

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

Land Bell
Land Bell

Date: 9-8, 2020

City Controller of the City of Houston, Texas

MB

SCC

FUND REF: 8001 2800 530805 AMOUNT: \$200,000.00 ENCUMB. NO.: 82045-332118
OA 46-16260

City of Houston, Texas Ordinance No. 2020-764

R

AN ORDINANCE APPROVING AND AUTHORIZING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF HOUSTON AND TEXAS A&M ENGINEERING EXTENSION SERVICE FOR AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) TRAINING SERVICES FOR GEORGE BUSH INTERCONTINENTAL AIRPORT/HOUSTON AND WILLIAM P. HOBBY AIRPORT FOR THE HOUSTON AIRPORT SYSTEM; 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, THAT:

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, or, in the absence of the Mayor, the Mayor Pro Tem is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary, or, in the absence of the City Secretary, any Assistant 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 actions 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 **\$1,500,000.00** 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 9th day of September 20 20.

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 SEP 15 2020.

At J. Hanil
City Secretary

FUNDING SOURCE:

\$1,500,000.00 from HAS Revenue Fund (8001)

(Prepared by Legal Dept. *Isfhan Zaman*)
(TNE/anv 08/31/2020) Assistant City Attorney
(Requested by Mario Diaz, Director, Houston Airport System)
(L.D. File No. 0042000206001)

AYE	NO	
✓		MAYOR TURNER
••••	••••	COUNCIL MEMBERS
✓		PECK
✓		DAVIS
✓		KAMIN
✓		EVANS-SHABAZZ
✓		MARTIN
✓		THOMAS
✓		TRAVIS
✓		CISNEROS
✓		GALLEGOS
✓		POLLARD
✓		MARTHA CASTEX-TATUM
✓		KNOX
✓		ROBINSON
✓		KUBOSH
✓		PLUMMER
✓		ALCORN
CAPTION	ADOPTED	

ORDINANCE No. _____
CONTRACT No. _____

**AGREEMENT FOR PROFESSIONAL TRAINING SERVICES
FOR THE HOUSTON AIRPORT SYSTEM**

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

I. CONTRACTING PARTIES

THIS INTERLOCAL AGREEMENT FOR AIRCRAFT RESCUE AND FIRE FIGHTING TRAINING SERVICES ("Agreement") is entered into on the countersignature date by and between the **CITY OF HOUSTON, TEXAS**, a Texas home-rule municipality ("City") and **TEXAS A&M ENGINEERING EXTENSION SERVICE (TEEX)**, a member of the Texas A&M System, ("Contractor"), pursuant to the Interlocal Cooperation Act, Tex. Gov't Code Ann. §791.001 et seq.

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>
Houston Airport System	Texas A&M Engineering Extension
Public Safety & Technology	Service (TEEX)
16930 J. F. Kennedy Blvd.	200 Technology Way
Houston, Texas TX 77032	College Station, TX 77845

II. DEFINITIONS

A. Agreement: means this contract, including all exhibits and any written amendments authorized by City's and Contractor's governing bodies.

B. ARFF (Aircraft Rescue and Fire Fighting) Personnel: means person(s) designated by the Director for ARFF certification training by Contractor under this Agreement.

C. Countersignature Date: means the date shown as the date countersigned by the City Controller on the signature page of this Agreement.

D. Director: means the Director of the Houston Airport System or the person he or she designates.

E. IAH: means George Bush Intercontinental/Houston Airport (IAH)

F. Hobby: means William P. Hobby Airport (HOU)

III. PURPOSE

The purpose of this Agreement is to set out the terms and conditions under which Contractor shall provide ARFF training to ARFF Personnel.

IV. SCOPE OF SERVICES

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material and supervision, including Texas Commission on Fire Protection (TCFP) certified instructors, necessary to train ARFF personnel to include Initial TCFP ARFF Certification, FAA live fire ARFF training, rescue tool training, provide additional training as requested, Mobile Aircraft Firefighting Trainer (MAFT), the propane to operate the MAFT, and certificates after the completion for those participants who successfully complete the training. For the live fire training required to be done at a large fixed facility, the Contractor shall provide a training facility with burn area, aircraft mockup, and props of sufficient size to satisfy FAA Index E and the FAA's training requirement found in 14 CFR Part 139.319. Provide ARFF Training to personnel in accordance with the TCFP curriculum. Provide day and/or night training.

For training projects conducted at IAH and Hobby airports, Houston Airport System (HAS) shall provide a suitable location for the training to occur, in coordination with MAFT owner, provide suitable location for aircraft fuselage(s) to conduct rescue training, assistance with

unloading/setup/loading of aircraft fuselage(s), assistance with propane delivery for all burns, assistance with unloading/set up/loading of components for the MAFT burn unit, all burn permits for the host training, provide two (2) each – 1 ½ " or 1 ¾ " hose lines 200 feet long and a minimum of 90 GPM, staff for Incident Management System (IMS) functions, provide self-contained breathing apparatus (SCBA) with refill capability, water re-supply to ensure the training evolutions are not interrupted, provide restroom facilities within 200 feet of the training site (portable restroom is acceptable), HAS will dispose of non-hazardous waste material. Runoff of aqueous film forming foam (AFFF) and containment will be the responsibility of HAS.

Contractor shall provide ARFF personnel training (consistent with this Agreement) as set forth in Letters of Agreement issued by the Contractor which shall include, without limitation, the dates of training, the location of training and a not to exceed dollar amount for the training.

V. PAYMENT

City shall pay and Contractor shall accept the fees set forth in the aforementioned Letters of Agreement.

VI. METHOD OF PAYMENT

The City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Director, indicating the hours and number of ARFF Personnel trained by Contractor. The Contractor will submit a class roster with each invoice which must be signed by Contractor's instructor and a HAS representative. HAS shall make payments to Contractor at the address set forth in Article IX C herein within 30 days after Director has approved an invoice.

VII. 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 \$300,000.00 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. Therefore, the Parties have agreed to the following procedures and remedies:

(3) The City has not allocated supplemental funds or made a Supplemental Allocation for this Agreement unless the City has issued to the Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

\$ _____

(4) The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractors 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.

VIII. CONTRACT TERM

This Agreement is effective on the Countersignature Date and expires five (5) years from the Countersignature Date unless sooner terminated in accordance with the terms of this Agreement. Contractor or Director may terminate this Agreement for convenience at any time by giving not less than thirty days advance written notice to the other Party. Provided, however, Contractor shall not terminate this Agreement if a class is in progress without the written approval of the Director.

IX. MISCELLANEOUS PROVISIONS

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

B. Amendments: 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.

C. Notice: All notices must be in writing to the attention of the following:

<u>City</u>	<u>Contractor</u>
Houston Airport System	Texas A&M Engineering Extension
Public Safety & Technology	Service (TEEX)
16930 J. F. Kennedy Blvd.	200 Technology Way
Houston, Texas TX 77032	College Station, TX 77845

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

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

F. Contractor's Debt: IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT

CONTRACTOR HAS INCURRED A DEBT, THE CITY CONTROLLER SHALL IMMEDIATELY NOTIFY CONSULTANT 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 CONSULTANT 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.

G. Independent Contractor: Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.

H. Force Majeure

(1) Timely performance by both Parties is essential to this Agreement. However, neither Party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a Party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, court orders, and the acts of superior governmental or military authority, and which the affected Party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Consultant to any reimbursement of expenses or any other payment whatsoever.

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

2.1 uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and

2.2 provides the other Party with prompt written notice of the cause and its anticipated effect.

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

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

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

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

I. 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.

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

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

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

M. 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.

N. Parties In Interest: This Agreement does not bestow any rights upon any third Party but binds and benefits the City and Contractor only.

O. 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.

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

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

Q. 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.

X. LIABILITY

Each Party to this Agreement shall be responsible for its own acts of negligence. Where any injury or property damage result from the joint or concurring negligence of the Parties, liability, if any, shall be shared by each Party on the basis of comparative responsibility in accordance with the applicable laws of the State of Texas, subject to all defenses, including governmental

immunity. These provisions are solely for the benefit of the Parties to this Agreement and not for the benefit of any person or entity not a Party to this Agreement; nor shall any provisions of this Agreement be deemed a waiver of any defense available by law.

Insurance and Release of Liability

Insurance

- (1) Contractor represents to the City the following:
 - (a) it is self-insured for all claims falling within the Tort Claims Act;
 - (b) it is self-insured for Worker's compensation insurance as provided by Chapter 502 of the Texas Labor Code; and
 - (c) it is either insured under a policy of commercial insurance or is self-insured for automobile insurance with minimum coverage of \$500,000.00 per occurrence for bodily injury or death and \$100,000.00 for injury to or destruction of property. If Contractor is insured under a policy of commercial insurance, the insurance will be issued by a company that the State Board of Insurance has authorized to do business in Texas and will name the City as an additional insured.
- (2) Evidence of insurance - Before performing any service under this Agreement, Contractor must provide to the Director either a statement of self-insurance or a certificate of commercial insurance evidencing the above coverages.
- (3) Waiver of subrogation - Where Contractor is self-insured, Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, and employees. Contractor shall ensure that each of its policies of insurance contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees.

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.

**TEXAS A&M ENGINEERING
EXTENSION SERVICE (TEEX)**

Signed by:

DocuSigned by:

R. Charles Todd

855E27C39DA84BB...
Associate Agency Director/CFO

Name: R. Charles Todd

Tax ID No.: 74-2270626

CITY OF HOUSTON, TEXAS

Signed by:

Mayor

ATTEST/SEAL:

City Secretary

APPROVED:

DocuSigned by:

Jerry Adams

00D260138A6F4CB...

Chief Procurement Officer

APPROVED:

DocuSigned by:

Mario Diaz

8520F31A7CB4BB...

Director,

Houston Airport System

COUNTERSIGNED BY:

City Controller

APPROVED AS TO FORM:

DocuSigned by:

Tiffany Evans

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Tiffany Evans/av

Assistant City Attorney

L.D. File No. 004000179001

DATE COUNTERSIGNED:

DS
SCA