

Controller's Office

To the Honorable Mayor and City Council of the City of Houston, Texas:

I hereby certify, with respect to the money required for the contract, agreement, obligation or expenditure contemplated by the ordinance set out below that:

- Funds have been encumbered out of funds previously appropriated for such purpose.
- Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.
- Other - Grant Funds Available

Cliff Brown
General Manager

Date: 6-2, 2020

City Controller of the City of Houston, Texas

mg
DE

1000-2100/3600
 2105-2500
 2802-2000
 2310-2000
 FUND REF: 800-2800
 6A# 46-15767 8300-2000

6,450.00
 25,000.00
 3,265.67
 19,667.00
 340,002.00
 59,334.00
 +4L \$1,483,716.67

SECS# 45-321233
 321253
 321285
 321409
 322649

AMOUNT: ENCUMB. NO.:

City of Houston, Texas Ordinance No. 2020-482

AN ORDINANCE APPROVING AND AUTHORIZING A JOB ORDER CONTRACT BETWEEN THE CITY OF HOUSTON AND D7 ROOFING AND METAL, LLC FOR ROOF REPAIR AND REPLACEMENT SERVICES; PROVIDING A MAXIMUM CONTRACT AMOUNT; CONTAINING PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.

* * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. The City Council hereby approves and authorizes the contract, agreement or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 3. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from Council.

Section 4. The total allocation for the contract, agreement or other undertaking approved and authorized hereby shall never exceed **\$10,000,000.00** unless and until this sum is increased by ordinance of City Council.

Section 5. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 3rd day of June, 2020

APPROVED this _____ day of _____, 20____.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is JUN 09 2020.

[Signature]

City Secretary

(Prepared by Legal Dept. [Signature])
(JN:yjs 5/20/20) Sr. Assistant City Attorney
(Requested by Jerry Adams, Chief Procurement Officer, Finance/Strategic Procurement Division)
(L.D. File No. 0331900127001)

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: JUN 09 2020

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

AGREEMENT FOR JOB ORDER CONTRACTING

I. 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 **D7 Roofing & Metal, LLC** ("Contractor") a company 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:

<u>City</u>	<u>Contractor</u>
Director, General Services Department or Designee City of Houston City Hall Annex 900 Bagby St., 2 nd Floor Houston, Texas 77002	D7 Roofing & Metal, LLC 8701 W. Hardy Road Houston, Texas 77022

The Parties agree as follows:

- B. Table of Contents
 This Agreement consists of the following sections:

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- B. FEES**
- C. CONTRACT DOCUMENTS**
- D. CITY OF HOUSTON DRUG POLICY COMPLIANCE AGREEMENT**
- E. CERTIFICATE OF NO SAFETY IMPACT POSITIONS**
- F. 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


A Job Order may not alter the terms set forth in the Sections, Exhibits and Documents.

E. Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized, and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

ATTEST/SEAL (if a corporation): D7 Roofing & Metal, LLC
WITNESS (if not a corporation):

By: 
Name: HENRY ZUBIO
Title: ASSISTANT

By: 
Name: Michael A Delgado
Title: President
Tax Identification No. 20-3062308

ATTEST/SEAL:


CITY OF HOUSTON, TEXAS

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:




Director, General Services
Department

City Controller

APPROVED AS TO FORM:

DATE COUNTERSIGNED:



Assistant City Attorney
L.D. File: 0331900127001

("Effective Date")

II. DEFINITIONS

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

"Agreement" means this Agreement for Job Order Contracting between the Parties, including all Exhibits and 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.

"CCODT" refers to the City's Contract Compliance Officer for Drug Testing.

"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 or her authority in writing.

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

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

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

"Department Director" means the Director, or the person he or she designates, of the City of Houston Department managing a particular facility.

"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 General Services Department or the person he or she designates.

"Documents" means the Contract 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.

"General Conditions" means Document 00700 of the City's Standard City Construction Documents.

"GSD" means the General Services Department.

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

"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.

"Project Manager" is a person designated by the Contractor and given the responsibility and authority to manage 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.

"Surety" is the person authorized and admitted to write surety bonds in Texas, and who does so for Contractor under Section III.R. of this Agreement.

"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" as of the date of each Job Order will be applied to the R.S. MEANS prices.

"Work" means all construction required by or reasonably inferable from the Agreement, Job Order, **Exhibit "A,"** 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 Section 3.1 of **Exhibit "B"** provided by Contractor to fulfill Contractor's obligations.

III. DUTIES OF CONTRACTOR

A. Scope of Services

In consideration of the payment specified in each Job 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, **Exhibit "A"** and the applicable Job Order.

B. Duty to Inspect

(1) Upon issuance of a Job 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. 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

(1) Contractor shall invoice the City and the City shall make payment in accordance with this Agreement. Contractor invoices for those costs specified in the Contract Fee Schedule must include itemization justifying the amounts as invoiced. Separate invoices for each facility must be provided. The itemization shall be in accordance with the Contract Fee Schedule and shall include, but is not be limited to the following:

- a. Each invoice (in duplicate) shall be delivered, mailed or emailed to the individual facility managers of each department. Contractor is responsible to verify the departments correct mailing address.
- b. Invoices must be submitted in duplicate with copies of Contractor's daily work orders attached which have been approved by the Facility Manager or designee.
- c. Invoices submitted for services performed as the result of Change Order shall require that copies of the applicable Change Order also be attached to the original and one (1) invoice copy.
- d. Invoices submitted for services that are performed as the result of Other Work/Services must also include copies of Department Director's written request for the services and any additional supporting documentation required for the services provided.
- e. Other information or details as may be requested or specified by the Department Director. Each invoice must contain, in addition to the above, the five digit Systems Applications and Products (SAP) Contract Number and Service Release Order (SRO) number assigned by the City Controller's Office to the specified contract services; a complete description of the services provided (and complete contract name); and Contractor's contact person for invoice irregularities.

(2) Contractor shall submit its invoices on forms approved in advance by the Department Director, accompanied by support documents as may be requested by the Director and Department Director. Each invoice Contractor submits must be in duplicate and each copy must include required support documents. Each invoice must be identified by the Agreement name, Job Order number, project name, Work Breakdown Structure (WBS), and City issued vendor and agreement numbers. Contractor shall deliver invoices (with supporting documentation) to the appropriate Department Director in the following manners:

- a. **Houston Public Works:**
Submit Invoices in PDF format to: finaccountspayable@houstontx.gov
- b. **Houston Airport System:**
submit invoice in TIFF format to: has.accountspayable@cityofhouston.net.
- c. **General Services Department:** Submit invoices electronically to: gsdpayables@houstontx.gov or by mail to or City Hall Annex, 2nd Floor 900 Bagby Street Houston, Texas 77002.
- d. **Houston Parks and Recreation Department:** Submit invoices by mail to: 2999 S. Wayside, Gragg Building, Accounts Payable Division - Attn: Gina Singleton, Houston, TX 77023.

- e. **Solid Waste Management Department:** Submit Invoices by mail to: COH Dept. of Solid Waste, Attn: Wealthia White, P.O. Box 1562, Houston, TX 77251-1562.

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. Contractor Personnel

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 Agreement:

Person	Area of Responsibility
Michael A Delgado	Project Manager
Henry Rubio-Merlan	Assistant
Francisco G Moreno	Roofing Superintendent
Jose E Rubio	Metal Superintendent

Contractor acknowledges that City is materially relying upon Contractor's promises to use these persons in the performance of this Agreement. Contractor shall not remove or replace these persons from these areas of responsibility without the written consent of Director, 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 is being replaced and who is acceptable to Director.

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. CONTRACTOR HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.

G. INDEMNIFICATION

(1) SCOPE OF 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:

- a. CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN THIS PARAGRAPH III.G, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- b. 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.

(2) INDEMNIFICATION PROCEDURES

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:

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

This notice does not 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 30-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.

(3) 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 Attorney. Contractor shall then control the defense and any negotiations to settle the claim, subject to the City Attorney's consent or agreement to the settlement, which consent or agreement shall not unreasonably be withheld. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City Attorney 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 Attorney may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations.

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 DIRECTOR'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 AM 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 AM Best's Key Rating Guide and the issuer must be an eligible non-admitted 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 Subsection (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 Contractor's insurance does not extend to instances of sole negligence of the City unmixed with any fault of 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: Contractor must give the Director in writing 30 days' advance written notice of any cancellation, non-renewal, or material change to the policy. Within the 30-day period, Contractor shall provide other suitable policies in lieu of those about to be canceled or nonrenewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may:

- a. immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
- b. purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

(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, except Workers' Compensation policies, 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 Section (13). The definitions set out below shall apply only for the purposes of this Section (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 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 Subsections I.1 thru I.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, Employer's Liability and Automobile Liability coverage that meets all the requirements of Table 1. The amount must be commensurate with the amount of the Subcontract, but not less than \$500,000 per occurrence. Contractor shall require all Subcontractors with whom it contracts directly, whose subcontracts exceed \$100,000 to provide proof of Commercial General Liability and Automobile Liability insurance coverage meeting the above requirements. Contractor shall comply with all requirements set out under Section (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

COVERAGE	LIMIT OF LIABILITY
Workers' Compensation:	Statutory Limits for Workers' Compensation
Employer's Liability:	Bodily Injury by Accident \$500,000 (each accident) Bodily Injury by Disease \$500,000 (policy limit) Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Including 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
Owners and Contractor's Protective Liability:	\$1,000,000 combined single limit each occurrence/aggregate
Automobile Liability Insurance: (For automobiles furnished by Contractor in the course of his performance under the Agreement, including Owned, Non-owned and Hired Auto Coverage)	\$1,000,000 combined single limit each occurrence
Excess Coverage:	\$10,000,000 each occurrence/combined aggregate in excess of the limits specified for Employer's Liability, Commercial General Liability, and Automobile Liability
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

- (17) Contractor shall provide updated certificates of insurance to the Director upon request. Every certificate of insurance Contractor delivers in connection with this Agreement shall:
- a. Be less than 12 months old;
 - b. Include all pertinent identification information for the insurer, including the company name and address, policy number, NAIC number or AMB number, and authorized signature;
 - c. Include the Project name and reference numbers and indicates the name and address of the Project Manager in the Certificate Holder Box; and

- d. Be appropriately marked to accurately identify all coverages and limits of the policy, effective and expiration dates, and waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and Worker's Compensation/Employers' Liability.

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.

(3) Contractor further warrants that the Work shall be performed in a thorough and workmanlike manner.

(4) 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.

(5) 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.

(6) 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.

(7) Contractor warrants all repairs made under this contract for a period not less than five (5) years from the date of acceptance by the City. Contractor shall warrant all complete roof installations performed under this Agreement for 5 years or more from the date of acceptance by the City. Contractor shall provide and pay for a manufacturer's "No Dollar Limit" warranty for 20 years or more for all complete roof installations performed under this contract.

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 Section.

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 Agreement 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 local, 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 Section 15-17 of the Code of Ordinances.

Q. Minority and Women Business Enterprises

Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 15% (12% MBEs and 3% WBEs) of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunities ("OBO") and will comply with them.

Contractor shall require written subcontracts with all MWBE subcontractors and suppliers contain the following terms:

[Name of MWBE 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 Office of Business Opportunity Director (the "Director").

[Name of MWBE subcontractor] shall permit representatives of the City of Houston, at all reasonable times, to perform: (i) audits of the books and records of the subcontractor; and (ii) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least 4 years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

Within five Business Days of execution of this subcontract, Contractor and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.

Any controversy between the Parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract may be submitted to the Director. The Director may prescribe procedures to provide dispute resolution

by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

R. Bonds

Each year during the term of this Agreement, Contractor shall furnish a Performance Bond and Payment Bond for \$500,000 conditioned on Contractor's full and timely performance of the Agreement and payment of Subcontractors. Prior to Job 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. Contractor shall also furnish a Maintenance Bond for \$500,000 to secure the warranty in Section 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 ("Surety"). 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 "D"**, 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 "E"**.

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 "F"**. 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 or City Facilities 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 (TPDES), 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 "Best Management Practices" as defined in 40 CFR, Part 122.2, as amended from time to time, if necessary to minimize the exposure of stormwater to significant materials generated, stored, handled, or otherwise used by Contractor as defined in the federal stormwater regulations.

(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.

U. Pay or Play Program Requirements

The requirement and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into this Contract for all purposes. Contractor has reviewed Executive Order No. 1-7 and shall comply with its terms and condition.

V. Waiver of Attorney Fees and Interest

(1) Neither the City nor Contractor may recover attorney fees for any claim brought in connection with this Agreement.

(2) Neither the City nor the Contractor may recover interest for any damages claim brought in connection with this Agreement.

W. Anti-Boycott of Israel

Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code

X. Zero Tolerance Policy for Human Trafficking and Related Activities

The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Agreement's effective date. Contractor shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Contractor or its subcontractors providing services or goods under this Agreement within 7 days of Contractor becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur

IV. DUTIES OF CITY

A. Payments and Completion

(1) Estimates for Payment

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 Section IV.C below.

(2) Certificates for Payment

a. Unless otherwise provided in the Agreement or Job Order, payments for completed work, 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.

b. 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, Job Orders and Documents, the amount of each Certificate of Payment shall be calculated as follows:

- 1 that portion of the Job Order price allocable to completed Work based on the line items completed and the extension of their unit prices (as calculated per **Exhibit "B"**) multiplied by the quantities incorporated into the Work, less retainage of five percent;
- 2 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;
- 3 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, 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, Job 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 Job 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 Job 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. Early Payment Discount: The City of Houston's standard payment term is to pay 30 days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Texas Gov't Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from vendor as follows:

- Payment Time - 10 Days: 2% Discount
- Payment Time - 20 Days: 1% Discount

If the City fails to make a payment according to the early payment schedule above but does make the payment within the time specified by the Prompt Payment Act, the City shall not receive the discount, but shall pay no other penalty. When the payment date falls on a Saturday, Sunday, or official holiday when City offices are closed, and City business is not expected to be conducted, payment may be made on the following business day.

c. 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.

d. 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.

e. 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.

f. 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, Job 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 Job 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 Job Order, the Documents, and this Agreement.

b. By submitting the list to the City, Contractor represents that work on the punch 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 Section 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 Job 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 punch list in Subparagraph 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 Job 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 Subsection 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 Section 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 Job Order, the Documents, and this Agreement.

(8) Final Completion and Final Payment

a. Contractor shall review the Job 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 Job 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 Job Order, the City Engineer will make final inspection. When the City Engineer finds the Work completed in accordance with the Job 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 Job 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 Job 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 Subsection (8)b. above, and Contractor's submission of the items set out in Subsection (8)(d) below, the City Engineer will issue a Certificate of Final Completion as provided in Subsection (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 Job Order prices less accrued liquidated damages.

f. If final completion is materially delayed through no fault of the Contractor, and the City Engineer so confirms, the City may, upon application by the Contractor and certification by the City Engineer, and without terminating the Job 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 Job 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 Job Order. For Job 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 Job 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 Job 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 Job 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 Job 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 for any purpose under this Agreement is limited in its entirety by the provisions of this Section.

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of **\$483,716.67** to pay money due under this Agreement during the City's current fiscal year (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. The City has not allocated supplemental funds or made a supplemental allocation for this Agreement.

(3) The Original Allocation is the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement and it has no other remedy in law or in equity against the City and no right to damages of any kind.

V. TERM AND TERMINATION OR SUSPENSION OF THE AGREEMENT

A. Agreement Term

(1) This Agreement is effective on the Countersignature Date and shall remain in effect for two (2) consecutive years, unless sooner terminated under this Agreement (the "Initial Term"). Contractor acknowledges that time is of the essence of this Agreement.

(2) Upon expiration of the Initial Term, and so long as the City has sufficient funds, this Agreement will be automatically renewed for three (3) successive one-year terms on the same terms and conditions. If the Director chooses not to renew this Agreement, he or she shall notify Contractor and the CPO of non-renewal at least 30 days before the expiration of the then-current term.

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

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 Subsection 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 Subsection 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:

- a. Contract Price for all Work completed in accordance with a Job Order and/or the entire Agreement up to the date of termination determined in the manner prescribed for payments in Subsection 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.
- b. 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:

- a. Contractor refuses or fails to supply enough properly skilled workers or proper Products;
- b. Contractor disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;

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

(2) If an Event 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:

- a. request that Surety complete the Work; or
- b. take possession of the site and all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor; and
- c. 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:

- a. Stop the Work on the date and to the extent specified in the Notice of Termination;
- b. Place no further orders or subcontracts for materials, equipment or services;
- c. Terminate all orders and subcontracts to the extent that they relate to performance of the work terminated;
- d. 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;
- e. Settle all outstanding liabilities and all claims arising out of the termination of supply orders and subcontracts with approval of City Engineer;
- f. 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

- g. 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 Subsection V.D.(1) above, Contractor may not receive any further payment until the Work is complete, subject to provisions of Section 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 Job 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:

- a. issuance of an order of a court or other public authority having jurisdiction;
- b. act of government, such as a declaration of national emergency, making material unavailable;
- c. 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 Job Order, and if Contractor delivers written notice to the City Engineer describing the reason for termination of a Job 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 Job Order is terminated pursuant to this provision, Contractor shall comply with the requirements of Subsection V.B.(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; and
 - (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. Governing Law and Venue

This Contract shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Contract shall lie exclusively in 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 Subsection I.A. 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.

Any series, as defined by the TEX. BUS. ORG. CODE ANN., affiliate, subsidiary, or successor to which Contractor assigns or transfers assets shall join in privity and be jointly and severally liable under this Agreement.

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 General Conditions.

S. Remedies Cumulative

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

T. Contractor Debt.

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY 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, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR. CONTRACTOR SHALL

FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

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EXHIBIT "A"

PERFORMANCE/WORK STATEMENT

General Information

- 1.0 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 Job 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 **\$10,000,000.00**. Each Job Order will have a maximum amount of **\$450,000.00**.

a. SERVICES

In consideration of the payment specified in this Agreement and in each Job 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 Job Order. Contractor shall perform the Work in accordance with the requirements set forth in this Agreement.

b. PROJECT DESCRIPTION

The Director will issue Job 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, carpeting, flooring, drywall finishing, hardware, doors, glazing, landscaping and telecommunications cabling services. The specific work requirements will be identified in the Job Orders.

2.0 JOB ORDERS

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

c. Job Orders must set forth the following:

- i. Job Order Number;
- ii. Agreement number and the Contractor's name and address;
- iii. Project (Work) name;
- iv. City Council District;
- v. Work Breakdown Structure (WBS);
- vi. Funding code applicable to the Job Order;
- vii. Dates of commencement and completion of the Work;

- viii. Balance of funds remaining on the Agreement;
- ix. The period of performance and schedule of work requirements;
- x. Total amount stated for the Work to be conducted;
- xi. The place of performance for the Work;
- xii. The Work to be performed;
- xiii. Such other information as directed by the Director;

d. Job Orders may be amended by a revised or a new Job Order.

e. For any work required under this Agreement, the Director shall issue a written Job Order as follows:

i. As the need exists for performance under the terms of this Agreement, the Director will issue a Request for Proposal (RFP) to the Contractor for an existing requirement. On receiving the RFP, the Contractor shall respond within two (2) 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.
- 3. Establish/submit the scope of work within four (4) working days of site visit for review prior to a proposal submission.

ii. After joint definition of the scope of the individual requirement, the Contractor shall prepare a proposal for accomplishment of the task. The basis for establishing the value of the work to be performed shall be the UPB. The Contractor shall submit its proposal within seven (7) business days after joint definition of the scope of the requirement, or as mutually agreed with the Director. If the Contractor cannot submit its proposal within seven (7) business days due to any subcontractor or supplier limitations, it is the Contractor's responsibility to inform the Director in writing prior to the expiration of the seven (7) business day period.

iii. 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 Job Order.

iv. If it is approved by the Director, a Job Order will be issued.

v. If the Job Order is not issued 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 SCHEDULING AND COMPLETION OF WORK

- a. Each executed Job 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 Job Order are at the risk and expense of Contractor.

Contractor shall diligently perform the Work to completion within the time set forth in the Job Order. The period of performance includes allowance for mobilization, holidays, weekend days, inclement weather, and cleanup.

- i. Contractor shall deliver materials and equipment without interfering with facility's operations and personnel.
 - ii. Contractor shall move furniture of up to 50 pounds 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.
 - iii. 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.
- b. 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.
- c. 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 Job 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.

4.0 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.

5.0 CONTRACTOR REPRESENTATIVE

- a. 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, but not limited to, electrical, mechanical, HVAC, paving, landscaping, painting, roofing and plumbing.

- b. 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
- c. 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.

6.0 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.

- a. 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.

- b. 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.

7.0 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.

8.0 ARCHITECTURAL AND ENGINEERING SERVICES

A Job Order Contract or a Job Order issued under the Agreement 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.

9.0 USE OF LOW SULFUR DIESEL FUEL

Contractor and Subcontractor(s) 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.

10.0 SAFETY

- a. 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**.

- b. **Contractor** and/or Subcontractor(s) shall be responsible for compliance with all safety rules and regulations of the Federal Occupational Safety and Health Act (OSHA) 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.**

11.0 PREVAILING WAGE RATES

- a. 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.
 - i. 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 of City of Houston's Front End General Conditions:
 1. Building Construction Rates
- b. Each week Contractor shall submit to the City of Houston Office of Business Opportunity, 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 Job Orders.

12.0 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.

Roof Repair

1. Contractor(s) shall be certified to install and do warranty repair on the following roof systems: Manville/Schuller, Tamko, Tremco, GAF Materials Corporation, Firestone, and Performance Roof Systems (Dergibum). Copies of current manufacturer's approval certificates for which Contractor(s) is approved shall be submitted within five (5) calendar days from the date of receipt of a request from the City. Failure to provide these certificates

may be cause for rejecting the proposal. If these certificates are submitted with the proposal, list these certificates as "Attachments."

2. If repair work is required on any roof under warranty for which Contractor is not currently approved, Contractor shall hire and use a certified applicator for to perform the work. This repair shall be paid on a time and material basis. Under no circumstances shall Contractor perform services on roof systems which they are not an approved applicator. Contractor shall verify if warranties exist prior to performing any services on any roofs. Contractor shall coordinate and receive approval from the manufacturer on all roofs currently under warranty. When repairs are covered under warranty, Contractor shall coordinate with the manufacturer for payment of the repairs directly from the manufacturer.
3. Contractor shall warrant all work performed under this Contract for a period of five (5) years from the date of Substantial Completion. Contractor shall accept responsibility for the correction of defects in materials and workmanship and shall repair leaks promptly upon notice by the City or his/her Representative and at no cost to the City. Contractor shall reimburse the City for repairs performed by others should Contractor not remedy leaks within five (5) working days after written notice of said defects by the City.
4. The equipment/material shall be standard accepted roofing materials "equal to" the current materials and must be compatible with materials already in place. Contractor shall utilize only those materials as approved by the manufacturer for roofs currently under warranty. Maintenance shall be simple and areas of high wear should be easily replaceable.
5. If no specific type of roofing material is specified for the repair, Contractor shall use a grade of material equal to or better than the existing material(s).
6. Roof repairs to any location shall commence no later than five (5) calendar days from written Notice-to-Proceed by the Department Director or authorized representative by Contractor. Other than in inclement weather, Contractor shall have personnel engaged in roof repair on a daily basis from start to finish of each individual job. All buildings shall be temporarily water-proofed at the end of each workday.
7. JOB SCOPE-BUR ROOFS/TYPICAL:
 - a. Based on preliminary assessment, the work shall include, in accordance with manufacturer's instructions, removal of built up roof membrane and insulation down to deck. Spud-back gravel or remove existing defective membrane at designated areas a minimum of 36-inches in all directions as agreed upon.
 - b. Installation of the following:
 - i. Mechanically fastened or base sheet. Use a venting base sheet over lightweight concrete fill or gypsum.
 - ii. Insulation to match existing roof in thickness and thermal characteristics.
 - iii. Miscellaneous flashing accessories, as agreed upon.
 - iv. Replacement of rotted or defective wood blocking by Contractor.
 - v. Deck repair as needed and agreed upon. Where large areas of deck repair are required, a structural engineer shall approve the attachment.
 - vi. Installation of:
 1. SBS and/or APP modified bitumen roofing system applied with hot asphalt, cold process adhesive, or torch application as approved.
 2. Surface aggregate shall be installed where aggregate is existing.

8. CONTRACTOR DELIVERY, STORAGE AND HANDLING

Contractor Shall Provide Department Director with Material Safety Data Sheets (M.S.D.S.) for all materials delivered and Stored on Site.

a. Delivery of Materials:

- i. Deliver materials to job-site in new, dry, unopened, and well-marked containers showing product and manufacturer's name.
- ii. Deliver materials in sufficient quantity to allow continuity of work.
- iii. Coordinate delivery with City Departmental personnel.

b. Storage of Materials:

- i. Store roll goods on ends only. Discard rolls which have been flattened, creased, or otherwise damaged. Place materials on pallets. Do not stack pallets.
- ii. Stack insulation on pallets and cover with approved tarps.
- iii. Store materials marked "keep from freezing" in areas where temperatures will remain above 40° Fahrenheit.
- iv. Neatly stack wood on dunnage.
- v. Remove plastic packaging shrouds. Cover top and sides of all stored materials with canvas tarpaulin (not polyethylene). Secure tarpaulin.
- vi. Rooftop storage: Disperse material to avoid concentrated loading.

c. Material Handling:

- i. Handle materials to avoid bending, tearing, or other damage during transportation and installation. All damaged materials shall be removed from site and not installed.
- ii. Material handling equipment shall be selected and operated so as not to damage existing construction or applied roofing. Do not operate or situate material handling equipment in locations that will hinder smooth flow of vehicular or pedestrian traffic.

9. SITE CONDITIONS:

a. Field Measurements and Material Quantities. Contractor shall have SOLE responsibility for accuracy of all measurements, estimates of material quantities and sizes, and site conditions that will affect work.

b. Existing Conditions:

- i. Building space directly under roof area covered by this specification will be utilized by on-going operations. Contractor shall not interrupt City operations unless written approval is received from the City.
- ii. Access to roof shall be from exterior only. No roofing employees will be allowed within building.
- iii. Air-conditioning units and other equipment shall be moved as required to install roofing materials complete and in accordance with plans, specifications, and as required for repairs. When units and equipment are to be moved, they shall be carefully disconnected and moved to a protected area so as not to damage any part or component thereof and shall be

reconnected in such a way that they are restored to a prior work operating condition.

- iv. All disconnection and reconnection shall be performed by a mechanical and/or electrical company licensed to perform such work.

c. Environmental Requirements:

- i. Do not work in rain, snow or in the presence of water.
- ii. Do not work in temperatures below 40° Fahrenheit, above 95° Fahrenheit, or outside the limits as provided by the manufacturer of the materials being used.
- iii. Do not install materials marked "keep from freezing" when daily temperatures are scheduled to fall below 40° Fahrenheit.
- iv. Do not perform masonry work below 35° Fahrenheit. Make proper provisions to protect work from freezing 48 hours after laying if work is performed between 35° Fahrenheit and 45° Fahrenheit.
- v. Remove any work exposed to freezing.

d. Safety Requirements:

- i. All application material handling, and associated equipment shall conform to and be operated in conformance with OSHA safety requirements.
- ii. Comply with federal, state, local and City fire and safety requirements.
- iii. Advise City personnel whenever work is expected to be unsafe to City employees and/or operators.
- iv. Maintain a crewman as a floor area guard whenever roof decking is being repaired or replaced.
- v. Maintain fire extinguisher within easy access whenever power tools and roofing kettles are being used.

10. GENERAL MATERIALS:

- a. Products containing Asbestos are prohibited.

b. Wood Blocking and Curbs:

- i. Southern Pine; No. 2 grade; free from warping and visible decay; pressure-treated with chromated copper arsenate (CCA) to meet AWPB LP-22, 0.40 retention and marked.
- ii. Southern Pine, Hem-Fir or California Redwood; #2 grade; free from warping and visible decay.
- iii. Curb flashing to existing curbs.
- iv. Expansion joint cant: Cut on bias.

- c. Thermal Barrier: Replace to match existing material where required.

- d. Insulation: Any replaced insulation/fiberboard must match existing material in thickness and type.

- i. Tapered edge strip: must match existing material.
- ii. Cant strip: must match existing material.

e. Mechanical Fasteners:

- i. One (1) inch cap nails: Must match original manufacturers recommended type . All fasteners to be factory mutual approved for the specific

- application.
- ii. Galvanized sheet steel to wood blocking: FS FF-N-105B(3) Type II, Style 20, roofing nails; galvanized steel wire, flat head, diamond point, round barbed shank.
- iii. Length: Sufficient to penetrate wood blocking 1-1/4 inches minimum. Where other types of substrate are used, penetration below deck shall not exceed 1-ubc.
- iv. Termination bar to masonry: Tremco/Olympic Lead Masonry Anchors by Tremco, or approved equal. Length must be sufficient to provide 1-1/4 inch embedment minimum.
- v. Drawband: Gold Seal stainless steel worm gear clamp by Murray Corporation, Cockeysville, MD. and Power-Seal stainless worm drive clamps by Breeze Clamp Company, Saltsburg, PA. or approved equal.

11. ROOFING MATERIALS AND PERFORMANCE REQUIREMENTS SHALL BE AT MINIMUM:

- a. Interplay adhesive; Bitumen: 190 Steep Asphalt, ASTM D 312-84, Type III.
- b. Sheeting paper: ASTM D 549-74 (1982), rosin-sized sheeting paper
- c. Base sheet (mechanically attached): ASTM D 4601-86 Type II.
- d. Ply sheet: ASTM D 2178, Type VI.
- e. Modified bitumen roofing sheet: THERM MB: TD by Tremco or equal.
- f. Roofing System: SBS Modified Bitumen Roofing System -GAF Rubberoid or equal.
- g. Related Materials
 - i. Asphalt Mastic: ELS by Tremco or equal.
 - ii. Asphalt Primer: TremPrime QD by Tremco or equal.
 - iii. Flashing Bitumen: Type III Asphalt by Tremco or equal.
 - iv. Flashing Membrane: THERM MB LTD by Tremco or equal.
 - v. Flashing Ply: ASIM D 2187 Type VI.
 - vi. Heat Reflective Coating: Double Duty Aluminum by Tremco or equal.
 - vii. Sealants: Reglet joint sealant by Tremco or equal.
 - viii. Sealants: Coping sealant: GP by Tremco or equal.
 - ix. Walkway Panels: 3G25 by Tremco or equal, Sheeting bond: White, by Tremco or equal.
 - x. Lap Adhesive: Lap Adhesive by Tremco or equal.
 - xi. Sheeting Solvent: By Tremco or equal.

12. METAL FLASHING, GUTTERS AND DOWNSPOUTS:

- a. Coping Cover AND Cover Plate: Galvanized Steel: ASTM A 526-85, 24-gauge thick sheet metal with 1.25 oz./sq. ft. galvanized coating.
- b. Cover Plated: ASTM A 526-85, 22-gauge thick sheet metal with 1.25 oz./sq. ft. galvanized coating.
- c. Copper: 16 oz. ASTM 3370.
- d. Pitch Pans: Pre-Finished Kynar 500 Coated 3105-H14 Aluminum sheet metal in

24-gauge thickness.

- i. Pitch pan cement: BASF Sonneborn Master seal SL-1 or equal.
 - ii. Pitch pan mastic: ELS by Tremco or equal.
- e. Work shall be in accordance with Architectural Sheet Metal manual, Third Edition, as issued by Sheet Metal and Air Conditioning Contractors National Association, Inc., (SMACNA).
 - f. Plumbing Vents: ASTM B 29-79 (1984), 4-2.5 lb. sheet lead.
 - g. Down spouts and gutters must be replaced with matching sheet metal according to SMACNA standards.
 - h. Splash blocks to be fabricated from precast concrete and be approved by Fire Department personnel.
 - i. Roof drains must be approved for the specific job. Use ASTM B 29-79 (1984), 4-lb. sheet lead.

13. PRE-WORK EXAMINATION:

- a. Verify conditions as satisfactory to receive work.
- b. Contractor shall not begin roofing until all unsatisfactory conditions are corrected. Beginning work constitutes acceptance of conditions.
- c. Check projections, curbs, and deck for inadequate anchorage, foreign material, moisture, or unevenness that would prevent quality and execution of roof repairs.
- d. When repairing leaks, Contractor shall perform water testing to ensure the source of the leak is identified for repair.

14. GENERAL WORKMANSHIP:

- a. Substrate: Free of foreign particles prior to laying roof membrane.
- b. Phased application: Not permitted. All plies shall be completed each day.
- c. Traffic and equipment: Kept off complete plies until adhesive has set.
- d. Wrapper and packaging materials: Not to be included in roofing system.
- e. Entrapped aggregate: Not permitted within new membrane. Its discovery is sufficient cause for rejection.
- f. Bitumen heating: Kettles shall be equipped with an fume afterburner and an operable, accurate and divisible thermometer. Adhere to following guidelines:
 - i. Apply asphalt at temperature range from 25° Fahrenheit. below to 25° Fahrenheit. above equiviscous temperature (EVT).
 - ii. Do not heat asphalt above flash point (FP).
 - iii. Strictly regulate heating above finish blowing temperature (FBTR) and never for longer than 4 hours to preclude excessive asphalt degradation.

Application Rates: Bitumen quantities for waterstop/tie-offs, flashings, miscellaneous detail applications, and minimum kettle capacity are not included in application rates.

To account for these factors, add approximately 25% additional bitumen on a total-job average basis.

- g. Base flashing height: Not less than eight inches, not higher than twelve inches above finished roofing surface. When height is higher than 12-inches provide a receiver and counterflashing and install wall flashing as per the manufacturer's recommendations.

15. PREPARATION:

- a. Contractor shall be responsible for protection of property during course of work and shall notify personnel for moving any vehicles. Lawns, shrubbery, paved areas, and building shall be protected from damage. Contractor shall repair any damage at no extra cost to the City.
- b. Provide prior to commencing removal of debris, a dumpster or dump truck located adjacent to building where directed by the City. Roofing, flashings, membrane repairs, and insulation shall be installed and sealed in a watertight manner on same day of installation or before arrival of inclement weather.
- c. At start of each work day drains within daily work area shall be plugged. Contractor must remove all plugs at end of each work day or before arrival of inclement weather.
- d. Preparation work shall be limited to those areas that can be covered with installed roofing material on same day or before arrival of inclement weather.
- e. Arrange work sequence to avoid use of newly repaired roofing for storage, walking surface, and equipment movement. Move equipment and ground storage areas as work progresses.
- f. Protect building surface at set-up areas with tarpaulin. Secure tarpaulin. Remove dumpster from premises when full and empty at approved dumping or refuse area. Deliver empty dumpster to site for further use. Upon job completion, dumpster shall be removed from premises. Spilled or scattered debris shall be clean-up immediately. Removed material to be disposed from roof as it accumulates.
- g. Seal nailed base sheet at perimeters, projections, and other roof penetrations at end of each day. Note: Base sheet itself is not considered adequate waterproofing protection.
- h. At end of each working day, completed segment shall be sealed with easter stops along edges to prevent water entry.
- i. Provide clean plywood walkways and take other precautions required to prevent tracking of aggregate/debris from existing membrane into new work area where aggregate/debris pieces can be trapped within new roofing membrane. Contractor shall instruct and police his workmen to ensure that aggregate/debris is not tracked into new work areas on workmen's shoes or equipment wheels. Discovery of entrapped aggregate/debris within new membrane is sufficient cause for its rejection.
- j. Patch Preparation and Built-Up Roof Removal:

- i. Remove existing damaged roofing, insulation to deck at least 24" beyond damaged area.
 - ii. Repair deck as needed.
 - iii. Remove and repair flashings to substrate as directed.
 - iv. Remove perimeter gravel stop to wood blocking as directed.
- k. Where roof drains and/or scuppers are found to be defective, consult with City Departments for further directions.

16. CARPENTRY (WHERE APPLICABLE):

- a. Roof Edge:
 - i. Mechanically attach wood blocking. Blocking thickness: Equal to existing insulation thickness. Width: Four (4) inches nominal.
 - ii. Fasteners shall be installed in two rows staggered. Spacing in any one row shall not exceed twenty-four (24) inches. Within eight (8) feet of outside corners, spacing shall not exceed twelve (12) inches in any one row.
- b. Base Flashing:
 - i. Remove existing base flashing to substrate. Blocking thickness: Equal to existing insulation thickness. Width: Six (6) inches nominal.
 - ii. Fasteners shall be installed in two rows staggered. Spacing in any one row shall not exceed twenty-four (24) inches. Within eight (8) feet of outside corners, spacing shall not exceed twelve (12) inches in any one row. Offset blocking layers twelve (12) inches, weave corners. Install 45 degree and continuous wood cants (4 x 4's) at intersections of horizontal wood blocking and vertical flashing surfaces. Nail six (6) inches o.c.
- c. Wood/Concrete Curbs: Mechanically attach additional wood blocking atop of curb to raise final curb height eight (8) inches minimum above new roofing plane, blocking flush with outside curb surface.
- d. Plumbing Vents: Mechanically attach wood blocking to structural deck at all plumbing vent locations; minimum two (2) fasteners per section. Blocking thickness: Equal to final insulation thickness. Width: Six (6) inches, nominal. Offset blocking layers twelve (12) inches; weave corners.
- e. Ductwork Flashings: Remove duct insulation to point eight (8) inches above final surface of new roofing. Mechanically attach to deck, and to each other wood blocking at duct base and vertical curb blocking around duct. Vertical curb at duct: Thickness: Same as duct insulation. Height: Eight (8) inches above final surface of new roofing. Blocking at duct base: Thickness: Equal to final insulation thickness. Width: Four (4) inches nominal.
- f. Expansion Joint(s): Install 4 x 4 wood cants on expansion joint blocking, high point at expansion joint opening. Nail six (6) inches o.c.
- g. Pitch Pan Locations: Mechanically attach wood blocking to structural deck at all pitch pan locations; minimum three (3) fasteners per side.
 - i. Blocking thickness: Equal to final insulation thickness.

- ii. Width: Four (4) inches, nominal.

17. ROOF SYSTEM APPLICATION (MUST MATCH EXISTING ROOF SYSTEM):

*Where specific items listed below conflict with existing roof system, Contractor should consult with City Departments before proceeding with work.

- a. One wood and plywood decks install one (1) ply rosin sheathing paper perpendicular to slope direction over roof deck. Sidelaps - two (2) inches; endlaps - four (4) inches. Nail to hold in place.
- b. Cut ply sheets in eighteen (18) foot lengths. Allow lengths to relax thirty (30) minutes minimum; do not re-roll.
- c. Install base ply of precut, relaxed lengths of play sheets over sheathing paper. Lap four (4) inches on sides and ends. Nail nine (9) inches o.c. at lap; two (2) rows staggered eighteen (18) inches o.c., twelve (12) inches from each edge.
- d. Adhere bottom layer of insulation to mechanically fastened base sheet with a uniform and continuous mopping of steep at minimum rate of thirty (30) pounds per 100 square foot.
- e. Adhere layer of insulation to bottom layer in a uniform and continuous mopping of steep asphalt applied at minimum rate of 30 pounds per 100 square foot.
- f. Offset joints of top layer six (6) inches in both directions from joints of base layer.
- g. Immediately after placement, work insulation boards into hot bitumen to achieve solid bond.
- h. Promptly spread any bitumen pools that may accumulate on insulation surface to achieve smooth surface for roofing installation.
- i. Install insulation boards in courses parallel to roof edges mopping surface up. Firmly butt each insulation board to surrounding boards. Do not jam or deform boards. Eliminate open joints and uneven surfaces.
- j. Maximum insulation gap: 1/4 inch.
- k. Fill insulation board joint gaps larger than 1/4 inch with roof insulation.
- l. Maximum elevation variation between boards at joints: 1/8 inch.
- m. Cut and fit insulation boards where roof deck intersects vertical surfaces. Cut board 1/4 inch from vertical surface.
- n. Stagger joints at least six (6) inches.
- o. Filler size: Eighteen (18) inches in length or width, minimum.
- p. Lay insulation in forty-eight (48) inch wide courses.
- q. Install two plies of Type IV ply sheet to roof and all wall, curb, and projection bases in a uniform and continuous mopping of steep asphalt. Application rate: Minimum thirty (30) pounds per 100 square feet. Ply laps: Nineteen (19) inches. Overlap starter strips twenty (20) inches with first ply, then overlap each succeeding ply nineteen (19) inches. Place ply sheets to ensure water will flow over or parallel to; but, never against exposed edges.

- r. Apply adhesive no more than five (5) feet ahead of each roll being embedded.
- s. Broom plies before adhesive cools from un-mopped side. Ensure complete and continuous seal and contact between bitumen and ply sheets, ends, edges, and laps without wrinkles, fish mouths, or blisters. Avoid walking on plies until adhesive has set.
- t. Cut out fish-mouths/side laps which are not completely sealed; patch. Replace all sheets which are not fully and continuously bonded.
- u. Lap ply membrane ends four (4) inches. Stagger end laps three (3) feet minimum.
- v. Install one ply of modified bitumen roofing membrane over ply sheets shingle fashion,
- w. overlapping each membrane four (4) inches. Place roofing membrane in manner to ensure water flows over or parallel to; but, never against exposed edges.
- x. Offset roofing membrane laps from base sheet laps six (6) inches minimum.
- y. Apply interplay adhesive no more than eight (8) feet ahead of each roll being embedded.
- z. Use mop technique to ensure salvage receives hottest bitumen; in no case lower than 350° Fahrenheit. or as recommended by manufacturer.
- aa. Apply uniform and continuous pressure to salvage and end laps to ensure complete adhesion.
- bb. Embed each ply in a uniform and continuous mopping of steep asphalt.

Interplay mopping rate: thirty (30) gallons per 100 square feet.

18. DAILY WATERSTOP/TIE-INS:

- a. Where existing, remove embedded gravel from top ply of felt along termination. Width: 18 inches.
- b. Adhere twelve (12) and eighteen (18)-inch wide No. 15 ply sheets form exposed deck to existing roofing with a continuous 1/2-inch thick application of tie-off mastic. Glaze cut-off with surfacing mastic. Extend eighteen (18) inch wide felt three (3) inches either side twelve (12) inch felt.

19. FLASHINGS (WHERE APPLICABLE):

*Where specific items listed below conflict existing roof system, Contractor shall consult with the cognizant Department before proceeding with work.

- a. Sleepers:
 - i. Lift/move mechanical equipment; remove existing sleepers.
 - ii. Install wood blocking at sleeper locations.
 - iii. Apply roofing over blocking.
 - iv. Adhere walkway panels to installed roofing at sleeper locations in asphalt mastic.

- v. Size: Length/width two (2) inches larger than new sleeper.
- vi. Remount mechanical equipment.

b. At plumbing vents:

- i. Remove existing stack flashing.
- ii. Wedge plumbing vent tight against deck.
- iii. Install wood blocking.
- iv. Provide tapered edge at vent base. Firmly butt edge strip to blocking; miter corners; adhere edge strip to deck.
- v. Install roofing system onto wood blocking.
- vi. Install 1/16 inch uniformly thick layer of asphalt mastic to surface receiving metal flange.
- vii. Fabricate and install plumbing vent flashing from lead. Flange: Four (4) inches wide minimum; extend completely around periphery of vent flashing. Set flange into mastic; neatly dress flange with wood block.
 - 1. Pipe outside diameter greater than two (2) inches: Bend lead inside pipe one inch minimum with pliers or rubber/plastic mallet; replace cracked lead.
 - 2. Pipe outside diameter two inches or less: Cut lead at vent top; fabricate and install integral lead cap and secure with silicone sealant.
- viii. Prime flange with asphalt primer. Apply a continuous application of 1/16 inch thick application of asphalt mastic; one inch onto entire flashing flange and at least two inches onto adjacent roofing.
- ix. Seal flange with two strips of flashing ply flashing embedded between alternate applications of asphalt mastic. Extend first ply two inches beyond flange; second ply two inches beyond first ply.

c. At wall flashings/parapet:

- i. Remove existing flashing and counter-flashing to substrate.
- ii. Prime vertical substrate with asphalt primer at approximate rate of one gallon per 250 square feet.
- iii. Install new wood blocking at flashing base.
- iv. Adhere cant strip to flashing base in a continuous mopping of flashing bitumen.
- v. Adhere two (2) flashing plies to flashing substrate in a continuous application of flashing adhesive. Remove wrinkles and voids. Overlap sections four (4) inches.
- vi. Extend flashing ply four (4) inches beyond toe of cant.
- vii. Cut modified bitumen flashing membrane in lengths not to exceed ten feet. Apply flashing bitumen to back of flashing ply in a continuous application. While bitumen is still hot, adhere flashing membrane to substrate. Lap flashing membrane ends four inches; extend membrane six inches beyond toe of cant; press sheet firmly in place. Ensure complete bond and continuity without wrinkles or voids.
- viii. Secure top edge of flashing membrane to substrate with termination bar

- secured eight inches o.c.
- ix. Install carpentry to parapet interior and top of parapet. Mechanically attach modified bitumen membrane three inches o.c. to either side of wood blocking with one inch cap nails.
 - x. Seal seams with elastomeric mastic. Press laps firmly.
 - xi. Face nail flashing to outside face of wood blocking eight inches o.c. with one-inch cap nails.
 - xii. Install coping cover.
- d. At Expansion Joint(s) Locations:
- i. Provide wood blocking at flashing base.
 - ii. Adhere cant strip to flashing base in a continuous mopping of flashing bitumen.
 - iii. Extend new roofing to top edge of cant. Nail six inches o.c. with one-inch cap nails.
 - iv. Mechanically fasten top of flashing to substrate with one inch cap nails eight inches o.c.
 - v. Adhere two plies flashing ply to flashing substrate in a continuous application of flashing adhesive. Remove wrinkles and voids. Overlap sections four inches.
 - vi. Extend flashing ply four inches beyond toe of cant.
 - vii. Ensure complete bond and continuity without wrinkles or voids. Lap sheeting ends four inches; wipe both sides of seams with solvent and splice ends with lap adhesive; steel roll. Wipe top of seam with solvent and apply edge sealant.
 - viii. Elastomeric sheeting width: Sufficient to extend at least four (4) inches beyond toe of cant onto new roof.
 - ix. Seal roof edge of sheeting with reinforcing membrane embedded between alternate continuous courses of elastomeric mastic.
- e. Curb Flashings:
- i. Remove mechanical equipment from curb.
 - ii. Provide cant strips around curb. Adhere/attach cant to deck/curb. Miter corners.
 - iii. Install new roofing to top edge of cant.
 - iv. Adhere flashing ply to flashing substrate in a continuous application of flashing adhesive. Remove wrinkles and voids. Overlap sections four (4) inches. Extend flashing ply four (4) inches beyond toe of cant.
 - v. Secure top edge of flashing to substrate with one-inch cap nails; nail eight inches o.c.
 - vi. Reinstall mechanical equipment onto curb and Refasten.
- f. At metal curbs:
- i. Remove unit from wood blocking; clean flange, straighten flange.
 - ii. Apply 1/16 inch uniformly thick layer of asphalt mastic to surface receiving metal flange.
 - iii. Set unit into mastic.
 - iv. Nail flange to wood blocking three (3) inches o.c., staggered.

- v. Prime metal flange with asphalt primer.
- vi. Seal flange with two strips of flashing embedded between alternate applications of flashing bitumen. Extend first ply two inches beyond flange; second ply two inches beyond first ply.

20. WALKWAYS AND PROTECTION PADS:

- a. Install walkway treads at traffic locations. Install protection pads around all rooftop equipment with service panels and ventilators.
- b. Fully adhere protection pads and walk pads to roof membrane.

21. ADJUSTING AND CLEANING:

- a. Repair of deficiencies:
 - i. Installations of details noted as deficient during Final Inspection must be repaired and corrected by applicator, and made ready for re-inspection within five (5) working days.
 - ii. 19.2 Clean-Up: Immediately upon job completion, roof membrane and flashing surfaces shall be cleaned of debris.

22. POWER WASHING:

- a. Contractor shall comply with section 7.145 of the Texas Water Code, to help ensure that pollution is avoided when pressure washing. Included in this is the requirement of a Class C permit, which is available to those companies that offer PSI services. To obtain this permit, Contractor shall have their equipment inspected by the City. This permit allows companies to carry Class C allowable waste that is extracted from a PSI job to be carried and disposed of at approved waste disposal facilities. A copy of a valid permit must be available for submittal to the City within five days after request from the City.

23. MAINTENANCE BOND:

- a. Contractor shall furnish a Maintenance Bond **in the amount of (100%) of the annual Contract amount** in the form required by the One bond, also referred to as the One Year Maintenance Bond, will be conditioned upon Contractor's repair, replacement or restoration of any work or any portion of the work which is found to be defective or fails in any way to comply strictly with this contract or the plans and specifications for such work within a period of one (1) year from the date of acceptance of such work by the City Council or after the date that the "CPO", or his designee in writing, determines, in a written notice to Contractor, to be the date upon which the project is both substantially complete and available for the full and beneficial occupancy or use of the City.

24. MATERIALS:

- a. The items furnished shall be the latest product in production to commercial trade and shall be of the highest quality as to materials used. Manufacturer furnishing these items shall be experienced in the production of such items and shall furnish evidence of having supplied similar items which have been in successful operation.

25. QUALITY CONTROL:

- a. The City reserves the right to perform quality control/assurance inspection by its

staff or independent consulting/inspection firm for verification of work performed and quality control assurance purposes. Contractor shall immediately correct any deficiencies during the work or after the work within 10 days of written notification.

26. COMPUTER MAINTENANCE MANAGEMENT SYSTEM (CMMS) COMPLIANCE:

- a. The City of Houston General Service Department (GSD) utilizes a Computer Maintenance Management System (CMMS) to monitor and track all work progress, to better manage finances and to create reporting documents for senior leadership. The City captures this important information through the use of work orders. The current CMMS is known as the Sprocket Work Order System (SWOS).
- b. GSD may choose at any time to implement a program requiring the selected contractor to utilize the SWOS to execute all work performed for GSD.
- c. All work shall be transmitted from the GSD to Contractor through the CMMS system and Contractor will monitor, execute and field close work orders with all pertinent information including initial response date (not applicable to PM work orders), field completion date, total job cost billed to the City (includes labor and materials used to complete a specific work order that is above and beyond the scope included in fixed contract with City), invoice number, and a brief description of the work performed.
- d. GSD may provide additional parameters for report formatting at any time.
- e. Contractor shall bill all work for payment using standard billing practices described in Section 43.0.
- f. GSD internal expenditure control policy is as follows:
 - g. Work orders with a cost estimate less than \$3,000.00, and approved by a GSD Representative can be executed against Service Release Order (SRO number) upon approval.
 - h. Jobs exceeding \$3,000.00 shall require a written estimate and the issuing of a Purchase Order (PO) number before the work order can be executed by Contractor.
 - i. Emergency Purchase Orders (EPO) can be executed upon verbal approval by a GSD Representative regardless of cost.
 - j. Work orders shall not serve as invoicing documents for Contractor. Payments will only be made as described in Section 43.0.
 - k. Work orders are to be field closed electronically upon completion to maximize accuracy to enable GSD managers to provide real-time reporting to upper management.
 - l. GSD shall provide Contractor with One (1) Sprocket user license. Contractor may purchase additional licenses.

27. CONTRACTOR BASE OFFICE:

- a. Contractor shall provide a phone number or phone numbers at which Contractor or a designated agent of Contractor with supervisory authority may be reached on a 24-hour, 7-day week basis.

28. CONTRACT ADMINISTRATION / CONTRACT COMPLIANCE:

- a. Overall Contract Administration for HAS shall be provided by the Technical Services Division's Contracts Administration Section. The Facilities Administration Section at each airport is responsible for day-to-day field compliance and will be the primary contact for Contractor.
- b. The Directors or Contract Administrators of the other City Departments will provide Contractor with contact information for the persons who will administer this contract on behalf of the various other City Departments.

29. WORK WEEK / HOURS:

- a. The normal work week for providing the services under the Agreement shall be Monday through Friday, 52 weeks per year, excluding City holidays. Any change in the work week for Basic Services shall be only by mutual Agreement between Contractor and the Department Director. Contractor's normal hours for providing roof repair/replacement services shall be between 7:00 AM and 7:00 PM CST, Monday through Friday.
- b. Contractor shall perform Work on a work schedule acceptable to the Department Director and schedule shall be submitted in advance for approval.
- c. Complaints and extra service requirements between scheduled visits must be handled within a 24-hour period after notification and are to be at no additional cost to the City.

30. EMERGENCY SERVICES:

- a. Contractor shall provide all tools, travel, equipment, labor, supervision, and materials necessary for Emergency Roof Repair/Replacement Services. Contractor shall provide Emergency Roof Repair and Replacement Services upon emergency request from the Director. An emergency request shall be at the Director's discretion. Contractor shall respond on site to a request within 2 hours. All work done outside of normal hours is considered special services.
- b. Contractor shall be available to respond to an emergency request twenty-four (24) hours per day, 365 days per year, including holidays. Contractor shall provide each department with a telephone number that can reach Contractor twenty-four (24) hours per day, 365 days per year, including holidays. Failure to answer a call will not relieve Contractor of responsibility.

31. WORK VERIFICATION:

- a. When scheduled for work, Contractor's personnel shall check in at the offices of the Facility Managers. Contractor shall present daily work orders or schedule. When the work is completed, or upon cessation of work, Contractor shall return to the Facility Manager and complete the City Service Log (CSL) describing services and procedures utilized for the scheduled work with appropriate follow-up actions if needed. The Facility Manager will verify and approve the City Service Log and Contractor's work order. A copy of the signed log and work order, with approval signature and employee ID number, shall be submitted with Contractor's invoice for payment. Invoices submitted without the appropriate City log and work order approval will not be processed for payment until proper documentation is received.

32. PERSONNEL QUALIFICATIONS:

- a. Contractor shall provide only qualified personnel with experience in the assigned tasks. Contractor is responsible for ensuring that certified trained personnel and necessary materials, tools, equipment and supplies will be available to meet the roof repair/replacement services requirements of this Agreement. Contractor may change personnel only with equally certified personnel and with Director's approval. Contractor shall furnish documentation that includes assigned personnel's qualifications and certifications. The Director shall have the authority to instruct Contractor to remove unsatisfactory personnel from performing work on this contract for just cause. The Director's decision shall be final in all cases.

33. CONTRACTOR PROJECT MANAGER:

- a. Contractor shall designate in writing to the Department Director or designee, a Project Manager to be approved by the Department prior to start of Work under the Contract. Contractor's Project Manager shall have full authority to represent Contractor in making decisions and in the execution of the services to be performed under the Agreement. Contractor shall provide the Director with the business and after hour's phone number of the Project Manager. Contractor shall provide a toll-free telephone number if the Project Manager resides outside of the 713, 281, 832, or 346 Area Codes. Contractor shall provide a dedicated and qualified Project Manager who is skilled and experienced in roof repair/replacement services identified in the Agreement, who will serve as the main point of contact for Contractor. The Project Manager shall be available to be on-site at all times during the performance of roof repair/replacement services and to provide the level of supervision necessary to ensure full compliance with the Contract specifications.

34. CONTRACTOR'S FINANCIAL OBLIGATION:

- a. Contractor shall make timely payments to all persons supplying labor and materials or furnishing it with any equipment in the execution of the Contract.

35. SECURITY REQUIREMENTS FOR HOUSTON AIRPORT SYSTEM AND GENERAL SERVICES DEPARTMENT FACILITIES:

- a. All Contractor personnel performing Work under the Agreement will be required to have a 10-year security background check. Contractor shall provide, at its expense, Airport security-approved clearance for each individual assigned to provide service under the Agreement.
- b. Special clearances that may be required by the FAA or other federal agencies must be provided by Contractor at its expense.
- c. Certain locations require Contractor to provide roof repair/replacement services in U.S. Government "sterile areas" controlled by both Immigration and Naturalization Services and Federal Inspection Services. Authorization to enter these areas is issued by U.S. Customs in the form of a special sticker affixed to a Department of Aviation badge. Contractor shall provide to U.S. Customs all required clearances and checks to obtain these authorizations at Contractor's expense.
- d. Contractor shall arrange access to each building or area serviced with the Houston

Airport System (HAS) Facilities Administration Section at each Airport.

- e. Contractor shall conform to HAS security requirements even though the requirements and costs may change from time to time.
- f. Contractor personnel must pass a background check for badging. Upon completion of the background check, all Contractor employees and sub-contractors shall be required to obtain a City of Houston Contractors Badge from the General Services Department's Security Office located at 611 Walker Street, Houston, TX. Time and scheduled hours will be provided.

36. AIRPORT OPERATIONS AREA (AOA) POLICY:

- a. Contractor's personnel and vehicles shall not be allowed within the Airport Operations Area (AOA), which includes the ramp area and aprons, unless authorized by the Director and escorted by authorized City personnel. Contractor shall not move any Contractor owned vehicles on and off aprons or within the AOA without a HAS escort.
- b. Airport Security: Contractor's services shall be performed in accordance with the Transportation Security Administration (TSA), Federal Aviation Administration (FAA) and any other governmental agency security directives, rules and regulations. The FAA and/or the TSA may assess fines and penalties for Contractor's non-compliance with the provisions of Title 49 Code of Federal Regulations (CFR), Parts 1540 and 1542, as amended from time to time, or by other agencies for non-compliance with laws or regulations applicable to Contractor's operations. Within 10 days of notification in writing, Contractor shall reimburse the City for any fine or penalty assessed against the City because of Contractor's non-compliance with any applicable laws or regulations.
- c. Badging: Contractor shall comply with all applicable Federal rules governing security at the Airports, as may be amended from time to time.
- d. All on-site personnel of Contractor, including subcontractors, who perform services under the Agreement, shall be required to undergo a fingerprint-based criminal history records check. Fingerprints are collected at the Airport Badging Office and submitted electronically for investigation.
- e. Contractor shall obtain HAS security badges for its personnel performing services on-site. Contractor is responsible for the cost of badges, including replacements thereof. Costs for the fingerprint-based criminal history checks are reflected in the cost of the badges.
- f. Contractor acknowledges that fines or penalties associated with non-compliance with security regulations must be reimbursed to HAS.
- g. Airport Customs Security Area Bond: In accordance with Title 19 of the Code of Federal Regulations, Part 113, Contractor shall obtain an Airport Customs Security Area Bond in order to have access to the Federal Inspection Station (FIS), and One Stop Cargo and Fumigation Facility at George Bush Intercontinental Airport (IAH) and William P. Hobby Airport (HOU). Upon award, Contractor shall obtain the requisite bond form and instructions from the Department of Homeland Security, U.S. Customs and Border Protection. The bond amount is determined by calculating \$1,000.00 times the number of employees needed to provide the service.

37. SECURITY REQUIREMENTS FOR THE HOUSTON PUBLIC WORKS PUBLIC UTILITIES DIVISION:

- a. Contractor agrees to strictly abide by all security and safety regulations issued by the City.
- b. All Contractor employees must be a U.S. Citizen or have a legal work permit. Each person must also present a valid unexpired U.S. state driver's license or photo identification card, U.S. issued resident alien card, with photo, passport, or other U.S. state or U.S. federal photo documentation is acceptable to present for identification purposes. Contractor shall immediately inform the City of any personnel changes.
- c. The City of Houston Public Utilities Division (PUD) Security Group shall also conduct a criminal background check on all contractor and subcontractor employees assigned to work at any PUD site. Contractor shall contact the PUD security manager during normal business hours (8:00 am to 5:00 pm, M-F) to coordinate completion of criminal background checks.
- d. Contractor agrees the City's Disclosure and Consent for Release of Information and any other documentation necessary to complete criminal background checks.
- e. All Contractor employees without current identification cards will have access to any PUD facility. All Contractor employees must show a valid identification card at the entrance and upon request while working on site.

38. SECURITY REQUIREMENTS FOR HOUSTON POLICE DEPARTMENT LOCATIONS:

- a. All personnel assigned to Houston Police Department (HPD) locations must comply with background check requirement in accordance with Section 40.0.
- b. A security background check shall be required for each Contractor employee assigned to work at these facilities. The results of background checks shall be submitted to the General Services Department's designated representative for approval prior to an employee reporting to an HPD facility. Any and all costs associated with the background check shall be the responsibility of Contractor. HPD also has the option to perform its own background check.

39. CRIMINAL JUSTICE INFORMATION SYSTEMS (CJIS) COMPLIANCE (Applicable to Houston Police Department (HPD) Occupied Facilities:

- a. The Houston Police Department recognizes that by allowing physical or logical (electronic) access to HPD facilities or network resources, people may gain access to information or systems they are statutorily prohibited from accessing. To comply with state and federal regulations, the Houston Police Department is required to document and investigate access requests to be sure access is necessary and permitted. Contractor agrees to review and comply with the Criminal Justice

Information Systems (CJIS) process and related documents located at <http://www.houstontx.gov/police/cjis/hpdvendorcertification.htm>.

40. SECURITY REQUIREMENTS FOR NON-HOUSTON POLICE DEPARTMENT FACILITIES:

- a. All personnel shall be subject to a security background check and a condition of assignment to any City of Houston facility. The results of the background check shall be submitted to the facility Supervisor in charge.
- b. All cost associated with the background check shall be the responsibility of Contractor.
- c. The Facility Supervisor shall have the authority to instruct Contractor to remove personnel.
- d. The decision by the Director shall be the final in all cases involving removal of contract personnel from performing work herein specified.
- e. Contractor shall comply with each facility's building security measures. Contractor must train all of its staff and sub-contractors in the security measures pertaining to these facilities.

41. TRANSPORTATION AND PARKING:

- a. Contractor shall furnish all necessary transportation required to perform the Work. Contractor is granted the right to use designated vendor parking areas while performing the Work, where available. Contractor vehicles shall be clearly marked with Contractor's name on each side of the vehicle. Vehicles must also be identified in accordance with State and local regulations. All vehicles used by Contractor's personnel in their routine duties shall be registered with the Director.

42. INSPECTIONS:

- a. The Director shall have the right to conduct inspections on all equipment, materials, supplies and tools furnished, all records and logs, and all work performed under the Agreement without prior notice to Contractor. Equipment, tools, materials, supplies, and services that do not conform to the specifications of this Contract may be rejected. It is Contractor's responsibility to maintain the equipment, materials and tools provided for all aspects of the services being provided hereunder, consistent with applicable State, Federal, environmental, safety and health codes, guidelines and regulations.
- b. All work performed by Contractor, which upon inspection by the Director, is found to be faulty, incomplete, or does not meet the specifications of this Agreement, shall be corrected by Contractor. The whole expense of these corrections shall be at the expense of Contractor. The Director reserves the right to stop the work covered under this Agreement at any time it has deemed Contractor is unable or incapable of performing the services satisfactorily. In the event of such stoppage, the Director shall have the right to arrange for the completion of the services in such manner as it deems advisable, and if costs of doing so exceeds the bid amount, the successful Contractor shall be liable to the City of Houston for any such costs on account thereof.

- c. A written report of the results of the inspection and recommendations will be forwarded to Contractor and shall require Contractor to take immediate action. Contractor shall correct the deficiency and respond in writing stipulating the corrective action(s) taken within 10 days unless otherwise authorized by the Director. The Director shall determine responsibility for any deficiencies identified through an inspection.

43. SUBCONTRACTORS: Contractor may use only subcontractors approved by the Director in connection with the performance of work under the Agreement.

44. DAMAGE TO CITY PROPERTY: Contractor shall be responsible for the repair and cost thereof, of all damages to City property caused by carelessness or neglect on the part of Contractor, its agents or employees.

45. PRE-PERFORMANCE CONFERENCE: Subsequent to contract approval/execution, Contractor(s) shall be required to attend a performance conference. The Strategic Procurement Division or the primary user department will host the pre-performance conference. The purpose of the pre-performance conference is for Contractor to introduce his or her project manager to the City staff and for City staff to introduce the contract end-users, contract compliance and accounts payable representatives. Items to be addressed shall include, but are not limited to, the following:

- i. Start-up and phase-in and performance schedule
- ii. Contract administration
- iii. Facilities utilization
- iv. Channels of communication
- v. Procedures to be used to ensure Contract requirements are met to meet all the requirements of the Contract.

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

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

EXHIBIT "B"
FEES

1.0 Unit Price Book (UPB) Pre-priced Items

- 1.1 Payment for work performed during standard working hours shall be based on the Coefficient factor of prices in the UPB .86 multiplied times the sum of applicable unit
- 1.2 Payment for work performed during non-standard working hours shall be based on the Coefficient factor of .96 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 48 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 UPB.
- 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 1.16 multiplied times the sum of the cost of non-pre-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 1.16 multiplied times the sum of the cost of non-pre-priced items not contained in the UPB.
- 2.3 For work 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 Subcontractor(s) shall require price quotations from at least three sources, unless otherwise directed, and be supported by a similar cost breakdown,

which shall show Subcontractor(s) by prime, and others. All costs claimed are subject to negotiation.

- 2.4 Surveying Costs
- 2.5 The total cost of the building permits plus 2% to be included in the proposal as a separate item.
- 2.6 "Temporary Security" sub section of "Temporary Barriers and Enclosures" section of "General Requirement" Division of the UPB.
- 2.7 Moving equipment services.
- 2.8 Pressure washing services.

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) General purpose equipment and tools of the trade.
 - (7) Moving of City property for access to area of the work.
 - (8) Administrative Work.
 - (9) Submittals.
 - (10) Price quotations.
 - (11) Daily Clean-Up.
 - (12) All waste and excess materials (not demolition waste).
 - (13) Permits, licenses, badges and fees (not building permits).
 - (14) Mobilization, De-mobilization, and close-out for total contract and each Job Order.
 - (15) Project management and supervision.
 - (16) Quality Control.
 - (17) Office supplies, equipment, hardware, software and staffing.
 - (18) Costs of Performance, Payment, Maintenance, and Airport Customs Security Area Bonds
 - (19) Interest associated with funding of equipment and payroll.
 - (20) Depreciation of mobile offices, if applicable.
 - (21) Employee wages, payroll taxes, insurance and fringe benefits.
 - (22) Risk of lower than expected contract dollar volume.
 - (23) Risk of high inflation costs.
 - (24) Risk of poor subcontractor performance and re-performance.
 - (25) Other risks of doing business.
 - (26) Business taxes, contributions, memberships, corporate headquarters support (legal, financial, etc.).
 - (27) 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 Job Orders, unless it is explicitly excluded by the line items in the UPB.

- (28) Any and all Subcontractor Costs.
 - (29) 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 expendable supplies, lubricants, wear and tear on tools are incidental to the UPB cost of construction and will not be paid separately.
- 3.5 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.
- 3.6 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.
- 3.7 UPB Exclusions. The following sections of the UPB General "Requirement" Division are excluded (i.e., all of these services are included in the Contractor's Coefficient):
- a. "Summary of Work"
 - b. "Allowances" 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.
 - c. "Project Management and Coordination"
 - d. "Construction Progress Documentation"
 - e. "Regulatory Requirements"
 - f. "Quality Control"
 - g. "Protective Equipment" sub section of "Construction Aids"
 - h. "Equipment Mobilization" sub section of "Construction Aids"
 - j. "Project Identification"
 - k. "Examination and Preparation"
 - l. "Cleaning and Waste Management"
 - m. "Protecting Installed Construction"
 - n. "Commissioning"

EXHIBIT "C"

CONTRACT 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>
00501	Resolution of Contractor
00601	Drug Policy Compliance Agreement
00602	Contractor's Drug-free Workplace
00605	List of Safety Impact Positions
00610	Performance Bond
00611	Statutory Payment Bond
00612	One-year Maintenance Bond
00620	Affidavit of Insurance
00624	Affidavit of Compliance with Affirmative Action Program
00630	Certification of Agreement to Comply with Pay or Play Program (POP-2)
00700	General Conditions – November 28, 2017
00800	[Omitted]
00820	[Omitted]
00821	Wage Scale for Building Construction

EXHIBIT "D"

DRUG POLICY COMPLIANCE AGREEMENT

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

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

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 "E"

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

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

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

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

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

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "F"

DRUG POLICY COMPLIANCE DECLARATION

I, _____ as an owner or _____ (Name) (Print/Type) _____ (Title) officer of _____ (Contractor) (Name of Company), have personal knowledge and full authority to make the following declarations:

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

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

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

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

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

_____ Initials From _____ [Start date] to _____ [End date] the following test has occurred:

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

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

_____ Initials I affirm that falsification or failure to submit this declaration timely in accordance with 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)