

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 hereby this reference.
- ( ) Other – Grant Funds Available.

*Ronald C. Khoo*  
*Jenard Path*

City Controller of the City of Houston, Texas

Date: 11-25, 2014

FUND REF: 8500-2000-520155 AMOUNT: \$40,000.00 ENCUMB. NO.: 42-5822

*OA 46-12981*

*Fm BB 316615*

City of Houston, Texas Ordinance No. 2014-1041

AN ORDINANCE APPROPRIATING THE SUM OF \$40,000.00 OUT OF THE WATER AND SEWER SYSTEM CONSOLIDATED CONSTRUCTION FUND; APPROVING AND AUTHORIZING A PROFESSIONAL CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES AGREEMENT BETWEEN THE CITY OF HOUSTON AND BRIONES CONSULTING & ENGINEERING, LTD FOR WATER AND WASTEWATER CONSTRUCTION PROJECTS; CONTAINING PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.

\* \* \* \*

*DE*  
*MS*  
*Y/B*

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

Section 1. The City Council appropriates the sum of money set out in the title of this Ordinance, out of the funds set out in such title for the purpose 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. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 3rd day of December, 2014.

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 DEC 09 2014.



\_\_\_\_\_  
City Secretary

(Prepared by Legal Dept. Ames EPO)  
 (ARC/dg 11/18/2014) Assistant City Attorney  
 (Requested by Dale A. Rudick, P.E., Director, Department of Public Works &  
 Engineering)  
 (L.D. File No. 0811400062001)  
 G:\CONTRACT\DLG\ARC\Ordinances\2014 Briones Consulting. CMI Contract.doc

AYE	NO	
✓		<b>MAYOR PARKER</b>
....	....	<b>COUNCIL MEMBERS</b>
✓		STARDIG
✓		DAVIS
✓		COHEN
✓		BOYKINS
✓		MARTIN
✓		NGUYEN
	<b>ABSENT</b>	PENNINGTON
✓		GONZALEZ
✓		GALLEGOS
✓		LASTER
✓		GREEN
✓		COSTELLO
✓		ROBINSON
✓		KUBOSH
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	

**CERTIFICATE OF CITY CONTROLLER**

I, Ronald C. Green, 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 \$40,000.00 required for the project referenced in the title of this ordinance, do hereby certify as follows:

- (1) The sum of \$40,000.00 will be funded from water and sewer system bond proceeds and/or water and sewer system commercial paper proceeds (first-in-first-out basis) pursuant to Ordinance No. 93-1409 authorizing the creation of the Water and Sewer System Consolidated Construction Fund. To the extent that this sum will be paid with bond proceeds, it is in the treasury in the said fund, and is not appropriated for any other purpose.
- (2) To the extent that the \$40,000.00 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 Water and Sewer System Commercial Paper Ordinance, Ordinance No. 93-1209.

  
City Controller *Jenae Polk*

**WORK ORDER  
CONSTRUCTION MANAGEMENT AND  
INSPECTION SERVICES AGREEMENT  
FOR  
WATER AND WASTEWATER CONSTRUCTION PROJECTS  
WBS NOS. R-000020-0035-4**

**I. PARTIES**

**THIS CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES AGREEMENT** (this "Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** (the "City"), a home-rule city, and **BRIONES CONSULTING & ENGINEERING, LTD** ("Construction Project Manager"), a corporation authorized to do business in Texas.

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

**City:**

Director of Department of Public Works  
and Engineering or Designee  
City of Houston  
P. O. Box 1562  
Houston, Texas 77251  
Fax Number: (713) 837-7357

**Construction Project Manager:**

Rolando H. Briones, Jr., President  
**Briones Consulting & Engineering, LTD**  
4515 Briar Hollow Place, Suite 106  
Houston, Texas 77027  
Fax Number: (713) 583-5306

The Parties agree as follows:

This Agreement consists of the following sections:

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This Agreement consists of the following sections:

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- H CONSTRUCTION PROJECT MANAGER'S CERTIFICATE

**C. PARTS INCORPORATED**

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

**D. CONTROLLING PARTS**

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


**E. SIGNATURES**


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

**ATTEST/SEAL (if a corporation):**

**CONSTRUCTION PROJECT MANAGER:  
Briones Consulting & Engineering, LTD**

**WITNESS (if not a corporation):**

By:   
Name: KEVIN L. JOHNSTON  
Title: CFO

By:   
Name: Rolando H. Briones, Jr.  
Title: President  
Tax ID No.: 20-0763344

**ATTEST/SEAL:**


**CITY:  
CITY OF HOUSTON, TEXAS**

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Mayor

APPROVED:


COUNTERSIGNED BY:

  
\_\_\_\_\_  
Director, Public Works and Engineering  
Department

\_\_\_\_\_  
City Controller

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

  
\_\_\_\_\_  
Assistant City Attorney  
L.D. File No. 0811400062001

\_\_\_\_\_

## DEFINITIONS

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

- A. “Agreement” means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Construction Project Manager.
- B. “City” is identified in the preamble of this Agreement and includes its successors and assigns.
- C. “City Personnel” means all City employees, but not elected officials.
- D. “Construction Cost” means the direct actual cost to the City of all construction contract items for a Work Order, including labor, materials, and equipment (if applicable) required for a Work Order and reflected by the actual construction contract(s), but excluding: (1) fees or other costs of engineering and/or program/construction management and related services, (2) the cost of land and rights-of-way, (3) the City’s administrative expenses, and (4) cash allowances included in the construction contract that do not require design services of the Engineer or other service of the Construction Project Manager.
- E. “Construction Documents” means all of the graphic and written information prepared or assembled by an Engineer for communicating the design and for the bidding and construction of a Project.
- F. “Consultant” means the professional Consultant or other entity subcontracted by Construction Project Manager to provide a portion of the Construction Project Manager’s services required under this Agreement.
- G. “Consultant Subcontract Cost” means the ordinary and reasonable cost of Consultant subcontracts made by Construction Project Manager 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 Agreement.
- H. “Construction Project Manager” is identified in the preamble of this Agreement and includes its successors and assigns.
- I. “Construction Project Manager’s Fee”:
  - 1. Raw Salary: The actual cost of annual base salary (excluding bonuses) divided by 2080 of an employee of Construction Project Manager for each hour during

which such employee is actively performing services of benefit to the City and directly related to the Project. Maximum raw salary rates by employee category for the duration of the Agreement are shown in Exhibit "A".

2. Raw Salary Multipliers:

- 2.65 for field personnel (submitting reports to City directly) times a factor of 1.5 for nonprofessional hours worked by an individual over 40 hrs/wk;
- 2.70 for field personnel (submitting reports through Engineer) times a factor of 1.5 for nonprofessional overtime hours worked by an individual over 40 hrs/wk;
- 2.75 for nonprofessional staff located at City offices;
- 2.85 for professional staff at City offices; and
- 3.00 for professional and nonprofessional staff located at the Construction Project Manager's offices.

The Raw Salary Multiplier (when applied to Raw Salary) includes all payment due Construction Project Manager for Raw Salary, salary burdens, benefits, insurance, payroll taxes, bonuses, overhead profit and clerical and management support, vacations, holidays and non-productive time of all kinds. The categories of service for which Raw Salary are payable are set out in Exhibit "A." All other categories of service are treated as overhead and are a part of Raw Salary Multiplier. Payments to contract personnel and personnel employed through employment agencies are not subject to enhancement by the Raw Salary Multiplier.

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

K. "Director" means the Director of the Department of Public Works and Engineering, or the person he or she designates in writing.

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

M. "Engineer" means an engineering firm which has been selected by the City and under contract with the City to design a whole or portion of the Project.

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

O. "Project(s)" identified in the title of this Agreement. The Project may be divided into several subprojects.

P. "Reimbursable Expenses" are limited to the following: (1) the ordinary and reasonable cost of copying, printing (other than for Construction Project Manager's internal use), postage, delivery services, cellular and long distance telephone calls incurred by the Construction Project Manager in the course of its performance of services under this Agreement, (2) the ordinary and reasonable costs of travel including meals and lodging to and from points outside of Houston by representatives of the Construction Project Manager, not to exceed the amounts established under the City's then current travel reimbursement policy for its employees, if such travel is reasonably necessary to accomplish a task for the Project and authorized by the Director in writing, (3) permit fees for permits that the Director requests the Construction Project Manager to obtain for the City; and (4) any sales tax Construction Project Manager is legally required to pay for Reimbursement Expenses.

Q. "Work Order" means an individual project assignment, with a defined scope of services, time of performance, and agreed lump sum issued by the Director to the Construction Project Manager under this Agreement.

## **II. DUTIES OF CONSTRUCTION PROJECT MANAGER**

### **A. SCOPE OF SERVICES**

#### **1. Services in General**

- a. In consideration of payments specified in this Agreement, Construction Project Manager shall provide all labor, material, and supervision necessary to perform the professional construction administration and management services, construction inspection services, and supplemental activities described in this Agreement and in the Work Orders.
- b. It is understood that pursuant to this Agreement the Director shall issue one

or more Work Orders to the Construction Project Manager for individual construction management and inspection assignments within the scope of the Project definition. Within 14 days of a request by the Director, Construction Project Manager shall provide the City with a written work plan that describes the following:

- (1) Tasks to be accomplished for the Work Order,
- (2) The personnel who will accomplish the tasks,
- (3) The time of completion for each task, and
- (4) Detailed and scheduled fees for the Work Order including a breakdown of man hours with the corresponding Raw Salary and classification, estimated quantities and costs for Reimbursable Expenses, and Consultant Subcontract Costs.

The work plan shall be submitted to the Director for approval. Upon approval of the work plan and agreement on a lump sum amount, the Director shall issue a Work Order. The Work Order shall set out:

- (1) Scope of Services,
- (2) Time of Performance, and
- (3) The agreed lump sum amount.

The Construction Project Manager may not begin work until the Director has issued a Work Order. The Director may request a change to a Work Order at any time. In such event Construction Project Manager may submit a revised work plan that includes the same information as above for the requested changes. Construction Project Manager may not begin work on any changes to a Work Order until the Director issues a revised Work Order with a revised agreed lump sum.

## **2. Construction Administration and Management Services**

Upon request by the Director the Construction Project Manager shall perform the following services for a Work Order:

- a. Receive, track, coordinate, record, and respond to all submittals required by the construction contract. Coordinate review of laboratory, shop, and mill tests of material and equipment, and all submittals requiring technical

review, with the Engineer of Record for general conformity with Construction Document requirements and report to the Director in writing on such matters.

- b. Discuss design clarifications and recommendations with the Director to assist the City in resolving field problems relating to the construction. Prepare requests for proposals for design revisions and additions that may be needed or desired to accomplish the overall project. Evaluate proposals by the construction contractor in response to such requests.
- c. Perform together with the City's representatives, observations of the construction site to determine the dates of substantial and final completion of the work. Construction Project Manager shall make a recommendation to the Director as to the work meeting the criteria for substantial and final completion.
- d. Observe the construction site, together with the Director no less than 30 days and no more than 45 days before the expiration of the correction period established by the Construction Documents. Further, the Construction Project Manager within 14 days after such observation, shall furnish the Director with a written report enumerating items that require repair or replacement as provided under the correction period provisions of the Construction Documents.
- e. Prepare and maintain an overall schedule for efforts of the Construction Project Manager. A Work Order master schedule, (independent from but based on the construction contractor's schedule) shall indicate duration, responsibility, and sequencing for major construction activities. Establish overall duration, identify critical activities, and monitor and report the status of key decisions and issues influential to the progress of the work.
- f. Prepare the final estimate within two weeks after final inspection.
- g. Prepare and process the closeout "RCA" within 45 days after approval of the final estimate by construction contractor.
- h. Review and provide recommendations regarding the proposed construction schedule and updates thereof submitted by the construction contractor.

- i. Assist the City in conducting preconstruction and routine progress meetings, and record and distribute records of the meetings.
- j. Prepare and distribute as required, monthly status reports to include budget information, current estimates of Construction Cost and schedule, obligations and action items required, status of change orders, anticipated change orders, expenditures and estimated cost at completion, construction contractor payment reports, cash flow projection of City's expenditures, and other information necessary to define the current Work Order status.
- k. Receive, track, coordinate, record, and respond to all requests for information from the construction contractor. Coordinate all requests that require technical review and response from the Engineer of Record and address contractual implications of such technical clarification in the response to the construction contractor.
- l. Prepare and recommend construction-contract change orders. Maintain a record of all field orders, directives, time extensions, and requests for information, proposals, and change orders. Evaluate and negotiate proposals as authorized by the Director and make recommendations regarding change orders to the Director.
- m. Monitor the construction contractor's conduct of required testing to assure, in the Construction Project Manager's professional opinion, that required testing is performed, secure and distribute (or cause to be distributed) information from the testing laboratories to the City regarding necessary field and laboratory tests, and review the results of the tests with the City for compliance with the Construction Documents.
- n. Collect all records, certificates, guarantees, warranties and releases required from the construction contractor(s) and transmit to the Director as required. Maintain a file for transmittal to the Director at the completion of a Work Order.
- o. Assist the City with the analysis and defense of claims relating to a Work Order and maintain Work Order records to support this effort.
- p. Assist the City in the completion and acceptance procedures and tests

required for a Work Order.

- q. Administer the construction contract as assigned by a Work Order, work to achieve timely completion of the construction of the Work Order, process submittals, and coordinate activities of the construction contractor.
- r. Provide advice, reviews, and assistance to the City and the Engineer in connection with all queries, actions, or communications that the construction contract and the construction contractor's performance would pose for the City for construction under a Work Order.
- s. Assist City by coordinating as required with utility corporations and governmental agencies regarding crossings, closings, and relocations when construction contract work does not provide for actual field conditions and adjustments are necessary to proceed with the construction project. These shall include but not be limited to: railroads, transit lines, power companies, telephone companies, gas line corporations, adjacent municipalities, county agencies, water supply and sewerage districts, drainage and levee districts, and other local public entities.
- t. Perform review, coordination, and liaison work between City and Engineers, and interested public or private entities to achieve efficiency and continuity for a Work Order.
- u. Provide constructability review of and input to proposed changes in the construction project as necessary.
- v. Coordinate or monitor compliance of construction contractor regarding required permits and relevant laws.
- w. Provide project management and administration for performance of the above defined tasks to accomplish the goal of coordinating and expediting the completion of all Work Orders.
- x. Familiarization with studies, reports, etc., prepared in advance of construction contract as assigned by a Work Order.
- y. Review of working drawings and specifications related to the Project design where appropriate.
- z. Provide advice and consultation concerning such working drawings and

specifications, including particularly their adequacy, accuracy, and constructability.

- aa. Conduct meetings that include the Director, Engineer, and others prior to and during the construction phase of the Project and coordinate the above-mentioned parties.

### **3. Construction Inspection Services**

The Construction Project Manager shall perform professional construction inspection services for a Work Order. Such services shall consist of technical, on-site inspection of the materials, structures, equipment and workmanship and methods used by the construction contractor to verify that a Work Order is constructed in compliance with the Construction Documents and according to good construction practices. Construction Project Manager shall observe and report to the Director if in the Construction Project Manager's professional opinion the construction contractor is using or professing to use construction methods that may adversely affect the finished work. However, conduct of construction contractor's safety program as well as selection of construction contractor's means and methods shall remain the exclusive responsibility of the construction contractor. The construction inspection services shall include the following:

- a. Provide on-site observation of the progress and quality of work for the construction contract. Advise the construction contractor and the City of any observed deviations from the Construction Documents in a timely manner to minimize delay in the progress of the work.
- b. Inspect and observe the construction contractor's activities to verify that the work complies with the Construction Documents. Notify the Director and the construction contractor if the construction contractor's work is not in compliance with Construction Documents including all addendums and change orders and notify the Director of any failure of the construction contractor to take measures to place such work in compliance.
- c. Inspect and observe the materials and equipment being incorporated into the work to verify in the Construction Project Manager's professional opinion that they are handled, stored and installed properly and adequately

and are in compliance with the Construction Documents. Report to the Director regarding these activities.

- d. Identify problems encountered in accomplishing the work and recommend the appropriate action to the Director for resolution of problems to minimize impact on timely completion of the work.
- e. Attend and participate with the City and the construction contractor(s) in all routine meetings and inspections as set forth in the construction documents and special meetings when reasonably requested by the Director. Assist the City in responding to impacts and concerns of construction on citizens.
- f. Prepare and submit a report of daily construction activities. Maintain a daily progress diary to record work performed and significant job events.
- g. Assemble and maintain notes, comments, sketches and supportive data relative to a Work Order in order to facilitate the revisions of tracings to conform to the construction records. Provide a copy of the daily progress reports to the Director.
- h. Verify the quantities contained in the construction contractor's pay request and make recommendations to the Director regarding payment of periodic and final requests for payment.

#### **4. Supplemental Activities**

The Construction Project Manager shall perform supplemental activities not defined above but necessary and related to the purposes of this Agreement as authorized in writing by the Director. The Construction Project Manager may receive a written description of each activity from the Director, review its requirement, and submit a proposed not-to-exceed amount to perform such services. The Construction Project Manager shall not proceed on any supplemental activity unless the Director has approved the not-to-exceed amount and authorized the Construction Project Manager to proceed.

If authorized by the Director as a supplemental activity the Construction Project Manager shall cooperate fully with surety's representative in the event of contractor default and permit surety to copy all relevant documents at surety's

expense.

**B. COORDINATE PERFORMANCE**

Construction Project Manager shall coordinate its performance with the Director and other persons that the Director designates. Construction Project Manager shall promptly inform the Director and other person(s) of all significant events relating to its performance under this Agreement.

**C. REPORTS**

Construction Project Manager shall promptly submit all reports, progress updates to include daily construction inspection reports, reports on all meetings established by the construction documents, monthly progress reports, and weekly updates to the City's project management information system for required project information.

**D. PAYMENT OF CONSULTANTS**

Construction Project Manager shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. **CONSTRUCTION PROJECT MANAGER SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONSTRUCTION PROJECT MANAGER'S FAILURE TO MAKE THESE PAYMENTS.** Construction Project Manager shall submit disputes relating to payment of Minority and Women Business Enterprises (MWBE) Consultants, if any, to arbitration in the same manner as any other disputes under the MWBE subcontract.

**E. PERSONNEL OF THE CONSTRUCTION PROJECT MANAGER**

Construction Project Manager shall submit in writing all prospective personnel and Consultants to Director for approval. Construction Project Manager shall replace any of its personnel or Consultants whose work product is deemed unsatisfactory by the Director.

**F. INSURANCE**

Construction Project Manager shall maintain in effect certain insurance coverage,

which is described as follows:

**1. Risks and Limits of Liability**

Construction Project Manager shall maintain the following coverage and limits of liability:

<u>COVERAGE</u>	<u>LIMIT OF LIABILITY</u>
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	<ul style="list-style-type: none"><li>▪ Bodily Injury by Accident \$100,000 (each accident)</li><li>▪ Bodily Injury by Disease \$100,000 (policy limit)</li><li>▪ Bodily Injury by Disease \$100,000 (each employee)</li></ul>
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	Bodily Injury and Property Damage, Combined Limits of \$500,000 each Occurrence, and \$1,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit
Professional Liability Coverage	\$1,000,000 per claim/aggregate

**Aggregate Limits are per 12-months policy period unless otherwise indicated.**

If professional liability coverage is written on a "claims made" basis, Construction Project Manager shall also provide:

- (a) proof of renewal each year for 2 years after substantial completion of the last Work Order issued under this Agreement; or
- (b) in the alternative, evidence of extended reporting period coverage for 2 years after substantial completion of the last Work Order issued under this Agreement; or
- (c) a project liability policy for the project covered by this Agreement with a duration of 2 years after substantial completion of the last Work Order issued under this Agreement.

**2. Form of Policies**

The Director may approve the form of the insurance policies, but nothing the Director does or fails to do relieves Construction Project Manager from its duties to provide the required coverage under this Agreement. The Director's actions or inactions do not waive the City's rights under this Agreement.

**3. Issuers of Policies**

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

**4. Insured Parties**

The City shall be an additional insured under this contract. Each policy, except those for Worker's Compensation, Employer's Liability, and Professional Liability, must name the City (and its officers, agents, and employees) as Additional Insured parties on the original policy and all renewals or replacement.

**5. Deductibles**

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

**6. Cancellation**

- a. Construction Project Manager shall give the Director 30 days' advance written notice before its policies will be cancelled or not renewed.
- b. Construction Project Manager shall give written notice to the Director within 5 days of the date on which total claims by any party against Construction Project Manager reduce the aggregate amount of coverage below the amounts required by this Agreement.
- c. In the alternative to (b) above, the policy may contain an endorsement establishing a policy aggregate for the particular project or location that is the subject of this Agreement.

**7. Subrogation**

Construction Project Manager waives any claim or right of subrogation to recover against the City, its officers, agents, or employees and each Engineer's

insurance policies except professional liability must contain an endorsement waiving such claim.

**8. Endorsement of Primary Insurance**

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

**9. Liability for Premium**

Construction Project Manager shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.

**10. Consultants**

Construction Project Manager shall require all Consultants whose subcontracts exceed \$100,000 to provide proof of professional liability coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

**11. Delivery of Policies**

At the time this Agreement is signed, Construction Project Manager must furnish to the Director certificates of insurance in substantially the form shown in Exhibit "B". These certificates must bear the Construction Project Managers name for which they are insured. If requested by the Director, Construction Project Manager must provide the originals of all policies referred to above, or copies certified by the agent or attorney-in-fact issuing them.

Construction Project Manager shall continuously and without interruption, maintain in force the required insurance coverage specified in this Section. If Construction Project Manager does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Construction Project Manager from any further performance under this Agreement and begin procedures to terminate for default.

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

**12. Other Insurance**

If requested by the Director, Construction Project Manager shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Construction Project Manager's operations under this Agreement.

**G. STANDARD OF CARE**

Construction Project Manager'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 services Construction Project Manager provides under this Agreement.

**H. CONFIDENTIALITY**

Construction Project Manager, its agents, employees, contractors, and subcontractors shall hold all City information, data, and documents (collectively, "the Information") that they receive, or to which they have access, in strictest confidence. Construction Project Manager, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Construction Project Manager shall obtain written agreement from its agents, employees, contractors, and subcontractors, which bind them to the terms of this Section.

**I. USE OF WORK PRODUCT**

Construction Project Manager conveys and assigns to the City its entire interest and full ownership worldwide in and to any work, invention, Construction Documents, and all other Documents, and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively "Proprietary Rights") that Construction Project Manager, its agents, employees, contractors, and subcontractors (collectively "Authors") develop, write, or produce under this Agreement (collectively "Works").

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

Construction Project Manager shall execute all documents required by the Director to further evidence this assignment and ownership. Construction Project Manager shall cooperate

with the City in registering, creating, and enforcing Proprietary Rights arising under this Agreement. If Construction Project Manager's assistance is requested and rendered under this Section, the City will reimburse Construction Project Manager 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, Construction Project Manager shall deliver all Works to the City. Construction Project Manager shall obtain written agreements from the Authors in the form specifies in Exhibit "C" which bind them to the terms of this Section. All Works developed, written, or produced under this Agreement for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, are "works made for hire".

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

**J. LICENSES AND PERMITS**

Construction Project Manager shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation, except as provided in Section II.P. Construction Project Manager shall immediately notify the Director of any suspension, revocation, or other detrimental action against his or her license.

**K. COMPLIANCE WITH LAWS**

Construction Project Manager shall comply with all applicable State and federal laws and regulations and the City Charter and Code of Ordinances.

**L. PARTICIPATION IN BIDDING AND CONSTRUCTION**

Construction Project Manager agrees not to participate in the bidding process as a bidder and not to engage in construction of any work issued under this Agreement as a contractor or subcontractor. By written agreement, Construction Project Manager shall require each Consultant for the Project to be bound by the requirements of this Section.

**M. COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE**

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

**N. MWBE COMPLIANCE**

Construction Project Manager shall comply with the City's MWBE programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Construction Project Manager shall make good faith efforts to award subcontractors or supply agreements in at least 24% of the value of this Agreement to MWBEs. Construction Project Manager acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Affirmative Action Division and will comply with them.

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

**O. DRUG ABUSE DETECTION AND DETERRENCE**

It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale or use of illegal drugs or alcohol by contractors while on City premises is prohibited. The Construction Project Manager shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. I-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

Before the City signs this Agreement, Construction Project Manager shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

- a) A copy of its drug-free workplace policy,
- b) The Drug Policy Compliance Agreement substantially in the form set forth in

- Exhibit "F", together with a written designation of all safety impact positions, and
- c) If applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "H".

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

Construction Project Manager also shall file updated designations of safety impact position with the CCODT if additional safety impact positions are added to Construction Project Manager's employee work force.

Construction Project Manager shall require that its Consultants comply with the Executive Order, and Construction Project Manager shall secure and maintain the required documents for City inspection.

#### **P. PAY OR PLAY**

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

### **IV. DUTIES OF CITY**

#### **A. PAYMENT TERMS**

1. For services set out in Sections III.A.2 and III.A.3, excluding Section III.A.2.g, performed in accordance with this Agreement, from date of issuance of a Work Order to the date of the construction contract's final completion, the City shall pay a lump sum amount

agreed upon by the Director and Construction Project Manager which will be recorded in the Work Order when issued. If Director and Construction Project Manager do not agree to the lump sum amount for an individual project then the Director may send notice to the Construction Project Manager deleting such individual project from this Agreement. The Director may negotiate a lump sum fee for each Work Order equal to or less than the following:

- a. Raw Salary times Raw Salary Multiplier (where the total salary cost is calculated by multiplying actual Raw Salary times Raw Salary Multiplier times the estimated hours necessary to complete the Work Order);
- b. Estimated Reimbursable Expenses;
- c. Estimated Consultant Subcontract Cost plus 8%; plus
- d. Estimated reasonable contract personnel cost and cost of personnel employed through employment agencies, plus 8%.

The City shall pay Construction Project Manager based on invoices showing percentage of total services performed for the preceding month. Once the construction contractor has earned 25 percent of the construction contract value, the percentage of completion of the Construction Project Manager shall not exceed a percentage equal to the dollar value of work completed by the construction contractor/divided by the original contract amount in the construction contract.

2. City shall pay Construction Project Manager for services set out in Section III.A.2.g, performed in accordance with this Agreement the lump sum amount of \$3,500.00 for each construction contract that is the basis for a Work Order. The City will pay Construction Project Manager based on invoices upon complete performance of the services set out in Section III.A.2.g.

3. If any of the following conditions listed in subparagraphs a, b, c, or d below occur with respect to a project, the Director may, but is not obligated to, negotiate with the CPM for an increase in the lump sum fee, subject to the limitations of paragraph IV.D., for services performed under Sections III.A.2 and III.A.3, excluding services under Section III.A.2.g.:

- a. work required by the Construction Documents extends beyond the original contract time by more than 50% of the original contract time in the

Construction Documents,

- b. the City adds work to that delineated by the Construction Documents so that the contract value of the work is increased by more than five percent or the contract time is extended by more than 60 days; this does not include increases in value or costs due to quantity overruns of estimated unit price quantities, increases in value/costs or time due to concealed or unknown conditions; or increases in value/costs or time due to field revisions of work required by the original construction documents,
- c. due to construction contractor's failure to substantially complete the project within the contract time established by the construction documents and any changes made thereto, the Construction Project Manager recommends assessment of liquidated damages for a period that includes 60 successive days; and/or
- d. the City terminates the construction contractor's performance and requests completion by the contractor's Surety in accordance with Article 14 of its Standard General Conditions for construction contracts.

The additional fee amount will be paid on the basis set forth in paragraph IV.A.4.

4. For supplemental activities specifically authorized by the Director and performed in accordance with Section III A.4. and the authorization letter, the City shall pay Construction Project Manager the following for its services:

- a. Raw Salary times Raw Salary Multiplier; plus
- b. Consultant Subcontract Cost plus 8%; plus
- c. Reimbursable Expenses; plus
- d. Reasonable contract personnel cost and cost of personnel employed through employment agencies, plus 8%.

The Construction Project Manager shall perform all services in an authorization for the not- to-exceed amount set out in such authorization.

For authorized supplemental activities, invoices must show the breakdown of type and cost of each item included within the definition of Reimbursable Expenses; a breakdown of the individual expenditures allowable as travel costs under the definition

of Reimbursable Expenses; the actual invoice cost of Consultant Subcontract Cost, including a copy of the Consultant's invoice; and the number of hours expended by Construction Project Manager's employees for each task of the Project. Services under III.A.2.o that would exceed 15% of the lump sum, as demonstrated by the Construction Manager's submitted records of actual expenses, will be considered by the Director as supplemental activities for authorization and payment.

**B. METHOD OF PAYMENT**

1. For services performed in accordance with this Agreement, the City shall pay Construction Project Manager based on invoices submitted by Construction Project Manager and approved by the Director. Invoices against the lump sum amount for the work order will be based on the approved work plan per Section III.A.1. For authorized supplemental activities, invoices must show the breakdown of type and cost of each item included within the definition of Reimbursable Expenses; a breakdown of the individual expenditures allowable as travel costs under the definition of Reimbursable Expenses; the actual invoice cost of Consultant Subcontract Cost times 1.08, including a copy of the Consultant's invoice; and the number of hours expended by Construction Project Manager's employees for each task of the Project. The City shall make payments to Construction Project Manager at its address for notices within 30 days of receipt of an approved invoice.

**C. METHOD OF PAYMENT – DISPUTED PAYMENTS**

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

**D. LIMIT OF APPROPRIATION**

The fees specified in Section IV.A. above are Construction Project Manager's total compensation for its services under this Agreement. Under its Charter, the City may not

obligate itself by contract to pay more money than the amount the City Council appropriates. The City Council shall appropriate only \$40,000.00 (“Original Allocation”) to pay for services under this Agreement. The City’s obligation to Construction Project Manager under this Agreement shall not exceed the Original Allocation. However, the City Council, at its sole discretion, may appropriate additional funds for this Agreement as it awards future construction contracts.

**E. SUSPENSION OF PERFORMANCE**

The Director may suspend Construction Project Manager’s performance under this Agreement, with or without cause, by notifying Construction Project Manager in writing. Construction Project Manager shall resume work when directed to do so by the Director. The parties may negotiate and mutually agree in writing to a plan to reduce stand-by costs to be paid to Construction Project Manager by the City during the suspension period, which shall not exceed \$5,000.00 under any circumstances. The City shall not grant any compensation or extension of time under this Section if the suspension results from non-compliance of Construction Project Manager or its Consultants with any requirement of this Agreement.

**F. SUSPENSION BY CONSTRUCTION PROJECT MANAGER**

In the event the appropriation under the Contract is insufficient to compensate Construction Project Manager for Services in accordance with the payment provisions hereof, Construction Project Manager may suspend work under such Services at such time as the total appropriation is expended or obligated for payment to the Construction Project Manager, but shall resume such Services, if and when authorized by the Director, upon appropriation of additional funds by City Council.

**G. CERTAIN OTHER DUTIES OF THE CITY**

In addition to other duties under this Agreement, the City shall perform the following services:

1. When requested to do so in writing by the Construction Project Manager provide access to information such as existing drawings, maps, field notes, statistics, computations, and other data in the possession of the City which in the Director’s

opinion will assist the Construction Project Manager in the performance of its services hereunder; and

2. Examine documents submitted by the Construction Project Manager and render initial review and response pertaining thereto within five working days so as to avoid delay in the progress of the Construction Project Manager's services.

## **V. TERM AND TERMINATION**

### **A. CONTRACT TERM**

The Director may issue Work Orders for three years from the Countersignature Date. This Agreement is effective on the Countersignature Date and remains in effect until the final acceptance by the Director of the last Work Order issued by the Director.

### **B. TERMINATION FOR CONVENIENCE BY CITY**

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

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

**TERMINATION OF THE AGREEMENT OR WORK ORDER AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONSTRUCTION PROJECT MANAGER'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF**

**THIS AGREEMENT. CONSTRUCTION PROJECT MANAGER 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.**

**C. TERMINATION FOR CAUSE BY THE CITY**

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

1. Construction Project Manager fails to perform any of its duties under this Agreement;
2. Construction Project Manager becomes insolvent;
3. all or a substantial part of Construction Project Manager's assets are assigned for the benefit of its creditors; or
4. a receiver or trustee is appointed for Construction Project Manager.

If an Event of Default occurs, the Director may, but is not obligated to, deliver a written notice to Construction Project Manager describing the Event of Default and the termination date if the Director does not give the Construction Project Manager the opportunity to cure, or the date by which the Construction Project Manager must cure the Event of Default if the Director gives the Construction Project Manager the opportunity to cure. The Director, at his or her sole option may extend the termination date or cure date to a later date.

If after the cure period has expired, the Construction Project Manager has failed or refused to cure the Event of Default, then the Director may deliver a second written notice to Construction Project Manager giving notice of the termination of the Agreement or of the termination of Construction Project Manager's performance under the Agreement ("Notice of Termination").

After receiving the Notice of Termination, Construction Project Manager shall, unless

the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders, Consultants or subcontractors chargeable to this Agreement.

**D. TERMINATION FOR CAUSE BY CONSTRUCTION PROJECT MANAGER**

Construction Project Manager may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Construction Project Manager wishes to terminate the Agreement, then Construction Project Manager must deliver a written notice to the Director describing the default and the proposed date by which the City must cure the default. The date must be at least 30 days after the Director receives notice. Construction Project Manager, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Construction Project Manager may send a second written notice to the City giving notice of the termination of this Agreement.

**VI. MISCELLANEOUS**

**A. INDEPENDENT CONTRACTOR**

Construction Project Manager shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.

**B. FORCE MAJEURE**

1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, and other acts of God, explosions, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.

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

(a) uses due diligence to remove the effects of the Force Majeure as quickly as

possible; and

- (b) provides the other party with prompt written notice of the cause and its anticipated effect including the anticipated length of the suspension of services hereunder and the anticipated date of resumption.

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

If the Force Majeure continues for more than 14 days from the date performance is affected, the Director may terminate this Agreement by giving seven days written notice to Construction Project Manager. This termination is not a default or breach of this Agreement. **CONSTRUCTION PROJECT MANAGER WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.**

#### **C. SEVERABILITY**

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable to the extent permitted by law.

#### **D. ENTIRE AGREEMENT**

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

#### **E. WRITTEN AMENDMENT**

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Construction Project Manager. The Director is only authorized to perform the functions specifically delegated to him or her in this

Agreement.

**F. APPLICABLE LAWS**

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

Venue for any litigation relating to this Agreement rests exclusively within the state courts of Harris County, Texas.

**G. NOTICES**

All notices required or permitted by this Agreement must be in writing and must be effected by hand delivery; registered or certified mail, return receipt requested; or facsimile with confirmation copy mailed to receiving party. Notice is sufficient if made or addressed with proper postage to the address stated in the preamble of this Agreement for each party or faxed to the facsimile number stated in the preamble to this Agreement for each party. The notice is deemed delivered on the earlier of:

1. the date the notice is actually delivered;
2. the third day following deposit in a United States Postal Service post office or receptacle; or
3. the date the facsimile is sent unless the facsimile is sent after 5:00 p.m. local time of the recipient and then it is deemed received on the following day.

**H. CAPTIONS**

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

**I. NON-WAIVER**

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

Agreement.

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

**J. INSPECTIONS AND AUDITS**

City representatives may perform, or have performed, (1) audits of Construction Project Manager's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Construction Project Manager shall keep its books and records available for this purpose for at least 3 years after this Agreement terminates. If an audit by the City shows overcharges of eight percent or more for the relevant audit period, Construction Project Manager shall pay the overcharges within 30 days of being notified in writing by the City of the overcharge amount; at such time, pay the City interest on the overcharge amount at eight percent per annum calculated from the first of the month following the date each overcharge amount occurred; and pay the City the cost of the audit based on the hourly rates of the auditing City employees (times the hours actually expended) and the City's reasonable expenses.

**K. ENFORCEMENT**

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

**L. AMBIGUITIES**

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

**M. SURVIVAL**

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

**N. PUBLICITY**

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

**O. PARTIES IN INTEREST**

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

**P. SUCCESSORS AND ASSIGNS**

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

**Q. BUSINESS STRUCTURE AND ASSIGNMENTS**

Construction Project Manager shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest under ' Section 9.318 (c) of the Texas Business & Commerce Code. In the case of such an assignment, Construction Project Manager 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.

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

**R. REMEDIES CUMULATIVE**

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

**S. MEDIATION**

At the sole option of the Director, any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. The parties shall agree on mediator and shall share the mediator's fee equally conditioned upon the City's appropriation of sufficient funds to pay such fee. The mediation shall be held in Houston, Texas.

**T. CONSTRUCTION PROJECT MANAGER'S DEBT**

**IF CONSTRUCTION PROJECT MANAGER, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONSTRUCTION PROJECT MANAGER HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY CONSTRUCTION PROJECT MANAGER IN WRITING. IF CONSTRUCTION PROJECT MANAGER DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONSTRUCTION PROJECT MANAGER UNDER THIS AGREEMENT, AND CONSTRUCTION PROJECT MANAGER WAIVES ANY RECOURSE THEREFOR. CONSTRUCTION PROJECT MANAGER 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.**

## EXHIBIT "A"

### RAW SALARIES

Pursuant to Section II.I of the Agreement the following table represents the classifications and hourly raw salary rates of personnel the Construction Project Manager anticipates will be directly engaged on the Project.

Employee Classification:	Maximum Raw Salary Rate:
Principal	\$75.00 / hr
Project Manager	\$60.00 / hr
Senior Engineer	\$47.00 / hr
Engineer	\$42.00 / hr
Construction Manager	\$45.00 / hr
Senior Inspector	\$32.00 / hr
Civil Inspector	\$25.00 / hr
Tunnel Inspector	\$28.00 / hr
Senior CAD Technician	\$40.00 / hr
CAD Technician	\$30.00 / hr
Administrative Assistant	\$20.00 / hr

**EXHIBIT "B"**

**CERTIFICATE OF INSURANCE**

**EXHIBIT "C"**

**SUBCONTRACTOR'S ASSIGNMENT OF COPYRIGHT**

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

1. Construction Project Manager has entered into a Contract with the CITY OF HOUSTON, TEXAS ("City") to provide \_\_\_\_\_, as well as related support and consulting services ("Services").
2. Subcontractor is or will be providing services for Construction Project Manager related to its Contract with the City.
3. In the course of Subcontractor's work for Construction Project Manager related to the provision of Services to the City, Contract Documents and other work products will be produced by Subcontractor for the benefit of the City for which Subcontractor will be compensated by Construction Project Manager.
4. Contract Documents include but are not limited to reports, charts, analyses, maps, letters, tabulations, computer programs, exhibits, notes, models, photographs, the original transparencies of all drawings, all graphic and written information prepared or assembled by Subcontractor and all other work products obtained or prepared by Subcontractor as part of its services for Construction Project Manager.
5. For and in consideration of the foregoing, the Subcontractor shall grant and assign and hereby does grant and assign to the City all right, title, interest and full ownership worldwide in and to any work, invention and all Contract Documents, or any modifications or improvements to them, and the copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights therein, that are discovered, conceived, developed, written or produced by the Subcontractor, its agents and employees pursuant to its contract with Construction Project Manager (collectively "Works"), to have and to hold the same unto the City absolutely.
6. The Subcontractor agrees that neither it nor any of its agents and employees shall have any right to assert or establish a claim or exercise any of the rights embodied in any copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights related to the Works. If requested by the Construction Project Manager, the Subcontractor shall place a conspicuous notation upon any such Works which indicates that the copyright, patent, trademark or trade secret thereto is owned by the City of Houston.
7. The Subcontractor shall execute all documents required by the Construction Project Manager and the Director of the Building Services Department of the City ("Director") to

further evidence such assignment and ownership. The Subcontractor shall cooperate with the Construction Project Manager and the City in registering, creating or enforcing any copyrights, patents, trademarks, trade secrets or other possessory or proprietary rights arising hereunder. If any assistance by the Subcontractor is requested and rendered pursuant to this Section, the City shall reimburse the Subcontractor for all out-of-pocket expenses incurred by the Subcontractor in rendering such assistance, subject to the availability of funds. On termination of the Subcontractor's contract with Construction Project Manager or upon request by the Director, the Subcontractor shall deliver all Works to the City. The Subcontractor agrees that its agents and employees performing work hereunder are bound by the terms of this Exhibit.

IN WITNESS WHEREOF, Subcontractor has executed this Assignment as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Subcontractor

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT "D"

### EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible

for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

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

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

## EXHIBIT "E"

### MWBE SUBCONTRACT TERMS

Construction Project Manager shall insure that all subcontracts with MWBE subcontractors and suppliers are clearly labeled "THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT" and contain the following terms:

1. \_\_\_\_\_ (MWBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director").
2. \_\_\_\_\_ (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for inspection for at least 4 years after the end of its performance under this subcontract. Nothing in this provision shall change the time for bringing a cause of action nor the applicable statute of limitations.
3. Within 5 business days of execution of this subcontract, Construction Project Manager (prime Construction Project Manager) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.
4. Any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 -- "the Act"). Arbitration shall be conducted according to the following procedures:
  - a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.
  - b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association.
  - c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
  - d. If the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.
  - e. All arbitrations shall be conducted in Houston, Texas unless the parties agree to another location in writing.

**EXHIBIT "F"**

**DRUG POLICY COMPLIANCE AGREEMENT**

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

\_\_\_\_\_ (Construction Project Manager)  
(Name of Company)

have authority to bind Construction Project Manager 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 Construction Project Manager is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Construction Project Manager 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 Construction Project Managers (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Construction Project Manager Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**EXHIBIT "G"**

**DRUG POLICY COMPLIANCE DECLARATION**

I, \_\_\_\_\_ as an owner or officer of  
 (Name) (Print/Type) (Title)  
 \_\_\_\_\_ (Construction Project Manager)  
 (Name of Company)

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

This reporting period covers the preceding 6 months from \_\_\_\_\_ to \_\_\_\_\_,  
 20\_\_\_\_.

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

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

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

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

\_\_\_\_\_  
 Initials From \_\_\_\_\_ (Start Date) to \_\_\_\_\_ (End Date) the following test has occurred:

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

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

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

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

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

**EXHIBIT "H"**

**CONSTRUCTION PROJECT MANAGER'S CERTIFICATION  
OF NO SAFETY IMPACT POSITIONS  
IN PERFORMANCE OF A CITY CONTRACT**

\_\_\_\_\_, \_\_\_\_\_  
(Name) (Title)

as an owner or officer of \_\_\_\_\_  
(Construction Project Manager) (Name of Company)

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

in performing \_\_\_\_\_  
(Project)

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

\_\_\_\_\_  
(Date) (Typed or Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)