three examples of Proposer's successful experience over the last five years with Job Order Contracts on similar types of projects. Include name, address, and telephone number of project owner or Architect/Engineer for verification. Required minimum number of years in business performing JOC is three.
- D.** Tabbed Section III: References (5 points).
Provide at least three references over the last five years from clients, project owners, Architects/Engineers, or Executive level personnel, with their address and telephone number.
- E.** Tabbed Section IV: Management Plan (13 points).
Provide proposed project organization with position descriptions, qualifications of personnel to be assigned to the project staff, procedures for managing the project to include preparation of estimates, scheduling, use of software and computers, field supervision, interface between Proposer's home office and BSD, measures to ensure responsiveness to routine, urgent, and emergency projects, and internal and external communication.
- F.** Tabbed Section V: Contractor's Representative (13 points).
Proposer's proposed supervisory personnel. Provide qualifications and experience of Contractor's Representative on Job Order Contracts with similar scope, complexity, and value. City may include a "key persons clause" as part of construction contract committing supervisory personnel to the project as proposed.
- G.** Tabbed Section VI: Subcontractors/Suppliers (6 points).
Provide list of proposed subcontractors and suppliers to be used. Attach letters of commitment to this project or letters of pre-qualifications from proposed subcontractors. Include subcontractors' experience on Job Order Contracts on similar types of projects. Provide procedures for identifying, managing, and assisting subcontractors.

Tabbed Section VII: Safety (5 points).

- H.** Provide safety record and program. Provide current Workmen's Compensation Modifier. Number of lost time incidents during last five years

and the associated total number of lost days related to safety incidents.
Number of OSHA citations received over the last five years.

Tabbed Section VIII: Claims History (5 points).

- I. List all projects in last five years that have gone to claim, litigation, City Engineer's decision, mediation or arbitration with the owner. List outcome of City Engineer's decision, litigation or arbitration. List any construction projects your firm failed to complete because of financial reasons, labor disputes, failure of your employees to perform, or any other reason.
- J. Total Point Value for the criteria noted above in Tabbed Sections I thru VII equals 100 possible points.

6.0 The Proposer selected for an award will be the Proposer whose Proposal, as presented in the response to this RFP, is the most advantageous to the City and offers the best value. The City is not bound to accept the lowest priced Proposal if that Proposal is not in the best interest of the City as determined by the City.

7.0 Proposals will be evaluated by the City. The criteria for evaluation of Proposals, and selection of the successful Proposer for this award, will be based on the factors listed in Paragraph VI-5A thru J of this RFP.

8.0 Submission of a Proposal indicates Proposer's acceptance of the evaluation technique and Proposer's recognition that some subjective judgments must be made by the City during the assigning of points.

VII. SUBMITTALS

Sealed submittals are required. **Submittals shall be delivered to City Secretary** of the City of Houston, in the Margaret Westerman Building (a.k.a. City Hall Annex), Public Level, 900 Bagby Street, Houston, TX. 77002, before 10:30 a.m., local time, Thursday, Septmeber 21, 2006. Late submittals will not be accepted for any reason. All submittals must be labeled on the outside with the Proposer's name and the name of the project.

- A. Proposals are publicly opened by the City Secretary in City Council Chambers on the public level in City Hall Annex at 11:00 a.m. on the Proposal Submittal Date.
- B. Place and date of Proposal opening may be changed in accordance with Sections 15-3(b)(5) and 15-3(b)(6) of the City Code.

- C. The City Secretary will publicly identify the names of the Proposers. Other contents of the Proposals will be afforded security sufficient to preclude disclosure of the contents of the Proposal prior to award.
- D. Within 45 days after the date of opening the Proposals, the City will evaluate and rank each Proposal with respect to the selection criteria contained in Paragraph VI of this RFP.
- E. After opening and ranking, an award may be made on the basis of the Proposals initially submitted, without discussion, clarification or modification, or, the City may discuss with the selected Proposer offers for cost reduction and other elements of the selected Proposer's Proposal. If the City determines that it is unable to reach a contract satisfactory to the City with the selected Proposer, then the City will terminate discussions with the selected Proposer and proceed to the next Proposer in order of selection ranking until a contract is reached or the City has rejected all Proposals.
- F. The City may not disclose any information derived from the Proposals submitted by competing Proposers in conducting the discussions.
- G. The City reserves the right to award a contract for all or any portion of the requirements proposed by reason of this request, or to reject any and all Proposals.
- H. The City will send to Selected Proposer a Notice of Intent to Award.
- I. The Proposal remains open to acceptance and is irrevocable for the period of time stated in Proposal Form (See Attachment A).

VIII ADDITIONAL INSTRUCTIONS, NOTIFICATIONS AND INFORMATION

- A. Proposers shall not offer any gratuities, favors, or anything of monetary value to any official or employee of the City for the purposes of influencing this selection. Any attempt by the Proposer to influence the selection process by any means, other than disclosure of qualifications and credentials through the proper channels, shall be grounds for exclusion from the selection process.
- B. Proposers who provide false or misleading information, whether intentional or not, in any documents presented to the City for consideration in the selection process shall be excluded. Any false or misleading information in these documents would, in effect, render the entire document suspect and therefore useless.
- C. INQUIRIES – Please do not contact the City during the selection process to make inquiries about the progress of this selection process. Proposers will be contacted when it is appropriate to do so.

- D. COST OF RFP – The City will not be responsible for costs incurred by anyone in the submittal of qualifications or for any costs incurred prior to the execution of a formal contract.
- E. CONFIDENTIAL INFORMATION – All responses shall be held confidential from other parties by the City to the extent allowable by law until after the selection process is completed. Proposers should be aware that at the completion of the selection process the contents of their Proposals are subject to the provisions of the Texas Open Records Act and may be made public. CONFIDENTIAL or SENSITIVE information should not be included in the Proposals.
- F. CITY POLICIES & ORDINANCES –Proposers should be aware of and therefore, familiar with all pertinent City of Houston Ordinances and policies which relate to contracting with the City. More detailed guidance is available on request. The following is a partial list of relevant subjects:
1. Equal Employment Opportunity
 2. MWBE Participation Goal of 15% and SBE Participation Goal of 5%.
 3. City of Houston Fair Campaign Ordinance
 4. Mayor’s Drug Detection and Deterrence Policy and Procedures

Phil Golembiewski, P.E.
City Engineer
Building Services Department

Attachment A

PROPOSAL FORM

00600-7
08-15-2006

To: **The Honorable Mayor and City Council of the City of Houston
City Hall Annex
900 Bagby Street
Houston, Texas 77002**

Project: **Job Order Contract for Construction Services relating to Citywide
Facilities**

Bidder: _____
(Print or type full name of proprietorship, partnership, corporation, or joint
venture.)

1.0 **OFFER**

- A. Coefficient Factors:** Having examined all matters referred to in Request for Proposals (RFP) for the Project, we, the undersigned, offer to enter into an Agreement (See Attachment "B" to RFP) to perform the Work for the Coefficient Factors submitted with this Proposal.
- B. Period for Proposal Acceptance:** This offer is open to acceptance and is irrevocable for 120 days from Proposal Submittal Date. That period may be extended by mutual written agreement of the City and Proposer.
- C. Addenda:** All Addenda have been received. Modifications to RFP have been considered and all related costs are included in the Coefficient Factors.
- D.** The following documents are attached to the Proposal Form, and shall be submitted with the Proposal Form:
- Document 00450 – Proposer’s Statement of MWBE/PDBE/DBE Status
 - Document 00452 - Contractor's Submission List - Fair Campaign Ordinance Form A
 - Document 00454 - Affidavit of Non-interest
 - Document 00455 - Affidavit of Ownership or Control
 - Others as listed: Document 00600 – List of Proposed Subcontractors and Suppliers, Part A – MWBE/PDBE/DBE/SBE Participation Plan to comply with goals as stated in the Agreement.

2.0 FEE SCHEDULE (See Exhibit "B" of Agreement):

A. PREPRICED ITEMS (PRINT OR TYPE NUMERICAL AMOUNTS):

1. COEFFICIENT FACTOR - STANDARD WORKING HOURS:

2. COEFFICIENT FACTOR - NON-STANDARD WORKING HOURS:

B. NON-PREPRICED ITEMS (PRINT OR TYPE NUMERICAL AMOUNTS):

1. COEFFICIENT FACTOR - STANDARD WORKING HOURS:

2. COEFFICIENT FACTOR - NON-STANDARD WORKING HOURS:

REST OF PAGE INTENTIONALLY LEFT BLANK

3.0 SIGNATURES:

Proposer: _____
(Print or type full name of your proprietorship, partnership, corporation, or joint venture.*)

** By: _____
Signature Date

Name: _____
(Print or type name) Title

Address: _____
(Mailing)

(Street, if different)

Telephone and Fax Number: _____
(Print or type numbers)

- * If Proposer is a joint venture, add additional Proposal Form signature sheets for each member of the joint venture.
- ** Proposer certifies that the only person or parties interested in this offer as principals are those named above. Proposer has not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding.

Note: This document constitutes a government record, as defined by § 37.01 of the Texas Penal Code. Submission of a false government record is punishable as provided in § 37.10 of the Texas Penal Code.

END OF PROPOSAL FORM

Document 00450

PROPOSER'S STATEMENT OF MWBE/PDBE/DBE/SBE STATUS

This certifies that the status of the Proposer, _____,
in

(Proposer's Name)

regard to the City of Houston Code of Ordinances, Chapter 15, Article V, relating to City-wide percentage goals for contracting with Minority and Women-owned Business Enterprises (MWBE) and Disadvantaged Business Enterprises (DBE), Chapter 15, Article VI, relating to City-wide percentage goals for contracting with Persons with Disabilities Business Enterprises (PDBE) and Chapter 15, Article IX, relating to City-wide percentage goals for contracting with a Small Business Enterprise (SBE) is as follows:

1. Proposer (individual, partnership, corporation) is is not a Minority Business Enterprise as defined above.
2. Proposer (individual, partnership, corporation) does does not declare itself to be a Women-owned Business Enterprise as defined above.
3. Proposer (individual, partnership, corporation) does does not declare itself to be a Persons with Disabilities Business Enterprise as defined above.
4. Proposer (individual, partnership, corporation) does does not declare itself to be a Disadvantaged Business Enterprise as defined above.
5. Proposer (individual, partnership, corporation) does does not declare itself to be a Small Business Enterprise as defined above.

Signature: _____

Title: _____

Date: _____

END OF DOCUMENT

Document 00452
Form A
CONTRACTOR SUBMISSION LIST
CITY OF HOUSTON FAIR CAMPAIGN ORDINANCE

The City of Houston Fair Campaign Ordinance makes it unlawful for a Contractor to offer any contribution to a candidate for City elective office (including elected officers-elect) during a certain period of time prior to and following the award of the Contract by the City Council. The term "Contractor" includes proprietors of proprietorships, partners or joint venturers having an equity interest of 10 percent or more for the partnership or joint venture, and officers, directors and holders of 10 percent or more of the outstanding shares of corporations. Submission of a statement disclosing the names and business addresses of each of those persons is required with each Proposal for a City Contract. See Chapter 18 of the City of Houston Code of Ordinances for further information.

This list is submitted under the provisions of Section 18-36(b) of the City of Houston Code of Ordinances in connection with the attached Proposal of:

Firm or Company Name: _____

Firm or Company Address: _____

The firm/company is organized as indicated below. Check one as applicable and attach additional pages if needed to supply the required names and addresses.

SOLE PROPRIETOR

Name _____
Proprietor Address _____

A PARTNERSHIP

LIST EACH PARTNER HAVING EQUITY INTEREST OF 10% OR MORE OF PARTNERSHIP (IF NONE STATE "NONE")

Name _____
Partner Address _____

Name _____
Partner Address _____

A CORPORATION

LIST ALL DIRECTORS OF THE CORPORATION (IF NONE STATE "NONE")

Name _____
Director Address _____

Name _____
Director Address _____

Name _____
Director Address _____

LIST ALL OFFICERS OF THE CORPORATION (IF NONE STATE "NONE")

Name _____
Officer Address _____

Name _____
Officer Address _____

Name _____
Officer Address _____

LIST ALL INDIVIDUALS OWNING 10% OR MORE OF OUTSTANDING
SHARES OF STOCK OF THE CORPORATION (IF NONE STATE "NONE")

Name _____
Owner Address _____

Name _____
Owner Address _____

Name _____
Owner Address _____

I certify that I am duly authorized to submit this list on behalf of the firm, that I am associated with the firm in the capacity noted below, and that I have knowledge of the accuracy of the information provided herein.

Signature

Printed Name

Title

Note: This list constitutes a government record as defined by § 37.01 of the Texas Penal Code.

END OF DOCUMENT

Document 00454

AFFIDAVIT OF NON-INTEREST

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas,
on

this day personally appeared _____,
who

Affiant

being by me duly sworn on his oath stated that he is _____, of

Title

Name of Firm

the firm named and referred to and in the foregoing; and that he knows of no officer,
agent, or employee of the City of Houston being in any manner interested either directly
or indirectly in such Contract.

Affiant's Signature

SWORN AND SUBSCRIBED before me on _____.
Date

Notary Public in and for the State of TEXAS

Print or type name

My Commission Expires: _____
Expiration Date

END OF DOCUMENT

Orig. Dept.: _____ File/I.D. No.: _____

00600-14
08-15-2006

INSTRUCTION: Entities using an assumed name should disclose such fact to avoid rejection of the affidavit. The following format is recommended: Corporate/Legal Name d.b.a. Assumed Name.

Document 00455

AFFIDAVIT OF OWNERSHIP OR CONTROL

BEFORE ME, the undersigned authority, on this day personally appeared

_____ (Full Name, hereafter "Affiant"),
_____ (state title/capacity with Contracting Entity) of
_____ (Contracting Entity's Corporate/Legal Name)
("Contracting Entity"), who being by me duly sworn on oath stated as follows:

1. Affiant is authorized to give this affidavit and has personal knowledge of the facts and matters herein stated.

2. Contracting Entity seeks to do business with the City in connection with

_____ (describe project or matter) which is expected to be in an amount that exceeds \$25,000.

3. The following information is submitted in connection with the proposal, submission or bid of Contracting Entity in connection with the above described project or matter.

4. Contracting Entity is organized as a business entity as noted below (check box as applicable):

FOR PROFIT ENTITY:

- SOLE PROPRIETORSHIP
- CORPORATION
- PARTNERSHIP
- LIMITED PARTNERSHIP
- JOINT VENTURE
- LIMITED LIABILITY COMPANY
- OTHER (Specify type in space below)

NON-PROFIT ENTITY:

- NON-PROFIT CORPORATION
- UNINCORPORATED ASSOCIATION

Orig. Dept.: _____

File/I.D. No.: _____

5. The information shown below is true and correct for the Contracting Entity and all owners of 5% or more of the Contracting Entity and, where the Contracting Entity is a non-profit entity, the required information has been shown for each officer. (NOTE: In all cases, use full names, local business and residence addresses and telephone numbers. Do not use post office boxes for any address. Inclusion of e-mail addresses is optional, but recommended. Attach additional sheets as needed.)

Contracting Entity

Name: _____

Business Address (No./Street) _____

(City/State/Zip Code) _____

Telephone Number (_____)_____

Email Address (optional) _____

Residence Address (No./Street) _____

(City/State/Zip Code) _____

Telephone Number (_____)_____

Email Address (optional) _____

5% Owner(s) (IF NONE, STATE "NONE.")

Name: _____

Business Address (No./Street) _____

(City/State/Zip Code) _____

Telephone Number (_____)_____

Email Address (optional) _____

Residence Address (No./Street) _____

(City/State/Zip Code) _____

Telephone Number (_____)_____

Email Address (optional) _____

6. Optional Information

Contracting Entity and/or _____ (Name of Owner or Non-Profit Officer) is actively protesting, challenging or appealing the accuracy and/or amount of taxes levied against _____ (Contracting Entity, Owner or Non-Profit Officer) as follows:

Orig. Dept.: _____

File/I.D. No.: _____

Name of Debtor: _____

Tax Account Nos. _____

Case or File Nos. _____

Attorney/Agent Name _____

Attorney/Agent Phone No. (_____) _____

Tax Years _____

Status of Appeal (Describe) _____

Affiant certifies that he or she is duly authorized to submit the above information on behalf of the Contracting Entity, that Affiant is associated with the Contracting Entity in the capacity noted above and has personal knowledge of the accuracy of the information provided herein, and that the information provided herein is true and correct to the best of Affiant's knowledge and belief.

Affiant

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 20____.

(Seal)

Notary Public

NOTE:

This affidavit constitutes a **government record** as defined by Section 37.01 of the Texas Penal Code. Submission of a false government record is punishable as provided in Section 37.10 of the Texas Penal Code. Attach additional pages if needed to supply the required names and addresses.

END OF DOCUMENT

Document 00600

LIST OF PROPOSED SUBCONTRACTORS AND SUPPLIERS - PART A¹

MWBE/PDBE/DBE/SBE PARTICIPATION PLAN

PROJECT NAME: _____ ORIG. CONTRACT PRICE: \$ _____
 PROJECT NO.: _____ PART. AMOUNT: \$ _____
 DATE OF REPORT: _____ PERCENTAGE: _____
 _____% PERCENTAGE MWBE: _____%
 _____% PERCENTAGE PDBE: _____
 _____% PERCENTAGE DBE: _____
 _____% PERCENTAGE SBE: _____

| SUBCONTRACTOR OR SUPPLIER ² (INLCUDE MWBE/PDBE/DBE/SBE DESIGNATION) | ADDRESS | SCOPE OF WORK ³ | AGREED PRICE |
|---|---------|----------------------------|--------------|
| | | | |
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- NOTES:**
1. RETURN PART A FOR PROJECTS WITH A STATED MWBE, PDBE, DBE AND/OR SBE PERCENTAGE GOAL, AS REQUIRED IN DOCUMENT 00800 – SUPPLEMENTARY CONDITIONS.
 2. FIRMS LISTED IN PART A SHALL BE CERTIFIED BY THE CITY AFFIRMATIVE ACTION/ CONTRACT COMPLIANCE DIVISION.
 3. DESCRIBE THE WORK TO BE PERFORMED, FOR WHICH THE FIRM IS CERTIFIED, SUCH AS PAVING, ELECTRICAL, ETC.
 4. DO NOT USE THE SAME LINE FOR MWBE/PDBE/DBE/SBE PERCENTAGES.

CONTRACTOR SHALL EXECUTE CONTRACTS WITH APPROVED SUBCONTRACTORS AND SUPPLIERS WITHIN 30 DAYS AFTER THE DATE OF THE NOTICE TO PROCEED.

SIGNATURE: _____ COMPANY NAME: _____

NAME: _____
(Type or Print)

TITLE: _____

END OF DOCUMENT

CONTRACTOR SHALL EXECUTE CONTRACTS WITH APPROVED SUBCONTRACTORS AND SUPPLIERS
WITHIN 30 DAYS AFTER THE DATE OF THE NOTICE TO PROCEED.

SIGNATURE: _____

COMPANY NAME: _____

NAME: _____
(Type or Print)

TITLE: _____

THE STATE OF TEXAS

§

§

COUNTY OF HARRIS

§

ARTICLE 1

PARTIES

A. Address

THIS AGREEMENT FOR JOB ORDER CONTRACTING ("Agreement") for the minor construction, repair, rehabilitation and alteration of City Facilities is made on the Countersignature Date ("Effective Date") between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation, and _____, a registered corporation authorized to do business in Texas.

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

City

Contractor

Director, Building Services Department
or Designee
City of Houston
P. O. Box 61189
Houston, Texas 77208-1189

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

Job Order Contract
WBS No. D-000108-0002

**LIST OF PROPOSED
SUBCONTRACTORS AND SUPPLIERS**

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- G. CONTRACTOR'S MANAGEMENT PLAN
- H. DRUG POLICY COMPLIANCE DECLARATION

C. Parts Incorporated

All of the above-described sections and exhibits are incorporated into this Agreement.

D. Controlling Parts

The Sections, Exhibits, and Documents are intended to be complementary. What is set forth in one document is as binding as if set forth in each document. In some cases they each may address similar terms and requirements. If a conflict among the Sections, Exhibits and Documents arises, the following order of priority controls:

1. Sections
2. Exhibits
3. Documents

E. Signatures

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

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

By: _____
Name:
Title:

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

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS
Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

Director, Building Services
Department

City Controller

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

Assistant City Attorney
L.D. File No.

II. DEFINITIONS

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

"Agreement" means this contract between the Parties, including all exhibits and the Documents, and written amendments authorized by City Council and Contractor.

"Bonds" mean Performance Bond, Payment Bond, Maintenance Bond, and other instruments of Surety. When in singular form it refers to the individual instrument.

"City" is defined in the preamble of this Agreement and includes its successors and assigns. City means the City or its authorized representative.

"City Engineer" means the licensed technical representative who has been designated, in writing by the Director. When the term "City Engineer" is used in this Agreement, action by City Engineer is required unless City Engineer delegates his authority in writing.

"City Facility" means a Facility owned or operated by the City.

"Contract Price" means the amount stated in each Work Order.

"Contract Time" means the number of calendar days to substantially complete the Work as stated in each Work Order.

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

"Contractor's Representative" means individual who shall directly manage and direct the Work under this Agreement and who has authority to act for the Contractor.

"Countersignature Date" means the date shown as the date countersigned on the signature page of this Agreement.

"Design Consultant" means the person, or firm under contract with the City to provide professional services during construction. Design Consultant means Design Consultant or its authorized representative. If a Design Consultant is not employed for services during construction, the City will perform the duties and responsibilities of the Design Consultant.

"Director" means the Director of the Building Services Department or the person he designates.

"BSD" means the Building Services Department.

"Documents" means the documents identified in Exhibit "C", as well as the Bonds, the Drawings and Specifications approved by the Director, appropriate addenda, and any other documents as they are specifically enumerated in this Agreement, plus approved changes, all of which are incorporated herein by reference for all purposes. Documents also include notes, manuals, notebooks, plans, computations, databases, 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) that Contractor prepares or provides under this Agreement.

"Effective Date" means the date the City Controller countersigns the signature page of this Agreement.

"Facility" is defined in Section 271.111 (7) of the Texas Local Government Code, as amended from time to time.

"Original Contract Price". The amount originally stated in the Agreement as the maximum contract amount \$20,000,000.

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

"Product" means materials, equipment, or systems incorporated into the Work.

"Subcontract" means any agreement entered into between the Contractor and a Subcontractor which is necessary and reasonable for services, labor, equipment, and/or materials required for the Agreement performance, including any changes.

"Subcontractor" means any individual, partnership, firm, corporation or joint venture who contracts with the Contractor to furnish services, labor, equipment and/or materials under this Agreement. As used herein, the terms subcontractor and supplier are synonymous.

"Unit Price Book" or "UPB" means the "Total Bare Costs" column in the latest quarterly edition of the R. S. MEANS Facilities Construction Cost Data, with certain exceptions that are outlined in Exhibit "B". The Houston, Texas City Cost Index "total weighted average" will be applied to the R.S. MEANS prices.

"Work" means all construction required by or reasonably inferable from the Agreement, Work Order, and Documents, including all labor, materials, tools, supplies, equipment, transportation, mobilization, insurance, Bonds, subcontracts, supervision, management, reports, incidentals, quality control, and all items listed in Paragraph 3.1 of Exhibit "B" provided by Contractor to fulfill Contractor's obligations.

"Work Order" means a written document which defines the Work to be accomplished in accordance with this Agreement. Upon written approval by the Director, the Work Order serves as a notice to proceed with the Work.

III. DUTIES OF CONTRACTOR

A. Scope of Services

In consideration of the payment specified in each Work Order under this Agreement, Contractor shall provide all labor, materials, tools, instruments, supplies, equipment, transportation, mobilization, insurance, subcontracts, Bonds, supervision, management, reports, incidentals, and quality control necessary to perform construction management and construction work for the minor construction, repair, rehabilitation and alteration of City Facilities as defined in this Agreement.

B. Duty to Inspect

(1) Upon issuance of a Work Order, Contractor shall acknowledge that it has taken all steps necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work, its cost, or performance time, including but not limited to:

- a. Conditions bearing upon transportation, disposal, handling, and storage of materials;
- b. The availability of labor, water, electric power, and roads;
- c. Uncertainties of weather, river stages, tides, or similar physical conditions;
- d. The conformation and conditions of the ground;
- e. The character of equipment and facilities needed preliminary to and during work performance;

- f. The location and/or relocation of existing utility lines, poles, and meters including the necessity for timely coordination with all involved utility owners; and
- g. The requirements for obtaining City, County, State, or Federal permits and licenses necessitated by project right-of-way alignments and boundaries.

(2) The Contractor also shall acknowledge that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the City, as well as from the drawings and specifications made a part of this Agreement.

C. Invoicing

Contractor shall submit its invoices on forms approved in advance by the Director, 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, Work Order number and Contractor number. All invoices are to be delivered or mailed to the following location:

The City of Houston
Building Services Department
P.O. Box 61189
Houston, Texas 77208-1189

D. Drawings

Figure dimensions on Drawings shall govern over scale dimensions and detailed Drawings shall govern over general Drawings.

The City assumes no responsibility for errors or omissions caused by failure of Contractor or any of its Subcontractors to inspect and familiarize themselves with the Work and Agreement.

E. Personnel of Contractor

Contractor shall provide sufficient, fully qualified personnel to meet the performance requirements set forth in this Agreement. Contractor shall replace any of its personnel or Subcontractors whose work product is deemed unsatisfactory by the Director. Additionally, Contractor shall retain the following persons for the following areas of responsibility throughout

the performance of this Contract:

Person

Area of Responsibility

Contractor acknowledges that City is materially relying upon Contractor's promises to use these persons in the performance of this Contract. Contractor shall not remove or replace these persons from these areas of responsibility without the written consent of City, which shall not be unreasonably withheld. Upon removal, any such persons shall be immediately replaced. Any replacement shall be with a person who has work experience and qualities equal to or better than the person being replaced and who is acceptable to City.

F. **RELEASE**

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

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) AND 2), "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- (2) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

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

NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE LIABILITY OF CONTRACTOR FOR THE CITY'S CONCURRENT NEGLIGENCE SHALL NOT EXCEED \$1,000,000.

(3) INDEMNIFICATION PROCEDURES

- a. Notice of Indemnification 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:
 - i. a description of the indemnification event in reasonable detail,
 - ii. the basis on which indemnification may be due, and
 - iii. the anticipated amount of the indemnified loss.

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

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

(4) DEFENSE OF INDEMNIFICATION 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 indemnified 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, or
 - 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.

H. RELEASE AND INDEMNIFICATION - (PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT)

CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE CITY) FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONTRACTOR, 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.

I. Insurance

(1) With no intent to limit Contractor's liability under the indemnification provisions set forth above, Contractor shall provide and maintain in full force and effect during the term of this Agreement and all extensions and amendments thereto, at least the following insurance and available limits of liability.

(2) If any of the following insurance is written as "claims made" coverage and the City is required to be carried as an additional insured, then Contractor's insurance shall include a two-year extended discovery period after the last date that Contractor provides any work under this Agreement.

(3) "Aggregate" amounts of coverage, for purposes of this Agreement, are agreed to be the amounts of coverage available during a fixed 12 month policy period. If Limit of Liability for Excess Coverage is \$2,000,000 or more, Limit of Liability for Employer's Liability may be reduced to \$500,000.

(4) Risks and Limits of Liability: The Contractor shall provide at a minimum the insurance coverages and limits of liability given in Table 1.

(5) Form of Policies: Insurance may be in one or more policies of insurance, the form of which is subject to approval by the Director. It is agreed, however, that nothing the Director does or fails to do with regard to the insurance policies shall relieve Contractor from its duties to provide the required coverage hereunder and Director's actions or inactions will never be construed as waiving City rights hereunder.

(6) Issuers of Policies: The issuer of any policy shall have (1) a Certificate of Authority to transact business in Texas or (2) 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 of Best's Key Rating Guide and the issuer must be an eligible nonadmitted insurer in the State of Texas. Each insurer shall be subject to approval by the Director in his or her sole discretion as to conformance with these requirements, pursuant to subparagraph (5) above.

(7) Insured Parties: Each policy, except those for Workers' Compensation and Owner's and Contractor's Protective Liability, must name the City, its officers, agents and employees as additional insured parties on the original policy and all renewals or replacements during the term of this Agreement. The City's status as an additional insured under the Contractor's insurance does not extend to instances of sole negligence of the City unmixed with any fault of the Contractor.

(8) Deductibles: Contractor shall assume and bear any claims or losses to the extent of deductible amounts and waives any claim it may ever have for the same against the City, its officers, agents, or employees.

(9) Cancellation: Each policy must expressly state that it may not be cancelled, non-renewed, or materially changed unless 30 days' advance notice of cancellation is given in writing to the Director by the insurance company.

(10) Subrogation: Each policy except Owner's and Contractor's Protective Liability must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, its officers, agents, or employees.

(11) Endorsement of Primary Insurance: Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to the additional insured with respect to claims arising hereunder.

(12) Liability for Premium: Contractor shall be solely responsible for payment of all insurance premium requirements hereunder and the City will not be obligated to pay any premiums.

(13) Additional Requirements for Workers' Compensation Insurance Coverage: Contractor shall, in addition to meeting the obligations set forth in Table I, maintain throughout the term of the Agreement, Workers' Compensation coverage as required by statute, and Contractor shall specifically comply with all requirements set forth in this

Paragraph (13). The definitions set out below shall apply only for the purposes of this Paragraph (13).

a. Definitions:

- .1 Certificate of Coverage: A copy of a certificate of insurance, or coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory Workers' Compensation insurance coverage for the Contractor's, Subcontractor's or Supplier's employees providing services for the duration of this Agreement.
- .2 *Duration of the Work*: includes the time from the start of the Work until the Contractor's work under the Agreement has been completed and accepted by the City.
- .3 *Persons providing services for the Work (Subcontractor in Texas Labor Code § 406.096)*: includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Work, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of such entity, or employees of any entity which furnishes persons to provide services on the Work. Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to the Work. Services do not include activities unrelated to the Work, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

b. Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of coverage agreements, which meet the statutory requirements of Texas Labor Code, Section 401.011(44) for employees of Contractor providing services on the Work, for the duration of the Work.

c. The Contractor must provide a Certificate of Coverage to the City prior to being awarded the Agreement.

d. If the coverage period shown on the Contractor's original Certificate of Coverage ends during the duration of the Work, Contractor must file a new Certificate of Coverage with the City showing that coverage has been extended.

e. Contractor shall obtain from each person providing services on the Work, and provide to the Director:

- .1 a Certificate of Coverage, prior to that person beginning work on the Work, so the City will have on file Certificates of Coverage showing coverage for all persons providing services on the Work; and
 - .2 no later than seven days after receipt by Contractor, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current Certificate of Coverage ends during the duration of the Work.
- f. Contractor shall retain all required Certificates of Coverage for the duration of the Work and for one year thereafter.
- g. Contractor shall notify the Director in writing by certified mail or personal delivery, within ten days after the Contractor knew or should have known, of any change that materially affects provision of coverage of any person providing services on the Work.
- h. Contractor shall post on site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Work that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- i. Contractor shall contractually require each person with whom it contracts to provide services on the Work to:
- .1 provide coverage, based on proper reporting of classification codes, payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Work, for the duration of the Work;
 - .2 provide to Contractor, prior to that person's beginning work on the Work, a Certificate of Coverage showing that coverage is being provided for all employees of the person providing services on the Work, for the duration of the Work;
 - .3 provide to Contractor, prior to the end of the coverage period, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current Certificate of Coverage ends during the duration of the Work;
 - .4 obtain from each other person with whom it contracts, and provide to the Contractor: (1) a Certificate of Coverage, prior to the other person's beginning work on the Work; and (2) a new Certificate of Coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current Certificate of Coverage ends during duration of the Work;
 - .5 retain all required Certificates of Coverage on file for the duration of the Work and for one year thereafter;

- .6 notify the Director in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Work; and
- .7 contractually require each person with whom it contracts, to perform as required by subparagraphs i.1-.7, with the Certificates of Coverage to be provided to the person for whom they are providing services.

j. By signing this Agreement or providing or causing to be provided a Certificate of Coverage, Contractor is representing to the City that all employees of Contractor who will provide services on the Work will be covered by Workers' Compensation coverage for the duration of the Work, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier. Contractor shall not be allowed to self-insure workers' compensation. Contractor may be subject to administrative penalties, criminal penalties, civil penalties, or other civil actions for providing false or misleading information.

k. Contractor's failure to comply with these provisions is a breach of the Agreement by Contractor which entitles the City to declare the Agreement void if Contractor does not remedy the breach within 10 days after receipt of notice of breach from the Director.

(14) Subcontractor Insurance Requirements: Contractor shall require Subcontractors and Suppliers to obtain Commercial General Liability, Workers' Compensation, Employee's Liability and Automobile Liability coverage that meets all the requirements of Table 1. The amount must be commensurate with the Subcontract, but not less than \$500,000 per claim. Contractor shall require all Subcontractors with whom it contracts directly, whose subcontracts exceed \$100,000 to provide proof of commercial, general and automobile liability insurance coverage meeting the above requirements. Contractor shall comply with all requirements set out under Paragraph (13) as to Workers' Compensation Insurance for all subcontractors and suppliers.

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

(16) Notwithstanding the proof of insurance requirements set forth above, it is the intention of the Parties that Contractor, continuously and without interruption, maintain in force the required insurance coverages set forth below. Failure of the Contractor to comply with this requirement shall constitute a material breach by Contractor allowing the City, at its option, to immediately suspend or terminate work or exercise any other remedy allowed under this Agreement. Contractor agrees that the City shall never have waived or be estopped to assert a material breach of the Agreement because of any acts or omissions by the City regarding its review or non-review of insurance documents provided by Contractor, its agents, employees or assigns.

TABLE 1
REQUIRED COVERAGES

| <u>(Coverage)</u> | <u>(Limit of Liability)</u> |
|---|--|
| .1 Workers' Compensation: | Statutory Limits for Workers' Compensation |
| .2 Employer's Liability: | Bodily Injury by Accident \$1,000,000 (each accident) Bodily Injury by Disease \$1,000,000 (policy limit) Bodily Injury by Disease \$1,000,000 (each employee) |
| .3 Commercial General Liability: Including Contractor's Protective, Broad Form Property Damage, Contractual Liability, Explosion, Underground and Collapse, Bodily Injury, Personal Injury, and Products and Completed Operations (for a period of one year following completion of the Work). | Combined single limit of \$1,000,000 (each occurrence), subject to general aggregate of \$2,000,000; Products and Completed Operations, \$1,000,000 aggregate |
| .4 Owners and Contractor's Protective Liability: | \$1,000,000 combined single limit each |

| | |
|---|---|
| | occurrence/aggregate |
| .5 Installation Floater | Value of stored equipment or material, listed on Certificates of Payments, but not incorporated in the Work |
| .6 Automobile Liability Insurance: (For automobiles furnished by Contractor in the course of its performance under this Agreement, including Employer's Non-Owned and Hired Auto Coverage) | \$1,000,000 combined single limit each occurrence |
| .7 Excess Coverage: | \$1,000,000 each occurrence/combined aggregate in excess of the limits specified for Employer's Liability, Commercial General Liability, and Automobile Liability |

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

J. Warranties

(1) Contractor warrants to the City that Products furnished under the Agreement shall be free of defects in title, of good quality, and new, unless otherwise required or permitted by the Agreement. Contractor warrants that the Products and the Work shall be free of defects not inherent in the quality required or permitted, and that the Products and the Work shall conform with requirements of the Agreement.

(2) Contractor further warrants that the Work will be free of concentrations of polychlorinated biphenyl (PCB), and other substances defined as hazardous by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or any other applicable law or regulation. Excepted from this warranty are those hazardous substances specified for use under the Agreement. Contractor further warrants that the Work shall be performed in a thorough and workmanlike manner.

(3) Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered nonconforming work. Contractor's warranty excludes remedy for damage or defect caused by abuse by person or persons other than those for whom Contractor is responsible, improper or insufficient maintenance by the City, improper operation, or normal wear and tear under normal usage, and excludes claims that hazardous material was incorporated into the Work, if that material was specified in the Agreement. If required by the Director, Contractor shall furnish satisfactory evidence as to kind, quality, and title of Products and that Products conform to the requirements of the Agreement.

(4) In the event of a defect in a specified Product, either during construction or warranty period, Contractor shall take appropriate measures with the manufacturer of the Product to assure correction or replacement of the defective Product with minimum delay.

(5) Contractor warrants that title to all work covered by Contractor's invoice will pass to the City upon incorporation in the Work or upon Contractor's receipt of payment, whichever occurs first. Such title shall be free of all liens, claims, security interests or other interests, ("Encumbrances") and if not, upon written demand from the Director, Contractor shall immediately take legal action necessary to remove Encumbrances.

K. Confidentiality

Contractor and its agents, employees, contractors, and subcontractors shall hold all City information, data, and documents (collectively, "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 unless the Director authorizes it in writing. 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 the terms in this Paragraph.

L. Conflicts of Interest

If an actual or potential conflict arises between the City's interests and the interests of other clients Contractor represents, Contractor shall immediately notify the Director by fax transmission, e-mail, or telephone. If the Director consents to Contractor's continued representation of the other clients, he or she shall notify Contractor in writing. If the Director does not issue written consent within 3 business days after receipt of Contractor's notice,

Contractor shall immediately terminate its representation of the other client whose interests are or may be in conflict with those of the City.

M. Ownership and Use of Contract Documents

(1) Drawings, Specifications, and other documents prepared by the City or its Design Consultant are instruments of service through which the Work, to be executed by Contractor, is described. Contractor may retain one Contract record set.

(2) Neither Contractor nor Subcontractor shall own or claim a copyright to Documents contained in the Agreement or any part thereof.

(3) Documents contained in the Agreement, prepared by the City or by its Design Consultant, and copies furnished to Contractor, are for use solely with respect to the Work. They shall not be used by Contractor or Subcontractor on other projects or for additions to the Work outside the scope of the Work without the specific written consent of the Director, and Design Consultant, when applicable.

(4) Contractor or Subcontractors are granted a limited license to use and reproduce applicable portions of the Agreement appropriate to and for use in execution of their work under the Agreement.

N. Permits, Fees, and Notices

(1) Unless otherwise provided in the Agreement, Contractor shall secure and pay for all construction permits, licenses, and inspections necessary for proper execution and completion of the Work. Such costs must be included in the Coefficient set out in Exhibit "B".

(2) If Contractor observes that portions of the Agreement are at variance therewith, Contractor shall promptly notify the Director in writing, and necessary changes shall be accomplished by appropriate modification.

O. Compliance with Laws

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

P. Compliance with Equal Opportunity Ordinance

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

Q. Minority, Women Business Enterprises and Small Business Enterprises

It is the City's policy to ensure that Minority, Women ("MWBEs") and Small Business Enterprises (SBE's) have the full opportunity to compete for and participate in City contracts. The objectives of Chapter 11, Article V and IX of the City of Houston Code of Ordinances, relating to City-wide Percentage Goals for contracting with MWBEs and SBEs, are incorporated into this Agreement.

Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 15% of the value of this Agreement to MWBEs and 5% of the value of this agreement to SBE's. 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,
- (3) subcontracts and supply agreements with Small Business Enterprises, and
- (4) specific efforts to identify and award subcontracts and supply agreements to MWBEs and SBEs. 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 and SBE Subcontractors and shall submit all disputes with MWBE and SBE subcontractors to binding arbitration 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.

R. Bonds

Each year during the term of this Agreement, Contractor shall furnish a Performance Bond and Payment Bond for \$4,000,000 conditioned on Contractor's full and timely performance of the Agreement and payment of Subcontractors. Prior to Work Orders in excess of the penal sum of the performance and payment bonds being issued, contractor shall provide additional performance and payment bonds equal to or greater than the additional amounts shall be provided prior to the issuance of the work order. Contractor shall also furnish a Maintenance Bond to secure the warranty in Paragraph III.J. The Bond(s) must be in a form approved by the City Attorney 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. Each Bond must state that it may not be canceled, materially modified, or nonrenewed unless the Surety gives the Director 30 days' advance written notice. In such event, Contractor must provide an equivalent replacement Bond before cancellation, modification or nonrenewal of the original Bond.

S. Drug Abuse Detection and Deterrence

- (1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
- (2) Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"),
 - (a) a copy of its drug-free workplace policy,
 - (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "F," together with a written designation of all safety impact positions and,

- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "G."

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "H." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its notice to proceed or if no notice to proceed is issued, on the first day Contractor begins work under this Agreement.

- (3) Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.
- (4) Contractor shall require that its subcontractors comply with the Executive Order and Contractor shall secure and maintain the required documents for City inspection.

T. 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"). In addition, Contractor shall comply with all safety precautions set forth in the Documents relating to Hazardous Substances and Safety of the Environment, Persons, and Property.

(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 City Facilities, or any other areas or facilities subject to this Agreement, except in strict compliance with the Environmental Laws. "Hazardous Materials" include:

- (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) Contractor will not be held responsible for hazardous materials at City Facilities existing prior to execution of the Agreement. Abatement of such hazardous materials will be handled by the City or its subcontractor. Contractor shall notify the City if hazardous materials are suspected in existing systems with which it comes into contact. Contractor shall be

responsible for handling any and all hazardous materials that are part of the services provided for under this Agreement.

(5) City Facilities are subject to the Texas Pollution Discharge Elimination System Program (ATPDES@), and the regulations, 40 CFR Part 122, relating to stormwater discharges, for operations at City Facilities. Contractor is familiar with these TPDES 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.

(6) Close cooperation is necessary to ensure compliance with any TPDES stormwater discharge permit terms and conditions, as well as to ensure safety and to minimize costs. Contractor shall implement ABest 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.

(7) The City's TPDES 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.

(8) Contractor shall implement the TPDES requirements as part of the Coefficient set out in Exhibit "B", 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.

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

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

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

(12) 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.

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

IV. DUTIES OF CITY

A. Payments and Completion

(1) Estimates for Payment

a. The City shall pay and Contractor shall accept fees as provided in Exhibit "B". The fees must only be paid from Allocated Funds, as provided in Paragraph IV.C below.

b. For Work Orders not completed within 45 days, the City will prepare a Certificate for Payment for the preceding monthly period based on the line items completed and the extension of their unit prices multiplied by the estimated quantities utilized. For Work Orders completed within 45 days, Contractor shall be paid within 30 days after receipt of an invoice and issuance of a Certificate of Final Completion and a final Certificate of Payment.

(2) Certificates for Payment

a. Within 10 days after the end of the month, the City will prepare a Certificate for Payment for Work based on an amount which the Director determine is properly due, with a copy to the Contractor.

b. Unless otherwise provided in the Agreement or Work Order, payments for completed work and if approved in advance by the Director for properly stored Products is conditioned upon compliance with procedures satisfactory to the City to protect the City's interests. Procedures will include applicable insurance, storage, and transportation to the site for materials and equipment stored off site. Contractor is responsible for maintaining materials and equipment until Substantial Completion of the Work.

c. Contractor shall document its use of Low Sulfur Diesel Fuel by providing invoices and receipts evidencing Contractor's use.

(3) Computations of Certificates for Payment

a. Subject to provisions of the Agreement, Work Orders and Documents, the amount of each Certificate of Payment shall be calculated as follows:

- .1 that portion of the Work Order price allocable to completed Work based on the line items completed and the extension of their unit prices (as calculated in Exhibit "B") multiplied by the quantities incorporated into the Work, less retainage of five percent;
- .2 plus progress payments for completed Work that has been properly authorized by Work Change Directives or Change Orders, less retainage of five percent; ;
- .3 plus actual costs, properly substantiated by certified copies of invoices and freight bills, of non-perishable materials and equipment delivered and properly stored, if approved in advance by the Director, less retainage of 15 percent;
- .4 less any previous payments made by the City.

(4) Decisions to Withhold Certification

a. The Director may decline to certify payment and may withhold payment in whole or in part to the extent reasonably necessary to protect the City, if in the Director's opinion there is reason to believe that:

- .1 non-conforming work has not been remedied;
- .2 the Work cannot be completed for the unpaid balance of the Work Order;
- .3 there is damage to the City or another contractor;
- .4 the Work will not be completed within the Contract Time and the unpaid balance would not be adequate to cover actual and liquidated damages;
- .5 probable evidence that third party claims will be filed in court, in arbitration, or otherwise;
- .6 Contractor has failed to make payments to Subcontractors for labor, materials or equipment; or
- .7 Contractor has persistently failed to carry out the Work in accordance with the Agreement, Work Order and Documents.

b. When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

c. The Director may decline to certify payment and may withhold a request for payment in whole or in part upon failure of the Contractor to submit the initial construction schedule or monthly schedule updates as required by the Work Order and this Agreement.

(5) Payments

a. Subject to the approval of the Director, the City will pay the amount certified by the Director within 30 days after issuance of a Certificate for Payment; provided, however, for Work Orders completed within 45 days, Contractor will not be paid until 30 days after the City's receipt of Contractor's invoice and issuance of a Certificate of Final Completion and a final Certificate of Payment.

b. The City has no obligation to pay or to facilitate the payment to a Subcontractor except as may otherwise be required by law. Contractor will comply with the prompt payment requirements of Chapter 2251 of the Government Code. State law requires payment of Subcontractors by Contractor within 10 days of Contractor's receipt of payment from the City.

c. The City may, on request and at the discretion of the Director, furnish to Subcontractor information regarding the percentages of completion or the amounts applied for by the Contractor, and the action taken thereon by the City because of Work done by the Subcontractor.

d. Contractor shall prepare and submit to the Director, on the City's form, a Certification of Payment to Subcontractors to be attached to each monthly estimate for payment.

e. A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Work by the City, does not constitute acceptance of work, which is not in accordance with the Agreement, Work Order and the Documents.

(6) Date of Substantial Completion

a. When the Contractor considers Work, or a portion thereof designated by the City Engineer, to be substantially complete for a Work Order, the Contractor shall prepare and submit to the City, a comprehensive punch list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct the items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to comply with the Work Order, the Documents, and this Agreement.

b. By submitting the list to the City, Contractor represents that work on the list shall be completed within seven days.

c. Upon receipt of the Contractor's punch list, the City will inspect the Work or designated portion thereof, to verify that the punch list contains all items needing completion or correction. If City's inspection discloses items not on the Contractor's punch list, the items must be added to the punch list of items to be completed or corrected. If City's inspection reveals that Contractor is not yet substantially complete, Contractor shall complete or correct the deficiencies and request another inspection. The City may recover the costs of re-inspection from Contractor.

d. Prior to City Engineer issuing a Certificate of Substantial Completion, Contractor shall also provide:

1. A Certificate of Occupancy for new construction, or Certificate of Compliance for remodeled work, as applicable, and
2. Compliance with Texas Accessibility Standards through State inspection of the Work, if required. If Contractor calls for inspection in a timely manner and the inspection is delayed through no fault of Contractor, and the City so confirms, the City may, upon request by Contractor, add the inspection to the punch list in Paragraph c. above and issue a Certificate of Substantial Completion.

e. When the Work or designated portion thereof is determined by the City to be sufficiently complete, in accordance with the Work Order, the Documents, and this Agreement so the City can occupy or utilize the Work, or designated portion thereof, for the purpose for which it is intended, the City may prepare a Certificate of Substantial Completion which incorporates the list in Paragraph c. above and establishes 1) the Date of Substantial Completion, 2) responsibilities of the Parties for security, maintenance, heating, ventilating and air conditioning, utilities, damage to the Work, and insurance, and 3) fixed time within which the Contractor shall complete all items on the list of items to be corrected accompanying the Certificate.

f. Warranties required by the Work Order, Documents, and Agreement shall commence on the Date of Substantial or Final Completion of the Work whichever is earliest unless otherwise provided in the Certificate of Substantial Completion. Warranties may not commence on items not completed.

g. Contractor shall complete or correct the items in Paragraph c. above within the time period set out in the Certificate of Substantial Completion. If Contractor fails to do so, the City may issue a Notice of Noncompliance and proceed according to Paragraph 2.5 of the General Conditions.

(7) Partial Occupancy or Use

a. The City may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to by the Contractor and Contractor's insurer and authorized by public authorities having jurisdiction over the Work. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld.

b. Immediately prior to such partial occupancy or use, the City Engineer and Contractor shall jointly inspect the area to be occupied or the portion of the Work to be used in order to determine and record the condition of the Work.

c. Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of work not complying with requirements of the Work Order, the Documents, and this Agreement.

(8) Final Completion and Final Payment

a. Contractor shall review the Work Order and inspect the Work prior to Contractor notification to the City Engineer that the Work is complete and ready for final inspection, Contractor shall submit an affidavit that the Work has been inspected, that Work is complete in accordance with requirements of the Work Order, the Documents, and this Agreement.

b. Within five business days after receipt of Contractor's written notice that the Work is ready for final inspection and acceptance under a Work Order, the City Engineer will make final inspection. When the City Engineer finds the Work completed in accordance with the Work Order, the Documents, and this Agreement, the City Engineer will, within three business days, issue a Certificate of Final Completion stating that to the best of City Engineer's knowledge, information, and belief, the Work has been completed in accordance with terms and conditions of the Work Order, the Documents, and this Agreement. Upon acceptance, the City Engineer may approve a final Certificate for Payment.

c. Should Work be found not in compliance with requirements of the Work Order, the Documents, and this Agreement, City Engineer will notify Contractor in writing of items of non-compliance. Upon inspection and acceptance of the corrections by the City Engineer, compliance with all procedures in Paragraph (8)b. above, and Contractor's submission of the items set out in Paragraph (8)(d) below, the City Engineer will issue a Certificate of Final Completion as provided in Paragraph (8)b. above.

d. Contractor shall submit the following items to the City Engineer before City Engineer will issue a Certificate of Final Completion:

- .1 an affidavit that payrolls, invoices for materials and equipment, and other indebtedness of the Contractor connected with the Work (less amounts withheld by the City) have been paid or otherwise satisfied. If required by the City Engineer, Contractor shall submit further proof including waiver or release of lien or claims from laborers or Suppliers of Products;
- .2 Maintenance Bond and other required Bonds, copies of record documents, maintenance manuals, tests, inspections, and approvals.

e. Upon City Engineer's issuance of a Certificate of Final Completion, Contractor may request an increase in payment to 100 percent of the Work Order prices less accrued liquidated damages.

f. If final completion is materially delayed through no fault of the Contractor, or by issuance of Change Orders affecting final completion, and the City Engineer so confirms, the City may, upon application by the Contractor and certification by the City Engineer, and without terminating the Work Order and Agreement, make payment of the balance due for that portion of the Work fully completed and accepted.

g. If the remaining balance due for Work not fully completed or corrected is less than the retainage stipulated in the Work Order, Documents, and this Agreement, Contractor shall submit to the City Engineer written consent of Surety to payment of the balance due for that portion of the Work fully completed and accepted, prior to certification of the payment. The payment is made under terms governing final payment, except that it shall not constitute a waiver of Claims.

h. The City will make final payment to the Contractor within 30 days after acceptance, subject to limitations, if any, as stated in the Work Order. For Work Orders completed within 45 days, the City shall pay Contractor within 30 days after receipt of Contractor's invoice and issuance of a Certificate of Final Completion and a final Certificate of Payment.

i. Acceptance of final payment by Contractor shall constitute a waiver of Claims, whether known or unknown, by Contractor, except those previously made in writing and identified by Contractor as unsettled as the time of final Application for Payment.

(9) Liquidated Damages

a. The Contractor, the Surety, and the City agree that failure to complete the Work under a Work Order within Contract Time will cause damages to the City and that actual damages from the harm are difficult to estimate accurately. Therefore, the Contractor, the Surety, and the City agree that the Contractor and the Surety will be liable for and shall pay to the City the amount stipulated in the Work Order as liquidated damages and that the amount of damages fixed therein is a reasonable forecast of just compensation for the harm to the City resulting from failure to complete the work within Contract Time. The amount specified by the City in each Work Order will be paid for each day of delay beyond the time for completion until the Date of Substantial completion, not to exceed \$200 per day.

b. The amount of liquidated damages, payable by Contractor or Contractor's surety, if applicable, is for each and every day of delay beyond the Contract Time in the Work Order until the Work is accepted by the City Engineer as substantially complete.

c. Contractor shall pay to the City an amount equal to \$1,200 per diesel operating vehicle or pieces of motorized equipment per incident of high sulfur diesel fuel usage.

B. Taxes

(1) Contractor shall pay all sales, consumer, use, and similar taxes for the Work, or portions thereof, provided by Contractor that it is legally required to pay, whether or not in effect on the Effective Date of this Agreement.

(2) Contractor shall obtain, and require Subcontractors to obtain, all necessary permits from the State and from local taxing authorities to perform contractual obligations under the Agreement, including sales tax permits.

(3) The City is exempt from the Federal Transportation and Excise Tax. Contractor shall comply with federal regulations governing such exemptions.

(4) Materials incorporated into the Work are exempt from state sales tax according to provisions of the Texas Tax Code, Chapter 151, Subsection H.

C. Limit of Appropriation

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

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$_____ to pay money due under the Contract (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for the Contract, 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 sending a notice signed by the Director of the Building Services Department or his designee and the City Controller to the contractor in substantially the following form:

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Name of Contractor]

FROM: City of Houston, Texas (the "City")

DATE: [Date of notice]

SUBJECT: Supplemental allocation of funds for the purpose of the "[title of this Agreement]" between the City and (name of Contractor) countersigned by the City Controller on (Date of Countersignature) (the "Contract").

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$_____, upon the request of the below-signed Director, has been allocated for the purposes of the Contract 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.

The aggregate of all sums allocated for the purpose of such Contract, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this notice, is \$_____.

SIGNED:

(Signature of the City Controller)

City Controller of the City

REQUESTED:

(Signature of the Director)
Director

(4) The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under the Contract 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 the Contract, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

D. Changes

- (1) Changes to Work as defined by a Work Order may be accomplished by Work Change Directive or Change Order.
- (2) The following types of Change Orders require City Council approval:
 - (a) a single Change Order that exceeds five percent of Original Contract Price.
 - (b) a Change Order, which when added to previous Change Orders, exceeds five percent of Original Contract Price
 - (c) A Change Order whose sum of line item increases, when added to the line item increases of previous Change Orders under the Agreement, exceeds 40 percent of the Original Contract Price, even if the net increase to the Original Contract Price is 5 percent or less.
- (3) Work Change Directive

- (a) A Work Change Directive cannot change Contract Price or Contract Time, but is evidence that the Parties agree that a change, ordered by directive, will be incorporated in a subsequently issued Change Order as to its effect, if any, on Contract Price or Contract Time.
 - (b) Failure by Contractor to commence work identified in a Work Change Directive within the time specified by City Engineer, or to complete the work in a reasonable period of time, may be determined by City Engineer to be a material breach of Contract.
 - (c) A Work Change Directive is used in the absence of total agreement of the terms of a Change Order.
 - (d) If Contractor signs a Work Change Directive, then Contractor agrees to its terms including adjustment in Contract Price and Contract Time or method for determining them. Agreement by the Parties to adjustments in Contract Price and Contract Time are immediately recorded as a Change Order.
 - (e) City Engineer, by Work Change Directive, may direct Contractor to take measures as necessary to expedite construction to achieve Date of Substantial Completion on or before expiration of Contract Time. When the Work is expedited solely for convenience of the City and not due to Contractor's failure to prosecute timely completion of the Work, then Contractor is entitled to an adjustment in Contract Price.
- (4) Whenever Contractor receives a Work Change Directive or Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The City Engineer's decision regarding a time extension is final.
- (5) A product or service provided under a Work Change Directive or Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Agreement, and is subject to the terms and conditions of the Agreement as if it had originally been a part of the Agreement.

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

(7) Adjustments in Contract Price

a. Adjustments in Contract Price by Change Order shall be based on one of the following methods:

.1 unit prices stated in the Unit Price Book; or

.2 for non-prepriced items, cost to be determined in accordance with Paragraph 2.0 of Exhibit "B" – Fees.

b. If Contractor does not indicate agreement with change in price or time given in the Work Change Directive within seven days from date of the City Engineer's directive, or Contractor disagrees with the method for adjustment in Contract Price, method and adjustment shall be determined by the City Engineer.

c. If the City Engineer determines the method and adjustment in Contract Price under Paragraph (b) above, Contractor shall provide, in such form as the City Engineer may prescribe, appropriate supporting data for items submitted. Failure to submit such data within seven days of request for such data by the City Engineer shall constitute waiver of such Claim.

d. Amount of credit to be allowed by Contractor to the City for deletion or change, which deletion or change results in a net decrease in Contract Price or Work Order Price, shall be determined in accordance with this Paragraph (7) and its Subparagraphs.

e. When Contractor agrees with the determination made by the City Engineer concerning adjustments in Contract Price and Contract Time, or the Parties otherwise reach agreement upon the adjustments, such agreement will be immediately recorded by preparation and execution of an appropriate Change Order.

V. TERM AND TERMINATION OR SUSPENSION OF THE AGREEMENT

A. Contract Term

This Agreement continues for five consecutive years from the Effective Date, unless sooner terminated under this Agreement. Performance begins on the date specified in the first Work Order issued by the Director. Contractor acknowledges that time is of the essence of this Agreement.

B. Termination by City for Convenience

(1) The Director may, without cause, and without prejudice to other rights or remedies of the City, give Contractor and Surety a Notice of Termination by seven days written notice.

(2) After receipt of a Notice of Termination, and except as otherwise approved by the Director, Contractor shall conform to the requirements of Paragraph V.D.(3).

(3) After receipt of such a Notice of Termination, Contractor shall submit to the City its termination claim, in the forms required by the Director. Such claim shall be submitted to the City promptly, but no later than six months from the effective date of termination, unless one or more extensions are granted by the Director in writing. If Contractor fails to submit its termination claim within the time allowed, in accordance with Paragraph V.B.(4) below, the City Engineer will determine, on the basis of available information, the amount, if any, due to the Contractor because of the termination, and such determination will be final and binding on the Parties. The City will then pay to the Contractor the amount so determined.

(4) The City Engineer will determine, on the basis of information available to the City Engineer, the amount due, if any, to Contractor by reason of the termination as follows:

- .1 Contract Price for all Work performed in accordance with a Work Order and/or the entire Agreement up to the date of termination determined in the manner prescribed for payments in Paragraph IV.A., except no retainage shall be withheld by the City either for payment determined by percentage of completion or for materials and equipment delivered to the site, in storage, or in transit.
- .2 Reasonable termination expenses, including costs for settling and paying Subcontractor claims arising out of termination of the Work, reasonable cost of preservation and protection of the City's

property after termination, if required, and the cost of Claim preparation. Termination expenses do not include field or central office overhead, salaries of employees of Contractor or litigation costs including attorney fees.

No amount will be allowed for anticipated profit or central office overhead on uncompleted Work, or any cost or lost profit for other business of Contractor alleged to be damaged by the termination.

(5) Contractor shall promptly remove from the site construction equipment, tools, and temporary facilities, except such temporary facilities that City may wish to purchase and retain.

(6) Contractor shall cooperate with the City during the transition period.

(7) The City will take possession of the Work and materials delivered to the site, in storage or in transit as of the date, or dates, specified in the Notice of Termination and will be responsible for maintenance, utilities, security, and insurance, as stated in the notice of termination.

C. Suspension by City for Convenience

(1) The City may, without cause, after giving Contractor and Surety 24 hour prior written notice, order Contractor to suspend, delay, or interrupt the Work in whole or in part for such period of time as City may determine.

(2) An adjustment shall be made in Contract Time equivalent to the length of time of suspension.

D. Termination by City for Cause

(1) Each of the following acts or omissions of Contractor or occurrences shall constitute an "Event of Default" under the Agreement:

.1 Contractor refuses or fails to supply enough properly skilled workers or proper Products;

.2 Contractor disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;

- .3 Contractor is guilty of material breach of any duty or obligation of Contractor under the Agreement;
- .4 Contractor has had any other contract with the City terminated for cause at any time subsequent to the Effective Date of the Agreement; or
- .5 Contractor fails to utilize Low Sulfur Diesel Fuel, as provided in the Agreement.

(2) If an Events of Default occurs, City may, at its option and without prejudice to any other rights or remedies which the City may have, deliver a written notice to Contractor and Surety describing the Event of Default and giving the Contractor 10 days in which to cure the Event of Default. If after the cure period, Contractor has failed and/or refused to cure said Event of Default, then the City may deliver a second written notice to Contractor giving notice of the termination of the Agreement or of the termination of the Contractor's performance under the Agreement ("Notice of Termination"). If City Engineer issues a Notice of Termination, then City Engineer may, subject to any prior rights of Surety:

- .1 request that Surety complete the Work; or
- .2 take possession of the site and all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor; and
- .3 finish the Work by whatever reasonable method City Engineer may deem expedient.

(3) After Contractor's receipt of a Notice of Termination, and except as otherwise directed in writing by the City Engineer, Contractor shall:

- .1 stop the Work on the date and to the extent specified in the Notice of Termination;
- .2 place no further orders or subcontracts for materials, equipment or services;
- .3 terminate all orders and subcontracts to the extent that they relate to performance of the work terminated;
- .4 assign to the City, in the manner, at the times, and to the extent directed by the City Engineer, all rights, title, and interest of Contractor, under the supply orders and subcontracts. The City may settle or pay any or all claims arising out of termination of the orders and subcontracts;
- .5 settle all outstanding liabilities and all claims arising out of the termination of supply orders and subcontracts with approval of City Engineer;
- .6 take such action as may be necessary, or as City Engineer may direct, for protection and preservation of property related to the Work that is in possession of Contractor, and in which the City has or may acquire an interest; and
- .7 secure the Work in a safe state before leaving the site, providing any necessary safety measures, shoring, or other devices.

- (4) If the City terminates the entire Agreement or terminates Contractor's performance under the Agreement for any one or more of the reasons stated in Paragraph V.D.(1) above, Contractor may not receive any further payment until the Work is complete, subject to provisions of Paragraph V.D.(5) below.
- (5) If the unpaid balance of the Contract Price exceeds the costs of finishing the Work, including liquidated damages and other amounts due under the Agreement, the balance will be paid to Contractor. If the costs of finishing the Work exceed the unpaid balance, Contractor shall, within 10 days of receipt of written notice setting out the amount of the excess costs, pay the difference to the City. The amount to be paid to Contractor or the City, will be certified by City Engineer in writing, and this obligation for payment shall survive termination of the Agreement or termination of Contractor's performance under the Agreement. Termination of the Contractor for cause shall not relieve the Surety from its obligation to complete the project.

E. Termination by Contractor

(1) Contractor may terminate a Work Order only (1) if the Work is stopped for a period of 30 days through no act or fault of the Contractor, Subcontractor, or their agents or employees, or other persons performing portions of the Work under contract with Contractor, and (2) for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction;
- .2 act of government, such as a declaration of national emergency, making material unavailable;
- .3 if repeated suspensions, delays, or interruptions by the City constitute in the aggregate more than 100 percent of the total number of days scheduled for completion of the Work Order, and if Contractor delivers written notice to the City Engineer describing the reason for termination of a Work Order, giving the proposed termination date, and granting the City a reasonable opportunity to respond and cure any City default before the termination is effective.

(2) If a Work Order is terminated pursuant to this provision, Contractor shall comply with the requirements of Paragraph V.C.(2)-(7) above.

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 delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure that was not within the control of the party claiming such inability to perform and that could not have been avoided by its exercise of due diligence and care. In this Agreement, Force Majeure means fires, natural disasters, and other acts of God, explosions, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.
- (2) This relief is not applicable unless the party claiming the inability to perform does the following:
 - (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible;
 - (b) provides the other party with prompt written notice of the cause and its anticipated effect.
- (3) The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by the City.
- (4) If the Force Majeure continues for more than 7 days, the Director may terminate this Agreement by giving 7 days written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES**

RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.

- (5) The Director shall determine when a Force Majeure condition has been removed. Contractor shall then provide all services and parts required under this Agreement in accordance with the Fee Schedule in Exhibit "B".
- (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 part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

D. Entire Agreement

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

E. Written Amendment

Unless otherwise specified elsewhere in this Agreement, this Agreement 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 required or permitted by this Agreement must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out in the preamble of this Agreement or at such other address as the receiving party designates by proper notice to the sending party.

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.

J. Inspections and Audits

Representatives of the City have the right to perform, or to have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 4 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

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 pertaining to this Agreement 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 prior written consent.

R. Dispute Resolution

Any disputes or claims arising under the Agreement shall be resolved in accordance with the Resolution of Claims and Disputes provision in the Agreement.

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. Indebtedness

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 CITY CONTROLLER IN WRITING. IF CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, IT SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, 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.

EXHIBIT "A"

PERFORMANCE/WORK STATEMENT

1.0 GENERAL INFORMATION

This Agreement is for the minor construction, repair, rehabilitation or alteration of City Facilities for work of a recurring nature where the delivery times and quantities are indefinite, and Work Orders are issued on the basis of pre-described and pre-priced tasks. The maximum amount of Work to be awarded during the term of the Agreement is \$20,000,000. The guaranteed minimum amount of Work to be awarded during the term of this Agreement is \$50,000. Each Work Order will be a minimum amount of \$1,500 and a maximum amount of \$350,000.

1.1 SERVICES

In consideration of the payment specified in this Agreement and in each Work Order, Contractor shall furnish all labor, materials, tools, supplies, equipment, transportation, insurance, Bonds, subcontracts, supervision, management, reports, incidentals, and quality control, and shall perform all operations necessary and required for construction management and construction work, which will be defined in each Work Order. Contractor shall perform the Work in accordance with the requirements set forth in this Agreement.

1.2 PROJECT DESCRIPTION

The Director will issue Work Orders on an as-needed basis as may be required. Work will be done in a wide variety of trades including, but not limited to, carpentry, masonry, concrete, paving, roofing, excavation, steam fitting, plumbing, sheet metal, painting, demolition, welding, HVAC, electrical, mechanical, asbestos abatement, hazardous material handling, carpeting, flooring, drywall finishing, hardware, doors, glazing, landscaping and telecommunications cabling services. The specific work requirements will be identified in the Work Orders.

2.0 WORK ORDERS

- 2.1 Contractor shall perform the Work under this Agreement only upon the issuance of a written Work Order signed by the Director. Work Orders shall be issued in accordance with the requirements specified in this Agreement.

2.2 Work Orders issued prior to and in effect at the time of the expiration of this Agreement shall continue to be in effect and performed by the Contractor until such time as all requirements have been met and a written acceptance of the Work performed has been made by the City Engineer.

2.3 Work Orders must set forth the following:

2.3.1 Contract Number and the Contractor's name, address, and telephone number;

2.3.2 Work Order number and the date of issuance;

2.3.3 The period of performance and schedule of work requirements;

2.3.4 The place of performance, as applicable to each Work Order;

2.3.5 The Work to be performed, total amount stated, including pricing data;

2.3.6 Identity of Contractor's key personnel;

2.3.7 Funding code(s) applicable to each Work Order;

2.3.8 Balance of funds remaining on the Agreement;

2.3.9 Such other information as directed by the Director;

2.4 Work Orders may be amended by Work Change Directive or Change Order.

2.5 For any work required under this Agreement, the Director shall issue a written Work Order as follows:

2.5.1 As the need exists for performance under the terms of this Agreement, the Director will notify the Contractor of an existing requirement. On receiving the notification, the Contractor shall respond within two business days, or as otherwise instructed by the Director:

1. Visiting the proposed site with the Director; or

2. Establishing contact with the Director to further define the scope of the requirement.

- 2.5.2 After joint definition of the scope of the individual requirement, the Contractor shall prepare a proposal, for accomplishment of the task. The UPB serves as the basis for establishing the value of the work to be performed. The Contractor shall submit its proposal within four business days after joint definition of the scope of the requirement, or as mutually agreed with the Director.
- 2.5.3 After receiving the Contractor's proposal, the Director shall review it for completeness, and will reach agreement with the Contractor on pricing, schedule, MWBE participation and all other terms, before issuance of a Work Order.
- 2.5.4 If it is approved by the Director, the Director will issue a Work Order.
- 2.5.5 If the Director does not issue a Work Order after receipt of Contractor's proposal, the City is not obligated to reimburse the Contractor for any costs incurred in the preparation of the proposal.

3.0 Not Used

4.0 SCHEDULING AND COMPLETION OF WORK

- 4.1 Each executed Work Order constitutes a notice to proceed, which specifies when Work is to begin. Any preliminary work started or materials ordered or purchased before receipt of the executed Work Order are at the risk and expense of Contractor. Contractor shall diligently perform the Work to completion within the time set forth in the Work Order. The period of performance includes allowance for mobilization, holidays, weekend days, inclement weather, and cleanup; therefore, claims for delay based on these elements are not allowed.
 - 4.1.1 Contractor shall deliver materials and equipment without interfering with facility's operations and personnel.
 - 4.1.2 Contractor shall move furniture and portable office equipment in the immediate work area and replace them in their original location, at no cost to the City. If the furniture and portable office equipment cannot be

replaced in their original location, the Director will designate new locations.

4.1.3 The Contractor shall take all precautions to ensure that no damage to private or public property results from its operations. Contractor must repair or replace items damaged by it at no cost to the City.

4.2 The Contractor shall enter and submit a schedule showing the actual progress every 30 calendar days, or as directed by the Director . If, in the opinion of the Director , the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Director , without additional cost to the City. In this circumstance, the Director may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction planned, and to submit for approval any supplementary schedule or schedules in chart form as the Director deems necessary to demonstrate how the approved rate of progress will be regained.

4.3 Failure of the Contractor to comply with the requirements of the Director shall be grounds for a determination by the Director that the Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Work Order. Upon making this determination, the Director may terminate the Contractor's right to proceed with the Work, or any separable part of it, in accordance with the default terms of this Agreement.

5.0 QUALITY ASSURANCE/QUALITY CONTROL PROGRAM

Contractor shall submit to the Director , for approval, a Quality Assurance/Quality Control Plan within 15 calendar days after the Effective Date of this Agreement. This Plan should address all aspects of quality control including responsibility for monitoring work, documentation, trend analysis, corrective action and interface with the City. In some cases, Contractor's Quality Control personnel may be required to have professional or discipline-specific certifications.

6.0 CONTRACTOR REPRESENTATIVE

- 6.1 At all times during performance and until the Work is completed and accepted, the Contractor shall manage, supervise, and direct the Work under this Agreement. The Contractor's Representative must be knowledgeable in multiple disciplines, including electrical, mechanical, HVAC, paving, landscaping, painting, roofing and plumbing.

Prior to the start of the Agreement performance, the Contractor shall advise the Director in writing of the Contractor Representative's contact phone numbers. The Contractor's Representative will have management responsibility for the total Agreement effort to receive and act on technical matters and resolve problems of a contractual nature.

Prior to substituting another individual for the Contractor's Representative, the Contractor shall notify the Director reasonably in advance and shall submit justification in sufficient detail to permit evaluation of the impact on the Work. No such substitution shall be made by the Contractor without first securing the Director's written approval.

7.0 CITY FURNISHED UTILITIES

The City shall provide free of charge to Contractor utilities that are available at each site for work performed under this Agreement.

7.1 WATER

The City shall furnish to Contractor from existing City facilities and without cost to Contractor, a supply of water necessary to perform work under the Agreement. The City will not furnish or install any required supply connections and piping for the purpose of implementing the availability of the water supply. Contractor shall determine the extent to which existing City water supply source is adequate for the needs of this Agreement.

All taps, connections, and accessory equipment required in making the water supply source available will be accomplished by and at the expense of Contractor. All related work must be coordinated, scheduled, and performed as directed and approved by the Director. Taps, connections, and accessory equipment must be maintained by Contractor in a workmanlike manner in accordance with the rules and regulations of the City. Upon completion of the Agreement, Contractor shall remove all taps, connections and

accessories at its expense so as to leave the water supply source and facility in its original condition. Such removal is subject to the Director's approval.

7.2 ELECTRICITY

The City shall furnish to Contractor from existing City facilities and without cost to Contractor, electricity necessary for the performance of work under the Agreement. The City will in no case furnish or install any electrical facility or accessory for the purpose of this Agreement. Contractor shall determine the extent to which existing City electrical facilities are adequate for the needs of this Agreement.

All taps, connections, and necessary equipment required in making the electrical power available will be accomplished by and at the expense of Contractor. All related work must be coordinated, scheduled and performed as directed and approved by the Director. Contractor must maintain taps, connections, and accessory equipment in a workmanlike manner in accordance with the rules and regulations of the City and the Airports. Upon completion of the Agreement, Contractor shall remove all taps, connections and accessories at its expense so as to leave the electrical power source and facility in its original condition. Such removal is subject to the Director's approval.

8.0 WORK BY THE CITY

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

9.0 ARCHITECTURAL AND ENGINEERING SERVICES

JOC may require architectural and/or engineering services that constitute the practice of architecture or engineering under Texas law. Such services are not included within the scope of the Agreement and will be provided by the City or its designee.

10.0 USE OF LOW SULFUR DIESEL FUEL

Contractor and Subcontractors shall use Low Sulfur Diesel Fuel (500 ppm or the applicable standard set by State or Federal Law and/or rules and regulations of the Texas Commission on Environmental Quality, or the Environmental Protection Agency, whichever is less in sulfur content) in all diesel operating vehicles and motorized equipment utilized in performing the Work. Contractor and Subcontractors shall not use a high sulfur type diesel fuel in diesel operating vehicles or motorized equipment used in performing the Work. Off-road Low Sulfur Diesel Fuel may be used in lieu of the on-road Low Sulfur Diesel Fuel. Upon request by the Director, Contractor shall provide proof that Contractor and Subcontractors are using Low Sulfur Diesel Fuel.

11.0 SAFETY

11.1 Contractor shall secure the site and be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Agreement and shall abide by all City rules, regulations, and programs with regard to safety. Contractor shall submit a safety program to the Director prior to mobilization for the Work, and shall be solely responsible for the safety, efficiency, and adequacy of the ways, means, and methods and for damage which might result from failure or improper construction, maintenance, or operation performed by Contractor.

11.2 Contractor and/or Subcontractor(s) shall be responsible for compliance with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970 and subsequent amendments all applicable federal, state, and local laws, ordinances and regulations, and the Agreement during the performance of this Work. The Contractor shall adhere, to applicable OSHA Standards, Part 1926 – Safety and Health Regulations for Construction, Part 1910 – Occupational Safety and Health Standards, the Texas Hazard Communication Standard and the Texas Underground Facility Damage Prevention and Safety Act along with any other applicable standards and/or requirements. The Contractor shall apply and/or adopt Parts 1910 and 1926 along with applicable Subparts as the safety standards for the performance of Work. **THE CONTRACTOR SHALL INDEMNIFY THE CITY FOR FINES, PENALTIES, AND CORRECTIVE MEASURES THAT RESULT FROM THE ACTS OF COMMISSION OR OMISSION OF THE CONTRACTOR, ITS SUBCONTRACTORS, AGENTS, EMPLOYEES, AND ASSIGNS FOR THEIR FAILURE TO COMPLY WITH SUCH SAFETY RULES AND REGULATIONS.**

12.0 PREVAILING WAGE RATES

12.1 Contractor shall comply with governing statutes providing for labor classification of wage scales for each craft or type of laborer, worker, or mechanic, as amended from time to time.

12.1.1 The prevailing wage rates in effect at the time the Agreement is executed applicable to the Work may be any one or a combination of the following as specifically identified in Division 00:

City Prevailing Wage Rates

- .1 Building Construction Rates
- .2 Engineering Construction Rates
- .3 Asbestos Worker Rates

12.2 Each week Contractor shall submit to the City Affirmative Action and Contract Compliance Division, certified copies of payrolls showing classification and wages paid by the Contractor and all Subcontractors for each employee under the Agreement, for any day included in the applicable Work Orders.

13.0 ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

Contractor agrees to comply with, and assure that it and Subcontractor or any other third party contractor under this Agreement complies with all applicable requirements regarding Access for Individuals with Disabilities contained in the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49 U.S.C. § 5301(d); and any other applicable Federal, State and City regulations, including any amendments thereto.

EXHIBIT "B"

FEEES

1.0 Unit Price Book (UPB) Prepriced Items

1.1 Payment for work performed during standard working hours shall be based on the Coefficient factor of _____ multiplied times the sum of applicable unit prices in the UPB.

Payment for work performed during non-standard working hours shall be based on the Coefficient factor of _____ multiplied times the sum of applicable unit prices in the UPB.

1.3 Standard hours of work will be from 7:00 AM to 7:00 PM, CST, Monday through Friday, unless alternate standard hours are agreed to for an individual Work Order. Hours worked before 7:00 AM and after 7:00 PM, Monday through Friday, and all hours worked on Saturdays, Sundays and City holidays will be considered non-standard hours. The Contractor will be required to notify the Director in writing, a minimum of 24 hours in advance when planning to work non-standard work hours, which must be approved in advance by the Director. Any work necessary during non-standard hours to maintain project schedules, due to Contractor delay, shall be performed without additional cost to the City. Other Work to be performed during non-standard hours that is directed by the Director shall be at the Coefficient for non-standard working hours.

1.4 The Coefficient factor shall be "net" (e.g. 1.0) or a percentage decrease from (e.g. .95) or increase to (e.g. 1.2) the unit prices in the Unit Price Book.

1.5 The actual pricing will be based on the unit rates contained in the UPB, including applicable Coefficient factor set forth above and the quantities agreed to by the Contractor and the Director.

2.0 Non-Prepriced Items

2.1 Payment for work performed during standard working hours shall be based on the Coefficient factor of _____ multiplied times the sum of the cost of non-priced items not contained in the UPB.

2.2 Payment for work performed during non-standard working hours shall be based on the Coefficient factor of _____ multiplied times the sum of the cost of non-priced items not contained in the UPB.

2.3 For work requiring an expenditure of \$50,000 or less where pricing cannot be determined by the UPB, the Contractor shall furnish, unless otherwise directed, a breakdown in sufficient detail to permit an analysis of all material, labor, equipment, and subcontract costs. Any amount claimed for Subcontractors shall require price quotations from at least three sources and be supported by a similar cost breakdown, which shall show Subcontractors by prime, and others. All costs claimed are subject to negotiation.

3.0 Coefficient

3.1 The Contractor's price coefficient factor must include all costs including but not limited to the following:

- (1) Overhead
- (2) Profit (prime and subcontractors)
- (3) Insurance
- (4) Compliance with all laws including but not limited to environmental laws, protection and safety
- (5) Tax laws
- (6) Protection or moving of City property
- (7) Administrative Work
- (8) Submittals
- (9) Price quotations
- (10) N/A.
- (11) Clean-Up
- (12) All waste and excess materials (not demolition waste)
- (13) Permits, licenses, badges and fees (not building permits)
- (14) Mobilization and close-out for total contract and each Work Order
- (15) Signs and barriers
- (16) Project management and supervision
- (17) Quality Control
- (18) Office supplies, equipment, hardware, software and staffing
- (19) Costs of Performance, Payment and Maintenance Bonds
- (20) Interest associated with funding of equipment and payroll

- (21) Depreciation of mobile offices, if applicable
 - (22) Employee wages, payroll taxes, insurance and fringe benefits
 - (23) Risk of lower than expected contract dollar volume
 - (24) Risk of high inflation costs
 - (25) Risk of poor subcontractor performance and re-performance
 - (26) Other risks of doing business

 - (27) Business taxes, contributions, memberships, corporate headquarters support (legal, financial, etc.)
 - (28) The cost of final clean-up and removal and hauling of trash, debris and rubbish. The City will not pay nor accept line items for final clean-up or rubbish hauling, etc., on Work Orders, unless it is explicitly excluded by the line items in the UPB.
 - (29) Any and all Subcontractor Costs.
 - (30) Other incidentals.
- 3.2 Where prices are listed as minimum, average, and maximum for the same work the average prices shall be used. Where prices are listed for minimum and maximum for the same work, items whose daily output indicates one crew day or more of work shall use minimum prices. Items whose daily output indicates less than one crew day shall use maximum prices.
- 3.3 All prices in the UPB are for completed-in-place construction.
- 3.4 Costs for temporary construction controls such as form work, shoring, scaffolding, bracing, etc are incidental costs which are included in the Coefficient factor and will not be paid separately unless explicitly excluded in the UPB line item.
- 3.5 Costs for expendable supplies, lubricants, wear and tear on tools are incidental to the UPB cost of construction and will not be paid separately.
- 3.6 Costs for survey and layout, other than legal property boundaries, are included in the Coefficient and will not be paid separately.
- 3.7 Costs for preparation of reports, correspondence and documentation required by law or this Agreement shall be included in the Coefficient factor. The Coefficient shall also include costs described as costs to provide submittals, interface with the City, and coordination with occupants.

3.8 Except for cabling related Work, line item descriptions which list material or equipment to be brand name or manufacturer "Type" will be considered as "Or Equal," but will contain all the essential salient characteristics of the brand name or manufacturer's material or equipment.

3.9 UPB Exclusions - The following R.S. MEANS divisions are excluded from the UPB:

- a. Division 01200, "Price and Payment Procedures": Does not apply because these costs are to be included in the Contractor's Coefficient with one exception Overtime of a maximum of 10% of the applicable project labor costs will be allowed for projects with a City Requested Overtime Requirement.
- b. Division 01300, "Administrative Requirements": Does not apply because these costs are to be included in the Contractor's Coefficient with one exception. Building permit costs will be treated as a Non-Prepriced Item per Paragraph 2 above and added to each individual Work Order when appropriate. Building permit costs will be paid at actual cost plus profit.
- c. Division 01590, "Equipment Rental": General-purpose vehicles and tools of the trade are to be included in Contractor's Coefficient. Other equipment costs are already included in the line-item prices. Exceptions will be treated as Non-Prepriced Items per Paragraph 2 above of this document. For purposes of this Agreement, all costs of equipment, which routinely or regularly used as part of carrying out any aspect of a trade or business is considered to be included in the Contractor's Coefficient and is not treated as an excluded item.
- d. Division 01740, "Cleaning": Does not apply because these costs are to be included in the Contractor's Coefficient. Special cleaning requirements will either be priced under Division 018, or treated as Non-Prepriced Items.

No contingency is to be included, because R.S. MEANS Cost Data and the Contractor's Coefficient factors represent the actual cost for all work performed.

EXHIBIT "C"

DOCUMENTS

The Documents identified below are attached to this Exhibit and incorporated into this Agreement for all purposes.

A. JOB ORDER CONTRACT DOCUMENTS

1. The Unit Price Book, R. S. MEANS Facilities Construction Cost Data, latest quarterly edition in effect at the time a Work Order is issued, which uses the CSI numbering structure and pricing customized and localized for the Houston area.

B. STANDARD CITY CONSTRUCTION DOCUMENTS

| <u>DOC NO</u> | <u>DOC TITLE</u> |
|---------------|--|
| 00500 | Form of Business |
| 00501 | Resolution of Corporation |
| 00600 | List of Proposed Subcontractors & Suppliers |
| 00610 | Performance Bond |
| 00611 | Statutory Payment Bond |
| 00612 | One-Year Maintenance Bond |
| 00620 | Affidavit of Insurance (Certificates attached) |
| 00700 | General Conditions |
| 00820 | Wage Scale for Engineering Construction |
| 00821 | Wage Scale for Building Construction |

EXHIBIT "D"

EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.

2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.

3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.

5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.

6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT "E"
MWBE/SBE SUBCONTRACT TERMS

Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers are clearly labeled "**THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT**" and contain the following terms:

1. _____ (MWBE/SBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director").

2. _____ (MWBE/SBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of subcontractor's books and records, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep its books and records available for inspection for at least 4 years after the end of its performance under this subcontract. Nothing in this provision shall change the time for bringing a cause of action.

3. Within 5 business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given under Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of the agent.

4. Any controversy between the parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract must, upon the written request of one party served upon the other or upon notice by the Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 -- "the Act"). Arbitration must be conducted according to the following procedures:

a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within 30 days or the matter may be referred to arbitration.

b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with the American Arbitration Association on file in the City's Affirmative Action Division Office.

c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.

d. If the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

EXHIBIT "F"

DRUG POLICY COMPLIANCE AGREEMENT

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

(Name of Company) (Contractor)

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

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

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

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

Date

Contractor Name

Signature

Title

EXHIBIT "G"

Contractor's Management Plan

EXHIBIT "H"

DRUG POLICY COMPLIANCE DECLARATION

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

(Name of Company) (Contractor)

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

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

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

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

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

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

_____ From _____ to _____ the following testing has occurred:
Initials (Start date) (End date)

| | <u>Random</u> | <u>Reasonable Suspicion</u> | <u>Post Accident</u> | <u>Total</u> |
|--|---------------|-----------------------------|----------------------|--------------|
|--|---------------|-----------------------------|----------------------|--------------|

Number Employees Tested

Number Employees Positive

Percent Employees Positive

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

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

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

(Date)

(Typed or Printed Name)

(Signature)

(Title)

Document 00910

ADDENDUM NO. 1

Date of Addendum: _____

PROJECT NAME: JOB ORDER CONTRACT

PROJECT NO: D-000108-0001-4

PROPOSAL DATE: September 21, 2006 (There is no change to the Proposal Date.)

FROM: Phil Golembiewski, P.E., City Engineer
City of Houston Building Services Department
900 Bagby
Houston, Texas 77001
Attn: JB White, Project Manager

TO: Prospective Bidders

This Addendum forms a part of the Bidding Documents and will be incorporated into the Contract documents, as applicable. Insofar as the original Project Manual and Drawings are inconsistent, this Addendum governs.

CLARIFICATIONS

This contract may be awarded to one or two proposers based on the content of the proposer's qualification statements. Should the contract be awarded to more than one proposer, the maximum contract amount shall be divided equally.

END OF ADDENDUM NO. ____

DATED: _____
Wendy Teas Heger, AIA
Chief of Design and Construction
Building Services Department

END OF DOCUMENT