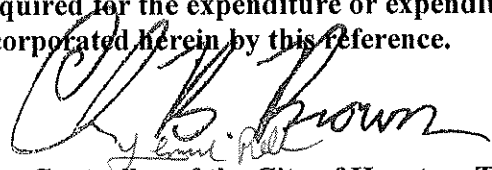


Controller's Office

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



City Controller of the City of Houston, Texas

Date: 9-21, 2020

mg

FUND REF: 403973600 ⁵⁵⁰¹⁰⁶ AMOUNT: \$596,522.00 ENCUMB. NO.: PO46-9586
CA46-11251

City of Houston, Texas Ordinance No. 2020-816

AN ORDINANCE APPROPRIATING THE SUM OF \$596,522.00 OUT OF THE MISCELLANEOUS CAPITAL PROJECTS/ACQUISITIONS CP SERIES E FUND; APPROVING AND AUTHORIZING A PROFESSIONAL ENGINEERING SERVICES CONTRACT BETWEEN THE CITY OF HOUSTON AND AECOM TECHNICAL SERVICES, INC. FOR DESIGN AND CONSTRUCTION PHASE SERVICES FOR HURRICANE HARVEY-TIGER TRAIL 4, FOR THE HOUSTON PARKS AND RECREATION DEPARTMENT; 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 appropriates the sum of money set out in the title of this Ordinance, out of the fund set out in such title.

Section 2. 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 3. 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 4. 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 5. The total allocation for the contract, agreement or other undertaking approved and authorized hereby shall never exceed \$596,522.00 unless and until this sum is increased by ordinance of City Council.

Section 6. 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 23rd day of September, 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 SEP 29 2020.

[Signature]

City Secretary

DocuSigned by:
Joe Nwaokoro
A7B91A9275E147C...

(Prepared by Legal Dept. _____)
(JN/yjs) Sr. Assistant City Attorney
(Requested by C.J. Messiah, Jr., Director, General Services Department and Steve Wright, Director, Parks & Recreation Department)
(L.D. File No. 0332000097001)

CERTIFICATE OF CITY CONTROLLER

I, Chris Brown, City Controller of the City of Houston, Texas, pursuant to Article II, Section 19a of the Charter of the City of Houston, with respect to the sum of **\$596,522.00** required for the project referenced in the title of this ordinance, do hereby certify as follows:

To the extent that the **\$596,522.00** will be paid by commercial paper proceeds, funds will be received into the treasury and available before the maturity of said obligation, and such anticipated funds have not already been appropriated for any other purpose. Such sum will be received as a cash draw(s) to the City of Houston pursuant to the General Obligation Commercial Paper Program, Series E, Ordinance No. 2002-1122.


City Controller *June 10th*

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	

CONTRACT

FOR

PROFESSIONAL ENGINEERING SERVICES

**THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §**

WHEREAS, the City of Houston, a Texas home-rule municipality (the "City") proposes to construct the following:

**HURRICANE HARVEY-TIGER TRAIL 4
Along the south bank of Buffalo Bayou between Franklin St. to Main St.
WBS No.: F-HARVEY-0004-3**

(the "Project").

WHEREAS, the City liaison for this Contract is:

**DIRECTOR
GENERAL SERVICES DEPARTMENT
P. O. BOX 1562
HOUSTON, TEXAS 77251**

WHEREAS, the City desires to enter into an agreement with the following Engineer to perform certain professional Engineering and other professional services in connection with the Project, as described herein and in **Exhibit "A,"** which is attached hereto and incorporated herein for all purposes:

**AECOM TECHNICAL SERVICES, INC.
5444 WESTHEIMER RD., SUITE 200
HOUSTON, TX 77056**

(the "Engineer").

NOW THEREFORE, in consideration of the mutual covenants and agreements of the parties, the City and the Engineer agree as set forth below:

Definitions

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

"Additional Services" are those defined in **Section 1.6** of this Contract.

"Engineer" is defined in the preamble of this Contract and includes the firm's successors and assigns which are jointly and severally liable for the obligations and liabilities under this Contract.

"Basic Services" are those Phase I, II, III and IV services defined in **Sections 1.2 through 1.5** of this Contract.

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

"City Engineer" is defined as the engineer so appointed by General Services Department.

"Construction Cost" is defined in **Article 3**.

"Contract" or "Agreement" means this Contract for Professional Engineering Services.

"Contract Documents" are as described in **Section 1.3**.

"Contractor" means the construction contractor to whom the City has awarded all or part of a construction contract for this Project.

"Director" means the Director of the General Services Department or of a successor department or such other person as may be designated from time to time by the Director, by notice to the Engineer, to administer this Contract on behalf of the City.

"Documents" means reports, charts, analyses, maps, letters, tabulations, exhibits, notes, models, photographs, specifications, AutoCAD and PDF files of all drawings and plans, and other submittal documents obtained by or prepared by the Engineer as instruments of its services under this Contract.

"Effective Date" is the date this Contract comes into force and shall be the date the City Controller countersigns it.

"FEMA" refers to the Federal Emergency Management Agency.

"Maximum Total Construction Cost" is the specific amount as defined in **Section 1.1.2** that may not be exceeded by any estimate of Construction Cost for the Project by the Engineer without the express written approval of the Director or an acting Director as appointed by the Mayor.

"MWBE" is defined as Minority and/or Woman Business Enterprise as more clearly defined in Chapter 15, Article V of the City of Houston Code of Ordinances.

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

"OBO Director" means the Director of the Mayor's Office of Business Opportunity or of a successor department or such other person as may be designated from time to time by the Mayor.

"Program" means all those quantitative and/or qualitative requirements for the Project that must be met or satisfied by the design for the Project.

"Project Schedule" (Form attached as **Exhibit "B"** and incorporated herein) means a schedule of Project activities and events, showing initiation point, duration and ending points. The schedule will also indicate time to be allowed for reviews by the City staff.

"Reimbursable Expense" is defined in **Article 5**.

"Subcontract Cost" means the ordinary and reasonable cost of subcontracts made by the Engineer and approved by the Director for the principal purpose of obtaining the professional services of others in connection with the performance of any service under this Contract.

"Substantial Completion" is that point in the construction of a project or designated portion thereof where the City Engineer certifies that construction is sufficiently complete, in accordance with the Contract Documents, that the City may occupy the project, or a designated portion thereof, for the use for which it was intended.

ARTICLE 1
ENGINEER'S SERVICES AND RESPONSIBILITIES

1.1 GENERAL

- 1.1.1 The Engineer agrees to provide prompt and efficient professional services as herein defined for the fees hereinafter specified and in accordance with the Project Schedule. The Project Schedule shall be drafted by the Engineer, in consultation with the City staff, approved by the Director and updated monthly at the time of invoice submittal. The Engineer shall coordinate his performance of the services hereunder with the Director and such other persons as the Director may specify. The Engineer shall make periodic verbal or written reports and recommendations to the Director with respect to conditions, transactions, situations or circumstances encountered by the Engineer relating to the services to be performed under this Contract and shall attend meetings which the Director determines to be necessary. The Engineer shall, upon written request, provide the Director with a copy of Documents prepared by the Engineer or made available to it as a result of its performance under this Contract.
- 1.1.2 The Engineer shall proceed with performance of its services hereunder with full knowledge and understanding that the Maximum Total Construction Cost for this Project shall not exceed the sum of \$5,994,755.87 without the express written approval of the Director. The Engineer shall plan and design this Project in such a manner that the Engineer's best professional estimate of probable Construction Cost does not exceed the Maximum Total Construction Cost. If at any time during the course of this Project, the Engineer's estimate of Construction Cost, for all work designed and specified, exceeds this amount, the Engineer shall immediately notify the Director. The Director may by written notice either increase the Maximum Total Construction Cost or obtain an agreed upon reduction in the Project scope. For any Maximum Total Construction Cost or budget revision, without an increase in the scope of the Project as defined in **Exhibit "A,"** there shall be no increase in the Engineer's fee. In the event the parties cannot agree on a revised Maximum Construction Cost this Contract may be terminated according to **Article 9** of this Contract. For the purpose of this **Section 1.1.2,** no person other than the Director is authorized to provide such written agreement to exceed the Maximum Total Construction Cost specified herein.
- 1.1.3 The Engineer shall designate a project manager who will be the Engineer's liaison for this Project.
- 1.1.4 The Engineer's Basic Services consist of those services performed by the Engineer, Engineer's employees and Engineer's subconsultants as enumerated in the four phases described in **Sections 1.2 through 1.5** and include normal civil, structural, mechanical, electrical engineering and landscape architecture services to meet the minimum requirements of the City Code of Ordinances. The Engineer agrees to perform the services set forth below for each Phase as authorized by the Director. In addition, the Engineer agrees to perform the particular scope of services as are set forth in **Exhibit "A."** In the event of an inconsistency between the terms of this Article and the terms of **Exhibit "A,"** the terms of **Exhibit "A"** shall control with respect only to the content of the scope of services.

- 1.1.5 Unless otherwise specifically provided herein, Engineer shall obtain and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule or regulation of any regulatory body having jurisdiction over the conduct of its operations hereunder. Engineer shall maintain all required professional licenses during the term of this Contract. Any failure of the Engineer to maintain such professional licenses or any revocation or suspension thereof, even if probated, shall entitle the Director in his sole discretion, to immediately terminate this Contract. Engineer shall immediately notify the Director of any suspension, revocation or other detrimental action against his license.
- 1.1.6 If an actual or potential conflict arises between the interests of the City and the interests of the Engineer or other clients represented by Engineer, Engineer shall immediately notify the Director by fax transmission or telephone. If the Director in his sole discretion consents to Engineer's continued representation of such other clients, he shall so notify the Engineer in writing. If the Director does not issue written consent within three business days of receipt of Engineer's notice, Engineer shall immediately terminate its representation of the other client whose interests are or may be in conflict with those of the City.
- 1.1.7 Engineer shall notify the Director promptly of any factor, occurrence or event coming to its attention that Engineer believes is likely to adversely affect its ability to meet any of its obligations hereunder or to materially delay delivery of any Document or service provided for herein and in the Project Schedule, in such event, promptly consult with the Director regarding a plan of action to prevent, eliminate or remedy such default or delay. Any request by Engineer to modify the Project Schedule shall be made in accordance with this **Section 1.1.7.**
- 1.1.8 Engineer shall make timely payments to all subconsultants, persons and entities supplying labor, materials or equipment for the performance of this Contract. **ENGINEER AGREES TO PROTECT, DEFEND, AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF ENGINEER'S FAILURE TO MAKE SUCH PAYMENTS.**
- 1.1.9 Engineer shall be responsible for services performed by subconsultants to the same extent as if the services were performed by Engineer. Engineer shall replace any subconsultant when requested by the Director to do so, who shall state the reasons for such request. Engineer shall provide the Director with a copy of any of its subconsultant's subcontracts at Director's request.
- 1.1.10 Confidentiality: Engineer, its agents, employees, consultants, and subconsultants shall hold all City information, data, and documents (collectively, the "Information") that they receive, or to which they have access, in strictest confidence. Engineer, its agents, employees, consultants, and subconsultants shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Engineer shall obtain written agreements from its agents, employees, consultants, and subconsultants which bind them to the terms in this Section.
- 1.1.11 Engineer shall, consistent with the applicable legal professional standard of care, comply with all applicable state, federal and local laws and regulations and the City Charter and Code of Ordinances.
- 1.1.12 Engineer's performance shall conform to the professional standards prevailing in Harris County, Texas with respect to the scope, quality, due diligence, and care of the service

and products Engineer provides under this Contract.

- 1.1.13 Engineer's personnel to be employed in the Project are identified in **Exhibit "J"**. Engineer shall not change the personnel in **Exhibit "J"** except with the Director's prior written consent, which shall not be unreasonably withheld. If any of Engineer's key personnel to be employed in the Project are not identified, Engineer shall identify in writing such persons to the Director. If the Director does not approve of an individual, Engineer shall propose an alternate individual reasonably acceptable to the Director.

1.2 PHASE I: DESIGN

- 1.2.1 **General.** Phase I Design shall be either a Preliminary Engineering Report ("PER"), preliminary engineering studies and designs divided into two stages, Schematic Design or 50% Design Completion and Design Development or 100% Design Completion. For each stage, the Engineer shall furnish to the Director **two** hard copies and **one** electronic copy of all drawings, specifications, reports and other required documents.
 - 1.2.1.1 The Engineer shall proceed with Phase I upon receipt of written authorization by the Director. The Engineer shall submit to the Director, within 10 days of the Notice to Proceed with Phase I, a revised Project Schedule, updated to reflect firm dates for activities and reviews set forth therein.
 - 1.2.1.2 The Engineer shall develop documents based on programming and planning as necessary, and on the scope of services as set forth in Exhibit "A" attached hereto, determined its feasibility within established budgetary constraints, and arrived at an understanding of such requirements with the Director. The Engineer acknowledges that the Maximum Total Construction Cost is reasonable for this Project.
 - 1.2.1.3 Based on the Program and Project budget requirements, the Engineer shall prepare, for approval by the Director, the Phase I – Schematic Design.
 - 1.2.1.4 The Engineer shall commission and direct registered professional engineers to assume responsibility for the civil, structural, and electrical engineering, registered landscape architect for landscaping and licensed irrigator for irrigation aspects of the Project throughout its design and construction.
 - 1.2.1.5 The Engineer shall, on behalf of the City, file all applications for utilities commitments and furnish any additional information necessary to obtain utility commitments.
- 1.2.2 **Schematic Design.** The Engineer shall furnish to the Director **two** hard copies and **one** electronic copy of documents that fully illustrate the scope, scale, and relationship of all Project components representing the Engineer's design solution to the criteria set forth in the Program. This submittal shall include but not be restricted to the following where applicable:
 - 1.2.2.1 General listing of the types, quantities and sizes of spaces included in the design. Prepare a comparison of these spaces with those listed in the Program, if there is a variance.
 - 1.2.2.2 Scaled drawings of the site plan, elevations and cross sections through structures.
 - 1.2.2.3 Preliminary estimate of the probable Construction Cost of the Project based on proposed systems and quantities.

1.2.2.4 General statement of proposed structural, civil, landscape, irrigation, and electrical system or systems in sufficient detail to demonstrate that spatial requirements have been accommodated and to provide a valid basis for the preliminary estimate of Construction Cost.

1.2.3 **Design Development.** The Engineer shall attend review conferences with the Director and such others as the Director may designate to assure consensus with respect to the Engineer's development of the Schematic Design of the Project. Completion of Design Development shall indicate that the Engineer has substantially solved the details of the design solution and is prepared to start Contract Documents. The Engineer shall furnish to the Director **two** hard copies and **one** electronic copy of drawings, outline specifications, a preliminary estimate of Construction Cost, based on approval by the Director of the Engineer's Phase I Schematic Design. This submittal shall include but not be restricted to the following where applicable:

1.2.3.1 Scaled drawings of the site plan, plans(s) and profiles, elevations, cross sections and/or details necessary to demonstrate the Schematic Design. The site plan(s) shall show trail layout and identify areas where the "PER" and/or preliminary engineering studies identified as failing and proposed corrective solutions.

1.2.3.2 Plan layouts, each on a separate sheet, of the proposed structural, civil, electrical, landscape and irrigation systems in sufficient detail to show structures, equipment, fixtures, devices and distribution/gathering systems.

1.2.3.3 Outline specifications of principal materials, systems and equipment proposed for inclusion into the project.

1.2.3.4 Updated estimate of the probable Construction Cost of the Project in sufficient detail to demonstrate its inclusiveness and the proposed level of quality throughout all aspects of the Project.

1.2.4 **Revisions.** The Engineer shall make modifications to the Phase I Design Development Documents as may be required to obtain approval of the Director and submit to the Director **two** hard copies and **one** electronic copy of revised Phase I Design Development Documents.

1.3 PHASE II: CONTRACT DOCUMENTS DESIGN

1.3.1 The Engineer shall proceed with the Phase II Contract Documents upon the Director's written approval of the Phase I Design and upon Director's written authorization to proceed.

1.3.2 Based upon approved Phase I Design Development Documents and any adjustments authorized by the Director in the Program or Project budget, the Engineer shall prepare, for approval by the Director, Contract Documents suitable for solicitation of competitive construction bids, for incorporation into a contract for construction of the Project, and shall make clarifications and revisions necessary to obtain permits. Contract Documents are those Documents prepared for the purpose of obtaining bids and guiding the construction of the Project. Contract Documents shall generally include but not be restricted to the following:

1.3.2.1 Drawings of plans, profiles, elevations, sections and details defining the dimensions and spatial relationships of all elements of the Project.

1.3.2.2 A written Project manual, which includes bidding requirements, sample forms,

conditions of the construction contract and specifications. The City will provide the Engineer bidding requirements, sample forms and conditions of the construction contract for Engineer's inclusion in the Project manual. Specifications shall define the general requirements for the Project, written descriptions of the technical nature of materials, equipment, construction systems, standards and workmanship. The Engineer shall not include in either the general requirements or in other technical specification sections requirements that conflict with the bidding requirements, sample forms and conditions of the construction contract provided by the City. Dollar allowances shall not be used in the Project manual.

- 1.3.2.3 To the extent practicable for each item that requires a specific designation, the Engineer shall specify the products of at least three manufacturers of each material and manufactured item acceptable for use in the Project.
- 1.3.2.4 The specifications shall also provide means by which the successful bidder can submit for approval products other than those specified which it considers equivalent to those specified in quality, including durability, serviceability, design, appearance, function, finish, performance, size and weight. The Engineer shall advise the Director as to whether or not products other than those listed in the specifications are equivalent to the products listed.
- 1.3.3 The Engineer shall attend review conferences with the Director and such others as the Director may designate to obtain the Director's approval of the development of the Contract Documents.
- 1.3.4 The Engineer shall advise the Director of any adjustments to previous estimates of Construction Cost indicated by changes in the requirements or general market conditions.
- 1.3.5 The Engineer shall, on behalf of the City, file all applications and Documents necessary to obtain approval of governmental authorities having jurisdiction over the Project and furnish any additional information necessary to obtain approvals. This shall include, but not be limited to, submittal of drawings to the Texas Department of Licensing and Regulations, Architectural Barriers Section for review, and Permit applications. The Engineer shall provide the City with copies of Proof of Submission and Proof of Inspection filings.
- 1.3.6 The Engineer shall submit for the Director's approval a final estimate of the Construction Cost of the Project, based upon fully developed Contract Documents.
- 1.3.7 The Engineer shall furnish to the Director **two** hard copies and **one** electronic copy of thirty percent, sixty percent and ninety percent complete documents and **two** hard copies and one electronic copy of fully developed, permittable Contract Documents for review by the Director. The Engineer shall incorporate all review comments, if any, and furnish to the Director **six** hard copies and **one** electronic copy of Contract Documents.
- 1.3.8 The Engineer and Engineer's subconsultants shall attend the Pre-Bid Conference and respond to bidders' questions. If required by the Director, the Engineer shall issue Addenda to the Contract Documents during the bid period as necessary to respond to bidders' questions and to make clarifications. The Engineer shall evaluate bids and bidders only when the Director requests such evaluations in writing.

1.4 PHASE III: CONSTRUCTION SERVICES

- 1.4.1 The Engineer shall proceed with the Phase III Construction Services upon receipt of the Director's written authorization to proceed.
- 1.4.2 Unless otherwise provided in this Contract, the Engineer shall provide limited administration of the construction contract as set forth below.
- 1.4.3 The Engineer shall be a consultant of the City during Phase III Construction Services and shall advise and consult with the City. Instructions to the consultant by the City shall also be sent to the Engineer. The Engineer shall have authority to act on behalf of the City only to the extent provided in this Contract.
- 1.4.4 The Engineer shall visit the site at intervals appropriate to the stage of construction, or as otherwise agreed in writing by the City and the Engineer, to become generally familiar with the progress and quality of the work and to determine, in general, if the work is proceeding in a manner indicating that the work when completed will be in accordance with the Contract Documents. The Engineer shall furnish to the Director written reports of its on-site observations regarding the progress and quality of the work. However, the Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, which will remain the responsibility of the Director or the Director's designated representative. On the basis of such on-site observations, the Engineer shall keep the Director informed of the progress and quality of the work, and shall notify the Director immediately in writing, of any defects and deficiencies in the Contractor's work and work that is not performed in accordance with Contract Documents.
- 1.4.5 The Engineer shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, which are solely the Contractor's responsibility under the construction contract. Except as otherwise provided herein, the Engineer shall not be responsible for the Contractor's schedules or failure to carry out the work in accordance with the Contract Documents. Except as otherwise provided herein, the Engineer shall not have control over or charge of acts or omissions of the Contractor, the Contractor's subcontractors, or the Contractor's agents or employees, or of any other persons performing any portions of the work.
- 1.4.6 The Engineer shall at all times have access to the work wherever it is in preparation or progress.
- 1.4.7 The Engineer shall attend conferences at the Project site with the Director and such others as the Director may designate, to assist the City in the administration of the Contract.
- 1.4.8 When requested by the Director, the Engineer shall assist the Director in determining the amounts owing to the Contractor based on Engineer's on-site observations and on evaluations of the Contractor's applications for payment and shall recommend to the Director issuance of certificates for payment to the Contractor in such amounts, as provided in the Contract Documents.
- 1.4.9 The Engineer's approval of the Contractor's application for payment shall constitute the Engineer's representation to the City that based upon the Engineer's on-site observations as provided in **Section 1.4.4** and upon the data comprising the Contractor's application for payment, that the work has progressed to the point indicated; and that, to the best of the Engineer's knowledge, information and belief, the quality of the work is in accordance with

the Contract Documents. The foregoing representations are subject to an evaluation of the work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent test required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to specific qualifications expressed by the Engineer. The Engineer's approval of the Contractor's application for payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the Engineer's approval of the Contractor's application for payment shall not be a representation that the Engineer has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the work, (2) reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by the City to substantiate the Contractor's right to payment or (3) ascertained how or for what purpose the Contractor has used money previously paid pursuant to the Contract.

- 1.4.10 The Engineer shall interpret the requirements of the Contract Documents. The Engineer shall render interpretations necessary for the proper execution or progress of the work to the Director with reasonable promptness upon written request of either the Director or the Contractor; and, if requested by the Director, shall render written advice to the Director within a reasonable time, on all claims, disputes and other matters in question between the City and the Contractor relating to the execution or progress of the work or interpretation of the Contract Documents.
- 1.4.11 Interpretations and advice of the Engineer shall be consistent with the intent of, be reasonably inferable from the Contract Documents, and shall be in written or graphic form. When making such interpretations, and giving such advice, the Engineer shall not show partiality to either City or the Contractor and shall not be liable for the result of any interpretation or advice so rendered in good faith.
- 1.4.12 The Engineer shall recommend to the Director to reject work which does not conform to the Contract Documents. Whenever the Engineer considers it necessary or advisable for the implementation of the intent of the Contract Documents, the Engineer shall recommend to the Director, to require special inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such work be then fabricated, installed or completed. However, neither this authority of the Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Engineer to the Contractor, Contractor's subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the work.
- 1.4.13 The Engineer shall review and recommend approval to the Director or take other appropriate action upon Contractor's submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance information given and the design concept expressed in the Contract Documents. The Engineer's action shall be taken with such reasonable promptness as to cause no delay in the construction of the Project by the City or by separate contractors, while allowing sufficient time in the Engineer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation

or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Engineer, of construction means, methods, techniques, sequences or procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Engineer shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

- 1.4.14 The Engineer shall submit to the Director a schedule of colors and finishes for the Project which the Engineer has selected from approved submittals. Wherever practicable, Engineer shall supplement schedule of colors and finishes with color chips, swatches and samples. Provided the Contractor has submitted in a timely manner acceptable samples of products he proposes to use, the Engineer shall submit a schedule of colors and finishes with sufficient lead time to permit a thirty-day review/approval period without risk of delay and the timely incorporation of the finishes, materials and similar items with other aspects of the Project. During the review period, the Engineer shall confer with the Director and such others as the Director may designate and make adjustment to the schedule of colors and finishes as necessary to obtain approval by the Director.
- 1.4.15 The Engineer shall review Contractor's requests and make recommendations to the Director. When requested by the Director, the Engineer shall prepare for the Director's approval and execution in accordance with the Contract Documents, and shall have authority, with the concurrence of the Director, to order minor changes in the work which do not involve an adjustment in the construction contract amount or an extension of the construction contract time for completion and which are not inconsistent with the intent of the Contract Documents. For the purpose of this section, "construction contract amount" shall be that amount and "construction contract time" for completion shall be that period as they appear in the Contract Documents initially or as they shall have been lawfully and legitimately amended under the terms of that contract at the time of such Contractor's request.
- 1.4.16 The Engineer shall conduct inspections to determine and recommend to the Director the dates of Substantial Completion and the date of final completion, and shall receive and forward to the Director for the Director's review, written warranties, guarantees, releases, operating instructions and maintenance manuals, keys, equipment data and related documents required by the Contract Documents and assembled by the Contractor, and shall approve the Contractor's application for final payment upon compliance with the requirements of the Contract Documents.
- 1.4.17 The extent of the duties, responsibilities, and limitations of authority of the Engineer shall not be restricted, modified or extended without written notice by the City to the Engineer and Contractor.
- 1.4.18 Before final payment of Phase III Construction Services compensation, the Engineer shall furnish to the Director, a complete set of AutoCAD V2013 and PDF files of drawings and specifications on a read-only compact disc. The digital files shall reflect significant changes

in the work including changes in scope made during construction, based on marked-up Project record drawings maintained by the contractor at the Project site, and drawings and other data furnished by the Contractor to the Engineer. The Engineer shall be able to rely on the accuracy of such changes and other information supplied by the Contractor and will not be required to perform studies to determine the completeness of such recorded changes, if any, supplied by the Contractor. Each "sheet" file shall be individually "bound" without the need to "x-ref" components, including but not limited to title blocks, site backgrounds, etc. Identify each sheet file the same as it is titled on the printed drawing. Final drawing set shall include CADD files for all disciplines. Provide a complete PDF set identified the same as the CADD files.

1.5 PHASE IV: POST-CONSTRUCTION SERVICES

- 1.5.1 The Engineer shall proceed with the Phase IV Post-Construction Services upon written authorization by the Director to proceed.
- 1.5.2 The Engineer shall inspect the Project in the company of the Contractor, and the Director or such others as the Director may designate, no less than thirty days and no more than forty-five days prior to the expiration of the one-year correction period, established in the Contract Documents. On or before the seventh day after such inspection, the Engineer shall furnish the Director a written report identifying items which require repair or replacement under the one-year correction period provisions of the Contract Documents.

1.6 ADDITIONAL SERVICES

- 1.6.1 The following Additional Services shall be performed by the Engineer, if authorized by the Director, in addition to Engineer's Basic Services and shall be paid for by the City as provided for in **Section 6.10** of this Contract. Additional Services shall only be provided when necessary and related to the purposes of this Contract, when authorized in writing by the Director, and when sufficient funding has been allocated for such services.
 - 1.6.1.1 Providing analyses of the City's needs and programming the requirements of the Project beyond the scope of services provided in **Section 1.2.2**.
 - 1.6.1.2 Providing financial, feasibility or other special studies.
 - 1.6.1.3 Providing planning surveys, site evaluations, environmental studies or comparative studies of prospective sites, and preparing special surveys, studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.
 - 1.6.1.4 Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Phase III Construction Services.
 - 1.6.1.5 Providing services to investigate existing conditions or facilities or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the City.
 - 1.6.1.6 Preparing Documents for multiple bid packages or providing extra services in connection with bidding, negotiation or construction prior to the completion of the Phase II Construction Documents, when requested by the Director.
 - 1.6.1.7 Providing detailed estimates of Construction Cost beyond the scope of estimate of Construction Cost based on current area, volume, or similar unit costs as required

in **Sections 1.2.3.5, 1.3.4 and 1.3.6**; and providing analyses of owning and operating costs, or detailed quantity surveys or inventories of material, equipment and labor.

- 1.6.1.8 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.
- 1.6.1.9 Providing services for planning leased tenant or rental spaces.
- 1.6.1.10 Making revisions in drawings, specifications or other Documents when such revisions are inconsistent with written approvals or instructions previously given, or during Phase II, making revisions to the Contract Documents required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such Documents or due to other causes not within the control of the Engineer.
- 1.6.1.11 Preparing drawings, specifications and supporting data and providing other services in connection with a change to approved Phase II Contract Documents to the extent that such services are in excess of the Basic or other Additional Services required of the Engineer pursuant to this Contract and provided such changes are not necessitated by an act or omission of the Engineer. In the event a change order is caused by an act or omission of the Engineer the Engineer will be required to prepare such drawings and specifications and supporting data at no expense to the City.
- 1.6.1.12 Making investigations, surveys, valuations, inventories or detailed appraisals of existing facilities and services required in connection with construction performed by the City.
- 1.6.1.13 Providing consultation concerning replacement of any work damaged during construction by fire or any other cause not under the Engineer's control and furnishing services as may be required in connection with the replacement of such work.
- 1.6.1.14 Providing services made necessary by the default of the Contractor, or by major defects or deficiencies in the work of the Contractor, or by failure of performance of either the City or Contractor under the contract for construction.
- 1.6.1.15 Providing extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
- 1.6.1.16 Providing additional construction phase services in the event that 1) the number of calendar days stipulated in the Contract Documents for Substantial Completion is exceeded beyond the time period set out in **Section 6.2.2** due to no fault of the Engineer or 2) the number of calendar days allowed for Substantial Completion under the Contract Documents is increased by change order beyond the time period set out in **Section 6.2.2** due to no fault of the Engineer.
- 1.6.1.17 Providing inspection of the Project in the company of the Contractor, and the Director, or such others as the Director may designate, no less than thirty days and no more than forty-five days prior to expiration of any special Project warranty, but after expiration of the one year correction period, as defined in the

general conditions of the construction contract, established in the Contract Documents. On or before the seventh day after such inspection, the Engineer shall furnish the Director a written report enumerating items which require repair or replacement under the special Project warranty provisions of the Contract Documents.

- 1.6.1.18 Providing land survey services to supplement any legal description and site information provided by the City and to include, but not be limited to, as applicable to the Project, grades of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, deed restrictions and contours of the site, locations, dimensions and complete data pertaining to existing buildings, other improvements and trees; and information concerning available services and utility lines both public and private, above and below grade, including inverts and depths in accordance with Project requirements. The Engineer shall commission a survey to be prepared by a registered land surveyor acceptable to the Director. The survey shall be signed and sealed by the registered land surveyor.
- 1.6.1.19 Providing geotechnical investigation and engineering services required for the design of the Project. Such services may include, as applicable to the Project, test borings, test pits, soil bearing values, percolation tests, and similar investigations and engineering services with reports and appropriate recommendations in accordance with the Project requirements. The Engineer shall commission a geotechnical investigation to be completed by a registered geotechnical subconsultant acceptable to the Director. The geotechnical report and appropriate recommendations shall be signed and sealed by the registered geotechnical engineer.
- 1.6.1.20 Providing Cultural Resource Reconnaissance or Surveying services as defined in the General Rules of Practice and Procedures, Chapter 41 of the Texas Antiquities Committee, to supplement the site information provided by the City and to identify potential historic or prehistoric sites in Project areas to be affected by improvements planned as part of the Project. The reconnaissance shall be conducted in accordance with procedures promulgated by the Texas Antiquities Committee in conformance with the Antiquities Code of Texas and signed by a professional archaeologist acceptable to the Texas Antiquities Committee and the Director. For the purposes of this Contract, the Director or his delegate is authorized to approve the archaeologist's permit applications for such Cultural Resource Reconnaissance or Surveys on behalf of the City.
- 1.6.1.21 Providing data processing and photographic production techniques when used in connection with another Additional Service.
- 1.6.1.22 Providing other professional services beyond the scope of Basic Services of this Contract which are necessary and related to the purposes of this Contract.
- 1.6.1.23 Whenever the Engineer, in the course of performing Basic Services, is required to present recommendations to the Director with respect to the advisability of, or the need for, any Additional Service, such recommendation shall include a recommended scope for the Additional Services and the recommended fee and

expenses. If the Engineer recommends subcontract services, the recommendation shall also include the names of the subconsultant(s) recommended by the Engineer. A maximum fee for each such subconsultant's service shall be proposed by the Engineer at the time Additional Services requiring such expenses are requested by the Director and shall be negotiated and agreed upon by the Engineer and the Director prior to the expense being incurred. The compensation for each such subconsultant's service expense shall never exceed this agreed upon maximum amount.

1.7 TIME

- 1.7.1 The Engineer shall perform Basic and Additional Services as expeditiously as is consistent with professional skill and care, and the orderly progress of the work. Upon definition of the scope of the Project as provided in **Section 1.2.2** and **Exhibits "A" and "B"** attached, the Engineer shall submit for Director's approval a calendar schedule of Engineer's services not exceeding the time limits provided in this **Section 1.7**, and which shall include allowances for periods of time required for City's review and for approval of submissions by authorities having jurisdiction over the Project, all as indicated on **Exhibit "B,"** Project Schedule, attached. Time limits established by this schedule approved by Director shall not, except for reasonable cause, be exceeded by Engineer or by the City.
- 1.7.2 The Engineer agrees to perform the services and furnish to the Director items called for in **Section 1.2** (Phase I Design) of this Contract within 92 calendar days from the issuance of a Notice to Proceed by the Director which includes a period of 28 calendar days for the City's reviews and approvals, providing there are no delays caused by the City or other agencies with whom the Project must be coordinated and over whom the Engineer has no control.
- 1.7.3 Upon approval by the Director of Phase I Design drawings, outline specifications, and a preliminary estimate of Construction Cost, and upon written authorization by the Director, including notice of allocation of adequate funds, the Engineer agrees to perform services and furnish to the Director items called for in **Section 1.3** (Phase II Contract Documents) of this Contract within 387 calendar days after receipt of such written authorization by the Director through receipt of Building Permit approval, which includes a period of 56 calendar days for Director's review and approval and 106 calendar days for Code Enforcement review and approval of the Building Permit; providing however, that if there are delays caused by the City or other agencies with whom the Project must be coordinated and over whom the Engineer has no control, the Engineer's time for performance shall be extended by the number of days of delay in the Project Schedule.
- 1.7.4 Upon receipt of written authorization from the Director to proceed, the Engineer agrees to perform the services and furnish to the Director the items called for in **Section 1.4** (Phase III: Construction Services) of this Contract for the period of construction time stated in the construction contract, providing there are no delays caused by the City, or by the Contractor for the general construction of the Project, or by other agencies with whom the Project must be coordinated and over whom the Engineer has no control.
- 1.7.5 Upon receipt of written authorization from the Director to proceed, the Engineer agrees to perform services and furnish to the Director the items called for in **Section 1.5** (Phase IV

Post-Construction Services) of this Contract within the time specified in **Section 1.5.2** of this Contract.

1.7.6 Extensions of any of the time-of-performance commitments by the Engineer in this Section shall be granted only by the Director, in written form, and shall have the same force and effect as the time-of-performance commitments originally stated herein.

1.7.7 The Engineer acknowledges and agrees that any services it provides to the City after the completion date established in the Project Schedule, unless an extension of time has been granted, will be deemed to be gratuitously provided, and the City shall have no obligation to pay for such services unless the City Council approves an agreement to do so in its sole discretion.

1.7.8 This Contract shall remain in force (1) until expiration of the one-year correction period established in the Contract Documents, or (2) 757 calendar days after completion of the services required in either **Section 1.2** Phase I: Design or **Section 1.3** Phase II: Contract Documents whichever shall have been completed without the subsequent Phase being authorized, or (3) until terminated under provisions of **Article 9** herein.

1.8 PAY OR PLAY

1.8.1 The requirements and terms of the City of Houston Pay or Play program, as set out in executive Order 1-7, are incorporated into this Agreement for all purposes. Engineer has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement. Engineer shall complete and submit to the Director **Exhibit "I,"** POP-2 Form prior to its execution of this Agreement.

1.8.2 Once Engineer submits, and the Director approves Engineer's POP-2 Form it shall be incorporated herein.

1.9 ANTI-BOYCOTT OF ISRAEL

1.9.1 Engineer certifies that Engineer 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.

1.10 ZERO TOLERANCE FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES

1.10.1 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. Engineer 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. Engineer shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Engineer or its subconsultants providing services or goods under this Agreement.

1.11 DEBARMENT AND SUSPENSION

1.11.1 The Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the engineer is required to verify that none of the Engineer, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded

(defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

- 1.11.2 The Engineer shall comply with 2 C.F.R. pt. 180, subpart C and 2C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- 1.11.3 This certification as set out in **Exhibit "L"** is a material representation of fact relied upon by the City. If it is later determined that Engineer did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- 1.11.4 Engineer shall comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. Engineer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

1.12 **BYRD ANTI-LOBBYING AMENDMENT**

- 1.12.1 For any bid, offer, or agreement exceeding \$100,000, Engineer shall file with the City a Certification Regarding Lobbying substantially in the form set out in **Exhibit "M"**. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352.
- 1.12.2 Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

1.13 **CONTRACT WORK AND SAFETY STANDARDS**

Vendor shall comply with the Contract Work Hours and Safety Standards Act, 40 U.S.C. sections 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5), including all the following requirements:

- 1.13.1 **Overtime requirements.** No engineer or subconsultant contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 1.13.2 **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph 1.13.1 of this section the engineer and any subconsultant responsible therefore shall be liable for the unpaid wages. In addition, such engineer and subconsultant shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in 1.13.1 of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1.13.1 of this section.

1.13.3 **Withholding for unpaid wages and liquidated damages.** FEMA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the engineer or subconsultant under any such contract or any other Federal contract with the same prime engineer, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime engineer, such sums as may be determined to be necessary to satisfy any liabilities of such engineer or subconsultant for unpaid wages and liquidated damages as provided in the clause set forth in 1.13.2 of this section.

1.13.4 **Subcontracts.** Engineer shall insert in any subcontracts the clauses set forth in paragraph 1.13.1 through 1.13.4 of this section and a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. The prime engineer shall be responsible for compliance by any subconsultant or lower tier subconsultant with the clauses set forth in paragraphs 1.13.1 through 1.13.4 of this section.

1.14 ENVIRONMENTAL COMPLIANCE

1.14.1 Engineer shall comply with all applicable standards, ordered, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 § et seq.).

1.14.2 Engineer shall report all violations to the City and the Texas Division of Emergency Management and understands and agrees the City and the Texas Division of Emergency Management will, in turn, report each violation as required to assure notification to FEMA and the appropriate Environmental Protection Agency Regional Office.

1.14.3 Engineer shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

1.14.4 Engineer shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6201 et seq.).

1.15 USE OF PRODUCTS

1.15.1 In the performance of this contract, Engineer shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (i) competitively within a timeframe providing for compliance with the contract performance schedule; (ii) meeting contract performance requirements; or (iii) at a reasonable price.

1.15.2 Information about this requirement, along with the list of EPA-designated items available at EPA's Comprehensive Procurement Guidelines web site: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

1.15.3 The Engineer also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

ARTICLE 2

THE CITY'S RESPONSIBILITIES

- 2.1 The City shall provide information regarding requirements for the Project including a written descriptive document, which shall set forth in detail the City's conditions and requirements for objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expendability, special equipment, and other conditions or requirements appropriate to the nature of the Project.
- 2.2 The City shall establish and update, when necessitated by changes in the agreed estimate and overall budget for the Project which shall include contingencies for bidding, changes in the work during construction, and other costs which are the responsibility of the City, including those described in this **Article 2** and in Section 3.1.2.
- 2.3 The Director shall designate a representative authorized to act on the City's behalf with respect to the Project. The Director's authorized representative shall examine the Phase I and Phase II documents submitted by the Engineer and shall render and obtain decisions pertaining thereto promptly to avoid unreasonable delay in the Engineer's services.
- 2.4 If required for the Project, the City shall furnish or shall authorize the cost of obtaining as an Additional Service, a complete and correct written legal description of the site, including metes and bounds, corners, lines of streets and alleys, and location of the site.
- 2.5 The City shall pay for quality control testing and other laboratory tests, inspections and reports as required by law or by the Contract Documents.
- 2.6 When required for the Project, and when the services, information, surveys and reports described in Sections 2.4 and 2.5 inclusive, are furnished by the City, the Engineer shall be able to rely upon the accuracy and completeness thereof.
- 2.7 If the City observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, prompt written notice thereof shall be given by the City to both the Engineer and Contractor.
- 2.8 The City shall furnish required information and services and shall render or obtain approvals and decisions as expeditiously as necessary for the orderly progress of the Engineer's services and of the work.

ARTICLE 3

CONSTRUCTION COST

3.1 DEFINITION

- 3.1.1 The Construction Cost shall be the actual cost to the City of all elements of the Project designed or specified by the Engineer.
- 3.1.2 Estimates of Construction Cost shall include (1) the cost, at current market rates, of labor and materials furnished by the City, (2) equipment designed, specified, selected or specially provided for by the Engineer, (3) City building permit fees, and (4) a reasonable allowance for the cost of construction, including the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding.
- 3.1.3 Construction Cost does not include the compensation of the Engineer and the Engineer's subconsultants, the cost of the land, rights-of-way, or other costs which are the responsibility of the City as provided in **Article 2**.

3.2 RESPONSIBILITY FOR CONSTRUCTION COST

- 3.2.1 Evaluations of the City's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Costs, if any, prepared by the Engineer, represent the Engineer's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Engineer nor the City has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding or market conditions. Accordingly, the Engineer cannot and does not warrant or represent that bids will not vary from the Project budget proposed, established or approved by the City, if any, or from any estimates of Construction Cost or evaluation prepared by the Engineer.
- 3.2.2 When a Maximum Total Construction Cost is established as a condition of this Contract in Section 1.1.2 or at any time prior to the taking of bids, the Engineer shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, and, with written approval, to make reasonable adjustments in the scope of the Project, or to include in the Contract Documents alternate bids to adjust the Construction Cost to the specified Maximum Total Construction Cost.
- 3.2.3 If bidding has not commenced within **6 months** after the Engineer submits the Contract Documents to the City, any Project budget or Maximum Total Construction Cost may, when warranted in the opinion of the Director, be adjusted to reflect any change in the general levels of prices in the construction industry between the date of submittal of the Contract Documents to the City and the date on which bid proposals are sought.

3.2.4 If a Project budget or Maximum Total Construction Cost (adjusted as provided in Section 3.2.3) is exceeded by the lowest bona fide bid, the City shall (1) give written approval of an increase in such Maximum Total Construction Cost, or (2) authorize rebidding of the Project within a reasonable time, or (3) in the event the Project is abandoned, terminated in accordance with Section 9.2.1, or (4) cooperate in revising the Project scope and quality as required to reduce the Construction Cost. In the case of (4), provided a Maximum Total Construction Cost has been established as a condition of this Contract, the Engineer, without additional charge, shall modify the Contract Documents as necessary to comply with the Maximum Total Construction Cost. The successful provision of such service shall be the limit of the Engineer's responsibility arising from the establishment of such Maximum Total Construction Cost, and having done so, the Engineer shall be entitled to compensation for all services performed, in accordance with this Contract, whether or not Phase III: Construction Services are commenced.

ARTICLE 4

RESERVED

ARTICLE 5

RESERVED

ARTICLE 6

PAYMENTS TO THE ENGINEER

6.1 GENERAL

- 6.1.1 The City shall compensate the Engineer under this Contract as provided in this Article.
- 6.1.2 The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Engineer's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificates and federal tax identification number to Engineer if requested.

6.2 PAYMENTS FOR BASIC SERVICES

- 6.2.1 Payments for Basic Services shall be made as set forth in Sections 6.6, 6.7, 6.8 and 6.9.
- 6.2.2 If the time initially established in the construction contract for completion of the Project is extended, through no fault of the Engineer, for more than **60** calendar days, the Engineer may request compensation for any required extension of Phase III services, which, if

authorized, shall be paid in accordance with the provisions of Section 6.10 for Additional Services.

6.2.3 Payments for Basic Services may be made monthly upon presentation of the Engineer's statement of services rendered and expenses incurred.

6.3 PAYMENTS FOR ADDITIONAL SERVICES

6.3.1 Payments for Additional Services may be made monthly upon presentation of the Engineer's statement of services rendered.

6.4 PAYMENTS WITHHELD

6.4.1 No deductions shall be made from the Engineer's compensation on account of penalty, liquidated damages or other sums withheld from payments to the Engineer.

6.4.2 If the Engineer receives payment from the City for work performed by any subconsultant or for materials provided by any supplier and the Engineer withholds or has withheld payment to the subconsultant or supplier on account of a deficiency in the quality or quantity of that subconsultant's or supplier's work or materials, the City may withhold the amount associated with such work or materials from any pending or future payments to the Engineer until the next regular payment to the Engineer occurring after the City receives reasonable documentation that the deficiency has been remedied.

6.5 PROJECT SUSPENSION

6.5.1 If the Project is suspended for more than 365 days, the Engineer shall be compensated in accordance with **Article 9**, for all services performed prior to the suspension.

6.6 BASIS OF COMPENSATION FOR PHASE I DESIGN SERVICES - STIPULATED SUM

6.6.1 For Phase I Design performed by the Engineer the City agrees to pay to the Engineer the sum of \$106,025.00.

6.6.2 The Director may authorize, no more frequently than monthly, partial payments commensurate with percentage of completion of Phase I Design by the Engineer. The fee for the Phase I services shall be payable as follows:

6.6.2.1 When the Schematic Design of the Project is complete and approved by the Director, the City agrees to pay to the Engineer the sum of \$52,955.50.

6.6.2.2 When Design Development is complete and approved by the Director, the City agrees to pay to the Engineer the sum of \$53,069.50.

6.7 BASIS OF COMPENSATION FOR PHASE II CONTRACT DOCUMENTS - STIPULATED SUM

6.7.1 For Phase II Contract Documents services performed by the Engineer the City agrees to pay to the Engineer the sum of \$245,549.00. The fee for the Phase II services shall be payable as follows:

6.7.1.1 When the Drawings and the Project manual are, in the opinion of the Director, 50% complete, the City agrees to pay to the Engineer the sum of \$133,032.00.

6.7.1.2 When the Drawings and the Project manual are fully developed, permittable documents that have been submitted to the Director for final approval, the City agrees to pay to the Engineer the sum of \$68,982.00.

6.7.1.3 When the Drawings and Project manual receive final approval of the Director, the

City agrees to pay the Engineer the sum of **\$19,460.00**.

6.7.1.4 When the Engineer has obtained the Building Permit approval, the City agrees to pay to the Engineer the sum of **\$9,600.00**.

6.7.1.5 The Director may authorize no more frequently than monthly, partial payments commensurate with completion of Phase II services of the Engineer.

6.7.1.6 Final payment shall be a lump sum payment of **\$14,475.00** due upon receipt of acceptable bids for the Project. If the Project is terminated under Section 1.7.8 (2) or (3) the final payment becomes due and payable to the Engineer.

6.8 BASIS OF COMPENSATION FOR PHASE III CONSTRUCTION SERVICES - STIPULATED SUM

6.8.1 For Phase III Construction services performed by the Engineer the City agrees to pay to the Engineer the sum of **\$81,048.00**. The fee for the Phase III Construction Services shall be payable as follows:

6.8.1.1 Partial payments for Phase III Construction Services shall be paid periodically, but no more frequently than monthly, on the basis of that proportion of compensation for Phase III Construction Services actually performed bears to the total compensation for Phase III Construction Services required under this Contract, less previous payments for services.

6.8.1.2 Partial payments shall be limited to a total of 95% of the final amount due for Construction Services until (1) the completion of Construction Services and any Additional Services requested, and (2) the Project has been accepted by City Council.

6.8.1.3 The final 5% shall be a lump sum payment due upon Project acceptance by City Council.

6.9 BASIS OF COMPENSATION FOR PHASE IV POST-CONSTRUCTION SERVICES

6.9.1 Compensation for Phase IV Post-Construction services performed by the Engineer is included in the compensation received by Engineer under Section 6.8 for Phase III Construction Services.

6.10 COMPENSATION FOR ADDITIONAL SERVICES

6.10.1 For Additional Services of the Engineer, as described in Section 1.6.1, Additional Services of subconsultants, compensation to the Engineer shall be made in accordance with the billable rates as shown in **Exhibit D**.

6.10.2 For Additional Services as described in Section 1.6.1 provided by subconsultants under contract with the Engineer, compensation to the Engineer shall be paid in accordance with the billable rates in **Exhibit D**. For Additional Services described in Section 1.6.1, payment to Engineer shall be subject to the following:

6.10.2.1 The maximum cost of Certified Land Survey Services described under Section 1.6.1.19 is **\$108,951.00** and, unless an additional allocation for this expense is made, the total obligation of the City to the Engineer shall not exceed the above maximum cost.

6.10.2.2 The maximum cost of Geotechnical Investigation and Engineering Services described under Section 1.6.1.20 is **\$40,804.00** and, unless an additional

allocation for this expense is made, the total obligation of the City to the Engineer shall not exceed the above maximum cost.

- 6.10.2.3 The maximum cost of Furniture, Fixture & Equipment (FF&E) Services described under Section 1.6.1.8 is **\$0.00** and, unless an additional allocation for this expense is made, the total obligation of the City to the Engineer shall not exceed the above maximum cost.
- 6.10.2.4 The maximum cost of Engineer services described under Section 1.6.1.23 is **\$0.00** and, unless an additional allocation for this expense is made, the total obligation of the City to the Engineer shall not exceed the above maximum cost.
- 6.10.2.5 The maximum cost of LEED Commissioning Services described under Section 1.6.1.23 is **\$0.00** and, unless an additional allocation for this expense is made, the total obligation of the City to the Engineer shall not exceed the above maximum cost.
- 6.10.2.6 The maximum cost of Site Platting Services described under Section 1.6.1.3 is **\$0.00** and, unless an additional allocation for this expense is made, the total obligation of the City to the Engineer shall not exceed the above maximum cost.
- 6.10.2.7 The maximum cost of Joint Referral Committee Services described under Section 1.6.1.3 is **\$0.00** and, unless an additional allocation for this expense is made, the total obligation of the City to the Engineer shall not exceed the above maximum cost.
- 6.10.2.8 The maximum cost of Miscellaneous Additional Services described under section 1.6.1.23 is **\$14,145.00** and, unless an additional allocation for this expense is made, the total obligation of the City to the Engineer shall not exceed the above maximum cost.
- 6.10.3 Compensation for Additional Services described in Section 1.6.1 shall not exceed **\$163,900.00** unless increased by additional allocation after execution of this Contract.

6.11 LIMIT OF APPROPRIATION

- 6.11.1 The City's duty to pay money to Engineer under the Contract is limited in its entirety by the provisions of this Section.
- 6.11.2 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 **\$596,522.00** ("Original Allocation") to pay money due under the Contract. The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for the Contract, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:
 - 6.11.3 The City has not allocated supplemental funds or made a Supplemental Allocation for this Agreement unless the City issues to Engineer 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 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.

\$ _____

- 6.11.4 The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under the Contract in excess of the Allocated Funds. Engineer must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Engineer's only remedy is suspension or termination of its performance under the Contract, and it has no other remedy in law or in equity against the City and no right to damages of any kind.
- 6.11.5 The Director shall have the authority to reallocate funding between and among the various categories of Additional Services.

6.12 ADDITIONAL PROVISIONS

- 6.12.1 All invoices for the Basic Services are subject to approval by the Director and are due and payable on or about thirty days after receipt and approval by the Director. All payments shall be made by check. Such checks shall be made payable to the Engineer and payments shall be addressed to the Engineer at its address specified herein for notices. The City agrees that it will not unreasonably delay or withhold payment or approval of any invoice; however, the Director shall approve in whole or in part or disapprove Engineer's invoices within fifteen days. Neither partial payments made hereunder nor approval of invoices or services by the Director shall be construed as final acceptance or approval of that part of the Engineer's services to which such partial payment or approval relates nor shall such payments be construed as relieving the Engineer of any of its obligations hereunder with respect thereto.

ARTICLE 7

RELEASE AND INDEMNIFICATION

7.1 RELEASE

- 7.1.1 **EXCEPT FOR THE CITY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, ENGINEER 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. ENGINEER 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.

7.2 INDEMNIFICATION

7.2.1 ENGINEER AGREES TO AND SHALL, TO THE EXTENT PERMITTED BY TEXAS LOCAL GOVERNMENT CODE §271.904, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES 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 TO THE EXTENT ARISING AS A RESULT OF ENGINEER'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONSULTANTS', OR SUBCONSULTANTS' ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS IN CONNECTION WITH ITS PERFORMANCE UNDER THIS AGREEMENT, WHETHER ENGINEER IS IMMUNE FROM LIABILITY OR NOT. ENGINEER SHALL INDEMNIFY AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES.

7.3 RELEASE AND INDEMNIFICATION OF PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT

7.3.1 ENGINEER 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 ENGINEER, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS ENGINEER FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. ENGINEER SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

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

7.3.3 WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, ENGINEER 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 ENGINEER SHALL REFUND THE PURCHASE PRICE.

7.4 SUBCONSULTANT'S INDEMNITY

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

**ARTICLE 8
OWNERSHIP AND USE OF THE DOCUMENTS**

- 8.1** Engineer conveys and assigns to the City its entire interest and full ownership worldwide in and to any work, invention, notes, plans, computations, data bases, tabulations, exhibits, reports, underlying data, photographs and other work products, and any modifications or improvements to them (collectively "Documents"), and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively "Proprietary Rights") that Engineer, its agents, employees, consultants, and subconsultants (collectively "Authors") develop, write, or produce under this Agreement.
- 8.2** The Authors shall not claim or exercise any Proprietary Rights related to the Works. If requested by the Director, Engineer shall place a conspicuous notation on any Works which indicates that the City owns the Proprietary Rights.
- 8.3** Engineer shall execute all documents required by the Director to further evidence this assignment and ownership. Engineer shall cooperate with the City in registering, creating, and enforcing Proprietary Rights arising under this Agreement. If Engineer's assistance is requested and rendered under this Section, the City shall reimburse Engineer for all out-of-pocket expenses it incurs in rendering assistance, subject to the availability of funds. On termination of this Agreement, or if requested by the Director, Engineer shall deliver all Works to the City. Engineer shall obtain written agreements from the Authors which bind them to the terms in this Section.
- 8.4** All Works developed, written, or produced under this Agreement for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, are "works made for hire."
- 8.5** Engineer may retain copies of the Documents for its archives. Engineer shall not otherwise use, sell, license, or market the Documents.

**ARTICLE 9
TERM, TERMINATION AND SUSPENSION OF CONTRACT**

- 9.1 TERM.** This Contract is effective on the Effective Date and expires upon the completion of the project unless terminated sooner.
- 9.2 TERMINATION OF CONTRACT**
- 9.2.1** This Contract may be terminated by the City with or without cause upon thirty days written notice signed by the Director.
- 9.2.2** The Engineer may terminate this Contract upon thirty days written notice to the City if the

City fails substantially to perform in accordance with the terms of this Contract or if activity on the Project is suspended by the City for longer than the time period set out in Section 6.5.1, or if a Force Majeure causes suspension of the Project for longer than ninety days, provided, however, in the event the failure or suspension is cured within a thirty day period following the receipt by the City of the Engineer's termination notice, the notice of termination shall become ineffective.

- 9.2.3 Upon receipt of a notice of termination and prior to the effective date of the termination, the Engineer shall, unless the notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Contract and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Contract. Within thirty days after receipt of the notice of termination, the Engineer shall submit a statement, showing in detail the services performed under this Contract prior to the effective date of termination.
- 9.2.4 Reproducible copies of all completed or partially completed Documents prepared under this Contract prior to the effective date of termination shall be delivered to the Director as a precondition to final payment.
- 9.2.5 In the event of termination due to no fault of the Engineer and upon conditions stated in Sections 9.2.2 and 9.2.3 being met, the City shall promptly compensate the Engineer for all services authorized by the Director and performed before or on the termination date, less previous compensation payments for services.

9.3 TERMINATION FOR CONVENIENCE BY THE CITY

- 9.3.1 The Director may terminate this Agreement at any time by giving 30 days written notice to Engineer, with a copy of the notice to the Chief Procurement Officer. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.
- 9.3.2 On receiving the notice, Engineer shall, unless the notice directs otherwise, immediately discontinue all Services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Engineer shall submit a final invoice marked "FINAL" showing in detail the Services performed under this Agreement up to the termination date.
- 9.3.3. **TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED, IF ANY, ARE ENGINEER'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. ENGINEER WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.**

9.4 TERMINATION FOR CAUSE

If Engineer defaults under this Agreement, Owner may either terminate this Agreement or allow Engineer to cure the default as provided below. Owner's right to terminate this Agreement for Engineer default is cumulative and in addition to, not exclusive of or in substitution for, any rights or remedies which exist now or in the future otherwise available to Owner. Default by Engineer occurs if:

- (a) Engineer fails to perform any of its material duties under this Agreement;
- (b) Engineer becomes insolvent;
- (c) All or a substantial part of Engineer's assets are assigned for the benefit of its creditors;
or
- (d) A receiver or trustee is appointed for Engineer.

9.5 FORCE MAJEURE, SUSPENSION OF CONTRACT

- 9.5.1 Timely performance by both parties is essential to this Contract. However, neither party will be liable for delays or other failures to perform its obligations under this Contract to the extent the delay or failure is caused by Force Majeure. For purposes of this Contract, Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders and the acts of superior governmental or military authority.
- 9.5.2 This relief is not applicable unless the affected party does the following:
 - 9.4.2.1 uses due diligence to remove the Force Majeure as quickly as possible;
 - 9.4.2.2 provides the other party with prompt written notice of the cause and its anticipated effect; and
 - 9.4.2.3 provides the other party with written notice describing the actual delay or non-performance incurred within seven days after the Force Majeure ceases.
- 9.5.3 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 Contract by the City.
- 9.5.4 If the Force Majeure continues for more than 30 days, the Director may terminate this Contract by giving seven days' written notice to Engineer. Such termination is not a default or breach of this Contract. Engineer waives any claim it may have for financial losses or other damages resulting from the termination except for amounts due under the Contract.
- 9.5.5 Engineer shall not be relieved of the performance of its obligations under this Contract due to a strike or work slowdown of its employees. Engineer shall employ only fully trained and qualified personnel during a strike.

ARTICLE 10

MISCELLANEOUS PROVISIONS

10.1 APPLICABLE LAWS

- 10.1.1 This Contract is subject to and shall be construed in accordance with the laws of the State of Texas, the City Charter and ordinances of the City of Houston (e.g. Landscape Ordinance), the laws and regulations of the federal government of the United States of America, and all rules and regulations of any regulatory body or officer having jurisdiction over this Project. Venue for this Contract is Harris County, Texas.
- 10.1.2 Engineer acknowledges that Federal Emergency Management Agency (FEMA) financial assistance will be used to fund this Agreement.
- 10.1.3 Engineer shall comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures and directives.
- 10.1.4 The Federal Government is not a party to this Contract and is not subject to any obligations

or liabilities to Owner, the Engineer, or any other party pertaining to any matter resulting from the Contract.

10.1.5 Engineer acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Engineer's actions pertaining to this Agreement.

10.2 INSURANCE

10.2.1 The Engineer shall provide and maintain certain insurance in full force and effect at all times during the term of this Contract and any extensions thereto. Such insurance is described as follows:

10.2.1.1 **Risks and Limits of Liability:** The insurance, at a minimum, must include the following coverages and limits of liability:

COVERAGE	LIMIT OF LIABILITY
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	<ul style="list-style-type: none"> • Bodily Injury by Accident \$500,000 (each accident) • Bodily Injury by Disease \$500,000 (policy limit) • Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Including Broad Form Coverage, Bodily Injury and Property Damage (Products and Completed Operations required when Physical Operations performed)	Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence, and \$2,000,000 aggregate per 12-month period
Automobile Liability	\$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Professional Liability	\$1,000,000 per occurrence; \$2,000,000 aggregate
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

If professional liability coverage is written on a "claims made" basis, the Engineer shall also provide proof of renewal each year for two years after substantial completion of the project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the project covered by this Contract with a duration of two years after substantial completion.

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

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

10.2.1.4 **Insured Parties:** The City shall be an additional insured under this contract. Each policy, except those for Workers' Compensation, Employer's Liability and Professional Liability, must name the City and its officers and employees as Additional Insureds on the original policy and all renewals or replacements during

the term of this Contract.

10.2.1.5 **Deductibles:** Engineer shall be responsible for and bear any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for same against the City, its officers or employees.

10.2.1.6 **Cancellation:** Engineer must give the Director 30 days' advance written notice of any cancellation, non-renewal, or material change to the policy. Within the 30-day period, Engineer 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 Engineer does not comply with this requirement, the Director, at his or her sole discretion, may:

- (a) immediately suspend Engineer from any further performance under this Contract 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 Engineer under this Contract.

10.2.1.7 **Subrogation:** Engineer waives any claim or right of subrogation to recover against the City, its officers, agents and employees, and each Engineer's insurance policy, except Professional Liability, must contain an endorsement waiving such claim.

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

10.2.1.9 **Liability for Premium:** The Engineer shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.

10.2.1.10 **Subconsultants:** Engineer shall require all subconsultants whose subcontracts exceed \$100,000, to carry insurance meeting all requirements stated above except amount. The amount shall be commensurate with the amount of the subcontract, but in no case, shall it be less than \$500,000 per claim.

10.2.2 **Delivery of Policies:**

10.2.2.1 At the time this Contract is signed and as long as this Contract continues, Engineer must furnish to the Director certificates of insurance that meet the requirements of this Contract. These certificates must bear the Engineer's name for which they are insured. If requested by the Director, Engineer must provide the originals of all policies referred to above, or copies certified by the agent or attorney-in-fact issuing them. Engineer shall provide updated certificates of insurance to the Director upon request.

10.2.2.2 Every certificate of insurance Engineer delivers for the Project shall:

- (a) Be less than 12 months old;
- (b) Include the Project name and reference numbers and indicates the name and address of the Project Manager in the Certificate Holder Box; and
- (c) Include all pertinent identification information for the Insurer, including the company name and address, policy number, NAIC number or AMB number, and authorized signature;
- (d) Be appropriately marked to accurately identify:

- i. All coverage and limits of the policy;
- ii. Effective and expiration dates; and
- iii. Waivers of subrogation, endorsement of primary insurance and additional insured language, as described above.

10.2.2.3 Engineer shall continuously and without interruption, maintain in force the required insurance coverage specified in this Section. If Engineer does not comply with this requirement, the Director, at his or her sole discretion, may: Immediately suspend Engineer from any further performance under this Contract and begin procedures to terminate for default; or

10.2.2.4 The City shall never waive or be estopped to assert its rights to terminate this Contract because of its acts or omissions regarding its review of insurance documents.

10.2.2.5 Engineer shall, upon the City's request, deliver an assurance letter from Engineer's insurer stating that the insurer intends to issue Engineer a new policy that meets the terms of this Section.

10.2.3 **Other Insurance.** If requested by the Director, Engineer shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Engineer's operations under this Contract.

10.2.3.1 Unless otherwise provided in this Contract, the Engineer and Engineer's subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

10.2.3.2 The Engineer agrees not to participate in the bidding process as a bidder and not to engage in construction of the Project. By written agreement, the Engineer shall require each subconsultant for Project engineering services to be bound by the requirements of this Section.

10.3 EQUAL EMPLOYMENT OPPORTUNITY

10.3.1 The provisions set out in **Exhibit "C"** relating to Equal Employment Opportunity and attached to this Contract are hereby incorporated by reference herein for all purposes as fully and completely as if set forth verbatim herein. For the purpose of interpreting such, the Engineer shall be the "Contractor".

10.3.2 Engineer shall comply with the applicable Equal Opportunity Clause required by the United States of America, including but not limited to the provisions of 41 CFR § 60-1.4(b). These provisions are inclusive of any amendments which may be made to such regulations. Further, Engineer shall include the summary of the provisions of 41 CFR § 60-1.4(b), as may be amended, in subcontracts it enters under this Agreement. This summary is set forth in **Exhibit "C"**.

10.4 NON-DISCRIMINATION

10.4.1 Engineer shall comply with the applicable non-discrimination provisions required by the United States of America, including but not limited to the provisions of 49 CFR Part 21. These provisions are inclusive of any amendments which may be made to such regulations. Further,

Engineer shall include the summary of the provisions of 49 CFR Part 21, as may be amended, in subcontracts it enters under this Agreement. This summary is set forth in Exhibit "K"

10.5 MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES PARTICIPATION

10.5.1 Engineer 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. Engineer shall make good faith efforts to award subcontracts or supply agreements in at least **24%** of the value of this Agreement to MWBEs. Engineer acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunity ("OBO") and will comply with them.

10.5.2 Engineer shall ensure that all subcontracts with MWBE subconsultants and suppliers contain the following terms:

1. _____ (MWBE subconsultant) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subconsultant or supplier without the express written consent of the City of Houston's OBO Director ("the Director").
2. _____ (MWBE subconsultant) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subconsultant, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subconsultant shall keep such books and records available for such purpose for at least four (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.
3. Within five business days of execution of this subcontract, Engineer (prime engineer) and subconsultant 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.

10.5.3 To this end, the Engineer shall maintain records showing: (i) subcontracts and supply agreements with Minority Business Enterprises; and (ii) subcontracts and supply agreements with Women-owned Business Enterprises; and (iii) specific efforts to identify and award subcontracts and supply agreements to Minority and Women-owned Business Enterprises.

10.5.4 The Engineer shall be required to submit periodic reports of its efforts under this Article to the OBO Director in such form and manner and at such time or times as may be prescribed.

10.5.5 Engineer shall adhere to and comply with 2 CFR 200.321 if subcontracts are to be let under this agreement. The Vendor, if subcontracts are to be let, is required to take the following affirmative steps to ensure that small business firms, minority business firms, women's business enterprises, and labor surplus area firms are used when possible, pursuant to 2 CFR Section 200.321. Affirmative steps must include: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) Assuring

that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and (6) Vendor should clearly document the communication and outreach to the certified business. Documentation may include mail logs, phone logs, or similar records documenting the use of the above identified sources of information about MWSBE firms, the efforts to contact them, and other efforts to meet the above requirements

10.5.6 Note that the requirements in 2 C.F.R. 200.321 must be followed regardless of whether Engineer has satisfied the City's MWBE referenced above.

10.6 SUCCESSORS AND ASSIGNS

10.6.1 The City and the Engineer, respectively, bind themselves, their partners, successors, assigns and legal representatives to this Contract. Neither the City nor the Engineer shall assign or otherwise, sublet or transfer any interest in this Contract without the written consent of the other.

10.7 NON-WAIVER

10.7.1 Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

10.8 NOTICES

10.8.1 All notices required or permitted hereunder shall be in writing and shall be deemed received when actually received or if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the other party at the address prescribed in the preamble hereof or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.

10.9 CAPTIONS

10.9.1 The captions at the beginning of the articles and sections of this Contract are guides and labels to assist in locating and reading such articles and sections and, therefore, will be given no effect in construing this Contract and shall not be restrictive of or be used to interpret the subject matter of any article, section or part of this Contract.

10.10 ACCEPTANCES AND APPROVALS

10.10.1 Any acceptance or approval by the City, or its agents or employees shall not constitute nor be deemed to be a release of the responsibility and liability of the Engineer, its employees, agents, subconsultants or suppliers for the accuracy, competency and completeness of any Documents prepared or services performed pursuant to the terms and conditions of this Contract, nor shall acceptance or approval be deemed to be an assumption of such responsibility or liability by the City, or its agents and employees, for any defect, error or omission in any Documents prepared or services performed by the Engineer, its employees, agents, subconsultants or suppliers pursuant to this Contract.

10.11 AMBIGUITIES

10.11.1 In the event of any ambiguity in any of the terms of this Contract it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

10.12 INDEPENDENT CONTRACTOR

10.12.1 The relationship of the Engineer to the City shall be that of an independent contractor. The City has no control or supervisory powers over the manner or method of Engineer's performance under this Contract. All personnel Engineer uses or provides are its employees or subconsultants and not the City's employees, agents, or subconsultants for any purpose whatsoever. Engineer 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.

10.13 SURVIVAL

10.13.1 The provisions set forth in **Article 8**, Ownership and Use of The Documents, herein shall survive the termination, cancellation or expiration of this Contract.

10.14 EXTENT OF CONTRACT

10.14.1 This Agreement, including its sections and the referenced **Exhibits A to M** which are made a part hereof, represents the entire and integrated agreement between the City and the Engineer and supersedes all prior negotiations, representations or agreements either written or oral. This Contract may not be altered or amended except in writing executed on behalf of all the parties and approved by ordinance by the City Council of the City of Houston.

10.14.2 If a conflict among the sections and Exhibits arises, the sections shall control over the Exhibits.

10.14.3 This Contract is between the City and Engineer, which are collectively referred to as the "parties" or singularly as a "party." This Contract shall bind and benefit the parties and shall not bestow any rights or benefits upon any third parties.

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

10.15 FAIR CAMPAIGN ORDINANCE

10.15.1 The City of Houston Fair Campaign Ordinance makes it unlawful for a contractor to offer

any contribution to a candidate for City elective office (including elected officers and officers-elect) during a certain period of time prior to and following the award of the Contract by the City Council. The term "Contractor" includes proprietors of proprietorships, partners or joint ventures having an equity interest of 10 percent or more for the partnership or joint venture, and officers, directors and holders of 10 percent or more of the outstanding shares of corporations. A statement disclosing the names and business addresses of each of those persons will be required to be submitted with each bid or proposal for a City Contract. See Chapter 18 of the Code of Ordinances, Houston, Texas, for further information. The term "contractor" as used in this ordinance and for the purposes of this Contract, shall mean the "Engineer".

10.16 ENFORCEMENT

- 10.16.1 The City Attorney or his or her designee shall have the right to enforce all legal rights and obligations under this Contract without further authorization. Engineer covenants to provide to the City Attorney all documents and records that the City Attorney deems necessary to assist in determining Engineer's compliance with this Contract, with the exception of those documents made confidential by federal or State law or regulation.
- 10.16.2 This Contract 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.
- 10.16.3 The parties consent to venue for any litigation relating to this Contract in Harris County, Texas, regardless of any choice of law rules.
- 10.16.4 Unless otherwise specified in this Contract, the rights and remedies contained in this Contract 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 Contract except in accordance with its provisions.

10.17 DRUG DETECTION AND DETERRENCE

- 10.17.1 It is the policy of the City to achieve a drug-free workforce and to provide a workplace that is free from the use of illegal drugs and alcohol. It is also the policy of the City that the manufacture, distribution, dispensation, possession, sale or use of illegal drugs or alcohol by Engineers while on City Premises is prohibited. By executing this Contract, Engineer represents and certifies that it meets and shall comply with all the requirements and procedures set forth in the Mayor's Policy on Drug Detection and Deterrence, City Council Motion No. 92-1971 ("Mayor's Policy") and the Mayor's Drug Detection and Deterrence Procedures for Engineers, Executive Order No. 1-31 Revised ("Executive Order"). City Council Motion No. 92-1971 (Mayor's Policy) is on file in the office of the City Secretary. Copies of Executive Order No. 1-31, Revised, may be obtained at the following website: <https://www.houstontx.gov/execorders/1-31.pdf>.
- 10.17.2 Executive Order No. 1-31, Revised applies to all City of Houston contracts for labor and/or services except the following:
 - 10.17.2.1 Contracts authorized by Emergency Purchase Orders,
 - 10.17.2.2 Contracts in which imposition of the requirements of this Executive Order would exclude all potential bidders or proposers or would eliminate meaningful

- competition for the contract,
- 10.17.2.3 Contracts with companies that have fewer than fifteen employees during any 20-week period during a calendar year and no safety impact positions,
- 10.17.2.4 Contracts with non-profit organizations providing services at no cost or reduced cost to the public, and
- 10.17.2.5 Contracts with federal, state, or local governmental entities.
- 10.17.3 Prior to execution of this Contract, Engineer will have filed with the City (i) the Drug Policy Compliance Agreement substantially in the format set forth in **Exhibit "E"** (Attachment A to the Executive Order), (ii) a copy of its drug-free workplace policy, and (iii) a written designation of all safety impact positions, if applicable or (iv) a Certification of No Safety Impact Positions, substantially in the format set forth in **Exhibit "F"** (Attachment C to the Executive Order), if applicable (i.e. no safety impact positions). Engineer shall also file every 6 months during the performance of this Contract and upon the completion of this Contract, a Drug Policy Compliance Declaration in a form substantially in the format set forth in **Exhibit "G"** (Attachment B to the Executive Order). The Drug Policy Compliance Declaration shall be submitted within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Contract. The first 6-month period shall begin to run on the date City issues its Notice to Proceed hereunder or if no Notice to Proceed is issued, on the first day Engineer begins Work.
- 10.17.4 Engineer shall have the continuing obligation to file with the Director written designations of safety impact positions and Drug Policy Compliance Declarations at any time during the performance of this Contract that safety impact positions are added if initially no safety impact positions were designated. Engineer also shall have the continuing obligation to file updated designations of safety impact positions with the Director when additional safety impact positions are added to Engineer's employee work force.
- 10.17.5 Engineer shall require that its subconsultants comply with the Mayor's Policy and the Executive Order and Engineer shall be responsible for securing and maintaining the required documents for City inspection throughout the term of this Contract.
- 10.17.6 The failure of Engineer to comply with the above Sections shall be a breach of this Contract entitling City to terminate in accordance with **Article 9**.

10.18 BUSINESS STRUCTURE AND ASSIGNMENTS

- 10.18.1 Engineer shall not assign this Agreement at law or otherwise or dispose of all or substantially all 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 Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Engineer 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.

10.19 ENGINEER'S DEBT

- 10.19.1 If Engineer, at any time during the term of this Contract, 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 Engineer has

incurred a debt, it shall immediately notify Engineer in writing. If Engineer does not pay the debt within thirty days of either such notification, City Controller may deduct funds in an amount equal to the debt from any payments owed to Engineer under this Contract, and Engineer waives any recourse, therefore. Engineer 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.

10.20 ENGINEER'S ACCOUNTING RECORDS, INSPECTIONS AND AUDITS

- 10.20.1 The Director and City Controller shall have the right to examine and review the Engineer's books, records and billing Documents which are directly related to performance or payment under this Contract. The Engineer shall maintain such books, records, and billing Documents for four years after the cessation of Engineer's other services and responsibilities under this Contract. If the books and records are located outside of Harris County, Texas, Engineer agrees to make them available in Harris County, Texas. Nothing in this Article shall affect the time for bringing a cause of action nor the applicable statute of limitations.
- 10.20.2 City representatives may perform, or have performed, (i) audits of Engineer's books and records, and (ii) inspections of all places where work is undertaken in connection with this Agreement. Engineer 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.
- 10.20.3 Engineer shall provide the Director, the FEMA Administrator, the Texas Department of Emergency Management, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Engineer which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Engineer shall keep its books, documents, papers, and records available for this purpose for at least five years after this Agreement terminates or expires. This provision does not limit the applicable statute of limitations.
- 10.20.4 Engineer shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 10.20.5 Engineer shall provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement.
- 10.20.6 In compliance with the Disaster Recovery Act of 2018, the City and the Engineer acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

10.21 REMEDIES

- 10.21.1 If default occurs, then the City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, the City shall have the right, but not the obligation, to cure or cause to be cured on behalf of Engineer any such default, and Engineer shall pay the City on demand all costs and expenses incurred

by the City in effecting such cure, in addition to all damages, losses, costs or expenses incurred by the City as a result of such default by Engineer.

10.22 CHANGES.

10.22.1 At any time during the Agreement Term, the City may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as it may find necessary to accomplish the general purposes of this Agreement. Engineer shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.

10.23 DHS SEAL, LOGO, AND FLAGS

10.23.1 Engineer shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

10.24 PRESERVATION OF CONTRACTING INFORMATION.

10.24.1 The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract and the Engineer agrees that this Contract can be terminated if the Engineer knowingly or intentionally fails to comply with a requirement of that subchapter. If the requirements of Subchapter J, Chapter 552, Texas Government Code, apply to this Contract, then for the duration of this Contract (including the initial term, any renewal terms, and any extensions), Engineer shall preserve all Contracting Information, as defined by Section 552.003 of the Texas Government Code, related to this Contract as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy, which record retention requirements include but are not limited to those set forth in Chapters 201 and 205 of the Texas Local Government Code and Texas Administrative Code Title 13, Chapter 7. Within five business days after receiving a request from the Director, Engineer shall provide any Contracting Information related to this Contract that is in the custody or possession of Engineer. Upon the expiration or termination of this Contract, Engineer shall, at the Director's election, either (a) provide, at no cost to the City, all Contracting Information related to this Contract that is in the custody or possession of Engineer, or (b) preserve the Contracting Information related to this Contract as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy.

10.24.2 If Engineer fails to comply with any one or more of the requirements of this Section 10.24, *PRESERVATION OF CONTRACTING INFORMATION*, or Subchapter J, Chapter 552, Texas Government Code, then, in accordance with and pursuant to the processes and procedures set forth in Sections 552.373 and 552.374 of the Texas Government Code, the Director shall provide notice to the Engineer and may terminate this Contract. To effect final termination, the Director must notify Engineer in writing with a copy of the notice to the Chief Procurement Officer. After receiving the notice, Engineer shall, unless the notice directs otherwise, immediately discontinue all services under this Contract, and promptly cancel all orders or subcontracts chargeable to this Contract.

[Remainder of Page Intentionally Left Blank]

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.

ENGINEER:
AECOM Technical Services,
Inc.

CITY:

THE CITY OF HOUSTON, TEXAS

DocuSigned by:
By: M. R. McCrary
2214FFBA842842E...
Name: **M. R. McCrary, PE, DBIA**

By: _____
Mayor

Title: Vice President

ATTEST/SEAL:
By: M.K.
Corporate Secretary **Manav Kumar**

ATTEST/SEAL:
By: _____
City Secretary

Tax Identification No. 19526619226

COUNTERSIGNED:

City Controller

DATE COUNTERSIGNED:

"Effective Date"

APPROVED:
[Signature]
Director, General Services Department

DocuSigned by:
APPROVED AS TO FORM:
Joe Nwaokoto
A7B91A9275E147C...

Senior Assistant City Attorney
LD No. 0332000097001

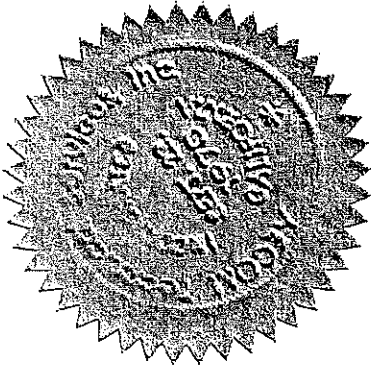


EXHIBIT "A"

SCOPE OF SERVICES

Hurricane Harvey – TIGER Trail 4

WBS No.: F-HARVEY-0004-3

2.1 PROJECT DESCRIPTION

Project Name: HURRICANE HARVEY – TIGER TRAIL 4

Location: Along the south bank of Buffalo Bayou between Franklin St. to Main St.

In late August of 2017, the TIGER Trail 4 along Buffalo Bayou in downtown Houston sustained significant damage because of Hurricane Harvey. This project seeks an engineering design solution to stabilize the bayou embankment and to repair the damaged portions of the trail, including the existing irrigation, trail lighting, 3" waterline and landscaping. The scope also includes a review of three elevated decks for structural integrity.

Engineer shall evaluate the hike and bike trail to develop the full project scope and provide design and construction level documentation to repair the trail.

2.2 CONSTRUCTION DELIVERY METHOD

The project will utilize the low bid delivery method.

2.3 SERVICES

The Engineer will provide all professional design services necessary and as further described in 2.4 below. Generally, services will include arranging, conducting, and recording of all Design Phase meetings, including City requested and/or special meetings. The Engineer will catalog and disseminate record meeting notes to all parties. Also, throughout the design process, the Engineer shall cooperate and coordinate in developing estimates and constructability reviews for each phase. All work to be generated on approved CAD system software.

2.4 DESIGN PHASES

Pre-Design Phase

The Engineer will gather any existing records available. These documents will need to be verified by on-site inspection. The extent of this effort shall be as in-depth and as extensive as is required and necessary to support the design effort for the project site. Research of innovative design concepts and systems for the specified improvements shall be introduced for City's consideration. This phase shall include but not be limited to:

- Survey and document the existing project site to aid in the baseline program and design criteria controls.
- Provide at least two design options for the project site for City's review.
- Evaluate existing topographic and site conditions; identify critical and/or essential control components.
- Review and verify design standard requirements and/or City standards.

- Introduce new forward-looking design concepts, innovative systems and amenities to the program for consideration.

Phase I Services

Phase I services include First and Design Development.

SCHEMATIC DESIGN

In this design phase, the Engineer will take the information gathered from the Pre-Design phase and facility surveys to create two to three design options for consideration. These options will be generally presented to visualize the different paths the project may pursue.

During this phase, develop a rough cost estimate to each option to aid in selecting a design that meets both the functional and aesthetic preferences and budget requirements. Modifications may occur to the preferred design prior to approval. Once selected, the design option that best suits the project's overall criteria, the process of refining the design begins in the Design **Development** phase. This will include outlining specifications that encompass ALL proposed assemblies; if more than one assembly is considered, both are provided.

DESIGN DEVELOPMENT

During this design phase, the project design is to be further refined. Plan arrangements, outline specifications and complete definitions of all systems serving the project are to be developed. All design decisions are to be completed and approved during this phase prior to proceeding to the construction documents phase. This phase shall include but not be limited to:

- Value engineering – constructability review – budget control estimate
- Further refinement of the outlined specifications with final selections
- Review and preliminary approval

Phase II Services

CONSTRUCTION DOCUMENTS

Construction document phase consists of preparation of drawings and specifications establishing the requirements for the construction of the project. The construction documents describe the quality, configuration, size, and relationship of all components to be incorporated into the project. Construction documents must be consistent with the project program, the construction budget, and the project schedule. This phase shall include but not be limited to:

- Final specifications
- Completely coordinated designed documents with ALL disciplines and components of the project
- 30%, 60%, 90% and 100% project reviews with coordinated estimates
- Constructability review
- Provide permitting services
- Actively assist with procurement process, including bidding activities

Phase III and Phase IV Services

CONSTRUCTION ADMINISTRATION and POST-CONSTRUCTION

Once the Contractor has received a Notice to Proceed and construction is under way, the Engineer shall provide Construction Administration services. The Engineer will administer the construction process to assure conformance with design intent, visit the site during construction, and address any

field conditions as they arise. The Engineer will be on hand for all construction progress meetings and address any field conditions as they arise. The Engineer's services shall include but not be limited to:

- Document and control RFI process, shop drawings and submittals
- Minimum of bi-weekly project meetings
- Assist in warranty reviews, post construction meetings and project closeout activities

EXHIBIT "B"
PROJECT SCHEDULE

Exhibit B

COH, Hurricane Harvey Tiger Trail 4 - Project Schedule

Task Name	Duration	Start	End
Project Kick-Off	1d	10/5/2020	10/5/2020
Phase I Design			
Schematic Design			
Drawings	20d	10/6/2020	10/26/2020
BOD Project Narratives	15d	10/6/2020	10/21/2020
Owner Review Period	7d	10/27/2020	11/3/2020
Design Development			
Drawings	27d	11/4/2020	12/1/2020
Preliminary A/EC Cost Estimate	7d	11/19/2020	11/26/2020
Outline Specifications	10d	11/16/2020	11/26/2020
Owner Review Period			
Owner Document Review	14d	12/2/2020	12/16/2020
A/E Cost Estimate	14d	12/2/2020	12/16/2020
Incorporation of Owner Comments	5	12/16/2020	12/21/2020
Phase I Deliverable	1d	12/21/2020	12/21/2020
Phase II Design			
Private Utilities	274d	12/22/2020	9/23/2021
Permitting			
COH Permitting, Flood Plain	95d	6/9/2021	9/13/2021
HCFCD	95d	6/9/2021	9/13/2021
90% CD Deliverable			
Drawings	232d	12/22/2020	8/11/2021
A/E Cost Estimate	133d	3/21/2021	8/3/2021
Technical Specifications	70d	5/25/2021	8/3/2021
Owner Review Period			
Owner Document Review	14d	8/12/2021	8/25/2021
A/E Cost Estimate	14d	8/12/2021	8/25/2021
Incorporation of Owner Comments For 100% Submittal	54d	8/26/2021	10/19/2021
Phase II Deliverable			
Bidding	83d	10/21/2021	1/12/2022
Phase III Construction			
Construction	278d	1/12/2022	10/17/2022

EXHIBIT "C"

EQUAL EMPLOYMENT OPPORTUNITY CONTRACT COMPLIANCE

I. SCOPE

Pursuant to City Council Ordinance No. 78-1538, passed August 9, 1978, all contracts entered into by the City of Houston involving the expenditure of \$10,000.00 or more shall incorporate the following equal employment opportunity clause.

II. REQUIREMENTS

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, sexual orientation, gender identity, national origin, or age. Such action will include, but be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier, or lessee agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, sexual orientation, gender identity, national origin, or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or workers' representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal opportunity and affirmative action provisions applicable, and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.

6. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246 and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders.
7. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract, or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
8. The contractor shall include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1)-(8) of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965 so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
9. The City agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.
10. The City further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the City agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the City under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such City; and refer the case to the Department of Justice for appropriate legal proceedings. The contractor shall file and shall cause each of his subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the engineer and each subcontractor.

EXHIBIT "D"

BILLABLE RATES

The following table represents the classifications and billable rates of personnel the Engineer anticipates will be directly engaged on the Project. The Director is authorized to approve additional classifications and billable rates for the Engineer's personnel and any subcontractor's personnel for unforeseen additional services.

<u>CLASSIFICATION</u>	<u>RATE</u>
Principal Architect	\$ 240.00
Quality Control Architect	\$ 190.00
Project Architect	\$ 168.00
(In House FFE)	\$ 120.00
CADD Architect	\$ 155.00
Principal Engineer	\$ 200.00
Senior Engineer	\$ 160.00
Landscape Architect (Irrigation Engineer)	N/A
Senior Designer	\$ 155.00
Senior Field Technician / Inspector	N/A
Engineers	\$ 125.00
Field Technician / Inspector	N/A
Designers	\$ 120.00
CADD Drafters	\$ 120.00
Clerical / Admin	\$ 105.00

EXHIBIT "E"

DRUG POLICY COMPLIANCE AGREEMENT

I, M. R. McCrary, PE, DBIA, Vice President
(Name) (Title)

of AECOM Technical Services, Inc.
(Engineer)

have authority to bind Engineer 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 Engineer is aware of and by the time the Contract is authorized and approved by the City Council, City of Houston, Engineer 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 Engineer 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 Engineers (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and an 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 Engineer 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 the Contract not being authorized and approved by the City Council, City of Houston or termination of the Contract by the City of Houston.

6/30/2020
(Date)

M. R. McCrary, PE, DBIA
(Engineer Name)

DocuSigned by:
Rod McCrary
2214FF6 (Signature)

Vice President
(Title)

EXHIBIT "F"

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

I, M. R. McCrary, PE, DBIA, Vice President, (engineer)
(Name) (Title)

as an owner or officer of AECOM Technical Services, Inc. have authority to bind
(Name of Company)

Engineer with respect to its bid, and hereby certify that Engineer has no employee safety impact positions,
as defined in Section 5.18 of Executive Order No. 1-31, that will be involved

in performing Hurricane Harvey – TIGER Trail 4, WBS No: F-HARVEY-0004-3. Engineer
(Project)

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

6/30/2020

(Date)

M. R. McCrary, PE, DBIA

(Typed or Printed Name)

DocuSigned by:

Rod McCrary

2214FFBAAE8191

(Signature)

Vice President

(Title)

EXHIBIT "G"

DRUG POLICY COMPLIANCE DECLARATION

I, M. R. McCrary, PE, DBIA, Vice President, as an owner or officer of
 (Name) (Print/Type) (Title)

AECOM Technical Services, Inc. have personal knowledge and full
 (Name of Company)
 authority to make the following declarations:

This reporting period covers the preceding 6 months from N/A to N/A, 20 N/A.

RM (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).

N/A (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.

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

N/A (Initials) Appropriate safety impact positions have been designated for employee positions performing on City of Houston contract. The number of employees in safety impact positions during this reporting period is N/A.

N/A (Initials) From N/A (Start date) to N/A (End date) the following test has occurred.

	<i>RANDOM</i>	<i>REASONABLE SUSPICION</i>	<i>POST ACCIDENT</i>	<i>TOTAL</i>
Number Employees Tested				
Number Employees Positive	N/A	N/A	N/A	N/A
Percent Employees Positive				

N/A (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.

RM (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.

6/30/2020
 (Date)

M. R. McCrary, PE, DBIA
 (Typed or Printed Name)
DocuSigned by:
Rod McCrary
 (Signature)
Vice President
 (Title)

EXHIBIT "H"

CERTIFICATE OF INSURANCE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
07/13/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh Risk & Insurance Services CA License #0437153 633 W. Fifth Street, Suite 1200 Los Angeles, CA 90071 Attn: LosAngeles CertRequest@Marsh.Com CN101348564-CPLNY-GAUPY-20	CONTACT NAME: James Vogel PHONE (A/C, No, Ext): 213-346-5098 FAX (A/C, No): 212-948-0533 E-MAIL ADDRESS: James.Vogel@marsh.com	
	INSURER(S) AFFORDING COVERAGE	
INSURED AECOM AECOM Technical Services, Inc PO Box 8799 Princeton, NJ 08543-8799	INSURER A: ACE American Insurance Company	NAIC # 72567
	INSURER B: N/A	N/A
	INSURER C: Illinois Union Insurance Co	27960
	INSURER D: Indemnity Insurance Company of North America	43575
	INSURER E:	

COVERAGES CERTIFICATE NUMBER: LOS-002454677-06 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER X POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER		HDD G7123311A	04/01/2020	04/01/2021	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 2,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPROP AGG \$ 2,000,000
A	X AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY		ISA H25301730	04/01/2020	04/01/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 3,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ UMBRELLA LIAB OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	WLR C9692340A	04/01/2020	04/01/2021	X PER STATUTE OTH ER E.L. EACH ACCIDENT \$ 2,000,000 E.L. DISEASE - EA EMPLOYEE \$ 2,000,000 E.L. DISEASE - POLICY LIMIT \$ 2,000,000
C	ARCHITECTS & ENG PROFESSIONAL LIABILITY		EON G21654693 005 *CLAIMS-MADE*	04/01/2020	04/01/2021	Per Claim/Aggregate 2,000,000 DEFENSE INCLUDED

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: AECOM Project # 04191453 / 2481. Client ref # WBS No. F-HARVEY-0004-3. Project Name: Hurricane Harvey - TIGER Trail 4.

The City of Houston, and its officers and employees are named as additional insured for GL & AL coverages, but only as respects work performed by or on behalf of the named insured and where required by written contract. This insurance is primary and non-contributory over any existing insurance and limited to liability arising out of the operations of the named insured and where required by written contract with respect to the GL & AL coverages. Waiver of Subrogation is applicable where required by written contract with respect to GL, AL and WC.

CERTIFICATE HOLDER The City of Houston General Services Department Design & Construction Division Attn: Mrs. Sara Krouskopf, Project Manager 960 Bagby St., 2nd Floor Houston, TX 77002	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh Risk & Insurance Services James L. Vogel
--	--

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POLICY NUMBER: HDO G7123311A

Endorsement Number: 6

COMMERCIAL GENERAL LIABILITY
CG 20 26 04 13**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****ADDITIONAL INSURED – DESIGNATED
PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s): Any person or organization whom you have agreed to include as an additional insured under a written contract, provided such contract was executed prior to the date of loss.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

POLICY NUMBER: HDO G7123311A

48
Endorsement Number: 7

COMMERCIAL GENERAL LIABILITY
CG 24 04 05 09

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

<p>Name Of Person Or Organization: Any person or organization against whom you have agreed to waive your right of recovery in a written contract, provided such contract was executed prior to the date of loss.</p>

<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

The following is added to Paragraph 8, Transfer Of Rights Of Recovery Against Others To Us of Section IV – Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

POLICY NUMBER: ISA H25301730

73
Endorsement Number: 5

COMMERCIAL AUTO
CA 20 48 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: AECOM

Endorsement Effective Date:

SCHEDULE

Name Of Person(s) Or Organization(s):

Any person or organization whom you have agreed to provide additional insured status or additional insured status on a primary, non-contributory basis, under written contract, provided such contract was executed prior to the date of loss, except where such contract is prohibited by law

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph A.1. of Section II - Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph D.2. of Section I - Covered Autos Coverages of the Auto Dealers Coverage Form.

POLICY NUMBER: ISA H25301730

42
Endorsement Number: 11

COMMERCIAL AUTO
CA 04 44 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: AECOM

Endorsement Effective Date:

SCHEDULE

Name(s) Of Person(s) Or Organization(s):

Any person or organization against whom you have agreed to waive your right of recovery in a written contract, provided such contract was executed prior to the date of loss

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

Workers' Compensation and Employers' Liability Policy

Named Insured AECOM 999 TOWN & COUNTRY ROAD ORANGE CA 92868	Endorsement Number
	Policy Number Symbol: WLR Number: C6692340A ✓
Policy Period 04-01-2020 TO 04-01-2021	Effective Date of Endorsement 04-01-2020
Issued By (Name of Insurance Company) INDEMNITY INS. CO. OF NORTH AMERICA	
Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.	

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

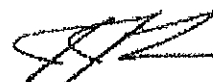
Schedule

ANY PERSON OR ORGANIZATION AGAINST WHOM YOU HAVE AGREED TO WAIVE YOUR RIGHT OF RECOVERY IN A WRITTEN CONTRACT, PROVIDED SUCH CONTRACT WAS EXECUTED PRIOR TO THE DATE OF LOSS.

For the states of CA, UT, TX, refer to state specific endorsements.
This endorsement is not applicable in KY, NH, and NJ.

The endorsement does not apply to policies in Missouri where the employer is in the construction group of code classifications. According to Section 287.150(6) of the Missouri statutes, a contractual provision purporting to waive subrogation rights against public policy and void where one party to the contract is an employer in the construction group of code classifications.

For Kansas, use of this endorsement is limited by the Kansas Fairness in Private Construction Contract Act(K.S.A. 16-1801 through 16-1807 and any amendments thereto) and the Kansas Fairness in Public Construction Contract Act(K.S.A 16-1901 through 16-1908 and any amendments thereto). According to the Acts a provision in a contract for private or public construction purporting to waive subrogation rights for losses or claims covered or paid by liability or workers compensation insurance shall be against public policy and shall be void and unenforceable except that, subject to the Acts, a contract may require waiver of subrogation for losses or claims paid by a consolidated or wrap-up insurance program.



Authorized Representative

Document 00630
(POP-2)
City of Houston
Certification of Compliance with
Pay or Play Program

Contractor Name: AECOM Technical Services, Inc. \$ 596,522.00
(Contractor/Subcontractor) (Amount of Contract)

Contractor Address: 5444 Westheimer Rd, Suite 400, Houston, TX 77056

Project No.: WBS No. F-HARVEY-0004-3

Project Name: Hurricane Harvey - TIGER Trail 4

POP Liaison Name: Todd David

In accordance with the City of Houston Pay or Play Program authorized by Ordinance 2007-534 and Executive Order 1-7, Contractor/Subcontractor agrees to abide by the terms of this Program. This certification is required of all contractors for contracts subject to the program. You must agree EITHER to PAY or to PLAY for all covered employees. The Contractor/Subcontractor may also Pay on behalf of some covered employees and Play on behalf of other covered employees.

The Contractor/Subcontractor will comply with all provisions of the Pay or Play Program and will furnish all information and reports requested to determine compliance with program requirements of the Pay or Play Program (See Executive Order 1-7 for the terms of the Pay or Play program) The criteria of the program is as follows:

The Contractor/Subcontractor agrees to "Pay" \$1.00 per hour for work performed by covered employees under the contract with the City. If independent contract labor is utilized the Contractor/Subcontractor agrees to report hours worked by the independent contract laborer and pay \$1.00 per hour for work performed.

Otherwise the Contractor/Subcontractor agrees to "Play" by providing health benefits to each covered employee. The health benefits must meet the following criteria:

1. The employer will contribute no less than \$150 per employee per month toward the total premium cost for single coverage only; and
2. The employee contribution, if any amount, will be no greater than 50% of the total premium cost and no more than \$150 per month.
3. Pursuant to E.O. 1-7 section 4.04 a contractor is deemed to have complied with respect to a covered employee who is not provided health benefits if the employee refuses the benefits and the employee's contribution to the premium is no more than \$40 per month.

Please select whether you choose to:	Pay	Play	Both
		X	

The Contractor/Subcontractor will file compliance reports with the City, which will include activity for covered employees subject to the program, in the form and to the extent requested by the administering department. Compliance reports shall contain information including, but not limited to, documentation showing employee health coverage and employee work records.

Note: The Contractor is responsible to the City for the compliance of covered employees of covered subcontractors and only forms that are accurate and complete will be accepted.

*Estimated Number of:	Prime Contractor	Sub-Contractor
Total Employees on City Job	20	
Covered Employees	20	
Non-Covered Employees	0	
Exempt Employees	16	

*Required

I hereby certify that the above information is true and correct.

M.R. McCrary
Contractor (Signature)

12/23/19
Date

M.R. "Rod" McCrary, Vice President

Name and Title (Print or type)

00630
07-03-2012

EXHIBIT "J"

KEY PERSONNEL

Engineer's personnel to be employed in the Project are identified below to the extent known at the time of signing this Contract. Engineer shall not change the personnel identified below except with the Director's prior written consent, which shall not be unreasonably withheld. If any of Engineer's key personnel to be employed in the Project are not identified below, Engineer shall identify in writing such persons to the Director. If the Director does not approve of an individual, Engineer shall propose an alternate individual reasonably acceptable to the Director.

<u>Project Manager</u>	<u>Andres Berdugo, P.E.</u>
<u>Project Engineer</u>	<u>Roel Huerta, P.E.</u>
<u>Construction Administration</u>	<u>Doug Haude, P.E.</u>

EXHIBIT "K"

TITLE VI: NON-DISCRIMINATION

During the performance of this Agreement, Engineer, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations - The Engineer shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation ("DOT") 49 CFR Part 21, as may be amended from time to time ("Regulations"), which are incorporated by reference and made a part of this Agreement.
2. Non-discrimination - The Engineer, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Engineer shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment - In all solicitation, either by competitive bidding or negotiation, made by the Engineer for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential Subconsultant or supplier shall be notified by the Engineer of the Engineer's obligations under this Agreement and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports - The Engineer shall provide all information and reports required by the regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the FAA to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of the Engineer is in the exclusive possession of another who fails or refuses to furnish this information, the Engineer shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance - In the event of the Engineer's noncompliance with the non-discrimination provisions of this Agreement, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including but not limited to:
 - 5.1. withholding of payments to the Engineer under the Agreement until the Engineer complies, and/or
 - 5.2. cancellation, termination, or suspension of the Agreement, in whole or in part.
6. Incorporation of Provisions - The Engineer shall include the provisions of paragraphs 1-5 above in every subcontract, including procurement of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The Engineer shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. If the Engineer becomes involved in, or is threatened with, litigation with a Subconsultant or supplier as a result of such direction, the Engineer may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the Engineer may request the United States of America to enter into such litigation to protect the interests of the United States.

EXHIBIT "L"

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - LOWER-TIER COVERED TRANSACTIONS

This Agreement is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Vendor is required to confirm that none of the Vendor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the Vendor (referred to herein as the "prospective lower tier participant") is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AN VOLUNTARY
EXCLUSION—LOWER TIER COVERED TRANSACTIONS

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Exhibit "M"

BYRD ANTI-LOBBYING CERTIFICATION

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Engineer, AECOM Technical Services, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

6/30/2020

(Date)

M. R. McCrary, PE, DBIA

(Typed or Printed Name)
Disigned by:
Rod McCrary

(Signature)
Vice President

(Title)

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- "B" PROJECT SCHEDULE
- "C" EQUAL EMPLOYMENT OPPORTUNITY CONTRACT COMPLIANCE
- "D" BILLABLE RATES
- "E" DRUG POLICY COMPLIANCE AGREEMENT
- "F" CONTRACTOR'S CERTIFICATION OF NO SAFETY
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- "I" FORM POP-2 - CERTIFICATION OF AGREEMENT TO COMPLY WITH
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- "J" KEY PERSONNEL
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- "M" BYRD ANTI-LOBBYING CERTIFICATION

PROFESSIONAL ENGINEERING SERVICES CONTRACT

BETWEEN

CITY OF HOUSTON

AND

AECOM Technical Services, Inc.

FOR

CONSTRUCTION OF

HURRICANE HARVEY – TIGER TRAIL 4

WBS No. F-HARVEY-0004-3