

**WORK ORDER CONSTRUCTION MANAGEMENT AND
INSPECTION SERVICES AGREEMENT
FOR
PAVING AND DRAINAGE
WBS NO.**

1. 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 municipal corporation and home-rule city of the State of Texas principally situated in Harris County, and, (“Construction Project Manager”), a corporation authorized to do business in Texas.

1.1 ADDRESSES. 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

Construction Project Manager

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

The Parties agree as follows:

This Agreement consists of the following sections:

1.2 TABLE OF CONTENTS. This Agreement consists of the following sections:

ARTICLE 1. PARTIES	1
1.1 Addresses.....	1
1.2 Table Of Contents	2
1.3 Parts Incorporated	3
1.4 Controlling Parts	3
1.5. Signatures.....	4
ARTICLE 2. DEFINITIONS	5
ARTICLE 3. DUTIES OF CONSTRUCTION PROJECT MANAGER	7
3.1 Scope of Services.....	7
3.2 Coordinate Performance	8
3.2 Reports	8
3.4 Payment of Consultants	9
3.5 Personnel of the Construction Project Manager.....	9
3.6 Insurance	9
3.7 Indemnification	11
3.8 Confidentiality	11
3.9 Use of Work Product	11
3.10 Licenses and Permits	12
3.11 Compliance with Laws.....	12
3.12 Participation in Bidding and Construction.....	13
3.13 Compliance with Equal Opportunity Ordinance.....	13
3.14 Minority and Women Business Enterprises Participation.....	13
3.15 Drug Abuse Detection and Deterrence	13
3.16 Title VI Assurances.....	14
3.17 Pay or Play	14
ARTICLE 4. DUTIES OF CITY.....	15
4.1 Payment Terms	15
4.2 Method of Payment	16
4.3 Method of Payment – Disputed Payments.....	17
4.4 Limit of Appropriation.....	17
4.5 Suspension of Performance	17
4.6 Suspension by Construction Project Manager	17
4.7 Access to Data.....	18
ARTICLE 5. TERM AND TERMINATION.....	18
5.1 Contract Term.....	18
5.2 Termination for Convenience by City	18
5.3 Termination for Cause by the City	19
5.4 Termination for Cause by Construction Project Manager	20
ARTICLE 6. MISCELLANEOUS.....	20
6.1 Independent Contractor.....	20
6.2 Force Majeure.....	20
6.3 Business Structure and Assignments.....	21
6.4 Parties in Interest.....	21
6.5 Non-Waiver.....	21

6.6	Applicable Laws	21
6.7	Notices	21
6.8	Captions.....	21
6.9	Acceptances and Approvals	22
6.10	Inspections and Audits	22
6.11	Ambiguities	22
6.12	Entire Agreement.....	22
6.13	Survival	22
6.14	Severability	22
6.15	Written Amendment.....	23
6.16	Enforcement	23
6.17	Publicity	23
6.18	Successors and Assigns	23
6.19	Remedies Cumulative	23
6.20	Construction Project Manager's Debt.....	23

EXHIBITS

- “A” RAW SALARIES**
- “B” CERTIFICATE OF INSURANCE**
- “C” DRUG POLICY COMPLIANCE AGREEMENT**
- “D” DRUG POLICY COMPLIANCE DECLARATION**
- “E” CONSTRUCTION PROJECT MANAGER'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS IN PERFORMANCE OF A CITY CONTRACT**
- “F” SUBCONTRACTOR'S ASSIGNMENT OF COPYRIGHT**
- “G” FORM POP 2 CERTIFICATION OF COMPLIANCE WITH PAY OR PLAY PROGRAM**
- “H” CERTIFICATION OF AGREEMENT TO COMPLY WITH STANDARD DOT TITLE VI ASSURANCES APPENDIX A LANGUAGE**

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

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

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

ATTEST & SEAL (if a corporation):
NOTARIZE & SEAL (if not a corporation):

By: _____
Corporate Secretary or Notary Public

Federal Tax Identification No. 76-0457613

ATTEST:

By: _____
City Secretary

APPROVED:

Director, Department of Public Works and Engineering

APPROVED AS TO FORM:

Assistant City Attorney
L.D. File No. _____

CONSTRUCTION PROJECT MANAGER:

By: _____
Name:
Title:

CITY:

THE CITY OF HOUSTON

By: _____
Mayor

COUNTERSIGNED BY:

City Controller

DATE COUNTERSIGNED:

ARTICLE 2.

DEFINITIONS

- 2.1 Definitions:** The following Definitions are used throughout this Contract, including Exhibit "A". See Exhibit "A" for any additional Definitions applicable to this Contract.
- 2.1.1 **Agreement:** This contract between the Parties, including all exhibits and any written amendments authorized by City Council and Construction Project Manager.
- 2.1.2 **City:** As identified in the preamble of this Agreement, including its successors and assigns.
- 2.1.3 **City Personnel:** All City employees, but not elected officials.
- 2.1.4 **Construction Cost:** 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 Construction Project Manager or other service of the Construction Project Manager.
- 2.1.5 **Construction Documents:** All of the graphic and written information prepared or assembled by a Professional Engineer for communicating the design and for the bidding and construction of a Project.
- 2.1.6 **Consultant (also "Subcontractor"):** 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.
- 2.1.7 **Consultant Subcontract Cost:** 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.
- 2.1.8 **Construction Project Manager:** As identified in the preamble of this Agreement and includes its successors and assigns, including a Certified Construction Manager ("CCM"), as required by the Construction Management Association of America (CMAA).
- 2.1.9 **Construction Project Manager's Fee:**
- 2.1.9.1 **Raw Salary:** The actual cost of salary (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 Contract are shown on Exhibit "A" attached hereto and, by reference, incorporated. The Raw Salary rates of Consultant shall not exceed the Raw Salary rates of Construction Project Manager without reasonable justification and prior written approval from the

Director.

2.1.9.2 **Raw Salary Multipliers:**

- 2.1.9.2.1 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;
- 2.1.9.2.2 2.70 for field personnel (submitting reports through Construction Project Manager) times a factor of 1.5 for nonprofessional overtime hours worked by an individual over 40 hrs/wk;
- 2.1.9.2.3 2.75 for nonprofessional staff located at City offices;
- 2.1.9.2.4 2.85 for professional staff at City offices; and
- 2.1.9.2.5 3.00 for professional and nonprofessional staff located at the Construction Project Manager's offices.
- 2.1.9.2.6 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 "B." 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.

- 2.1.10 **Countersignature Date:** The date shown as the date countersigned by the City Controller on the signature page of this Agreement.
- 2.1.11 **Director:** The Director of the Department of Public Works and Engineering, or such other person designated from time to time by the Director by notice to Construction Project Manager to administer this Contract on behalf of the City.
- 2.1.12 **Documents:** The reports, charts, analyses, maps, letters, tabulations, exhibits, notes, models, photographs, the original transparencies of all drawings, Construction Documents, computer programs including source and object codes, and other work products obtained by or prepared by Construction Project Manager as part of its services under this Contract. The Director shall specify the medium and format in which Construction Project Manager shall provide such documents.
- 2.1.13 **Professional Engineer:** 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.
- 2.1.14 **Parties:** All the entities set out in the preamble of this Agreement who are bound by this Agreement.
- 2.1.15 **Project(s):** As identified in the title of this Agreement. The Project may be divided into several

subprojects.

- 2.1.16 **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.
- 2.1.17 **Work Order:** 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.

ARTICLE 3.

DUTIES OF CONSTRUCTION PROJECT MANAGER

3.1 SCOPE OF SERVICES

3.1.1 Services in General

3.1.1.1 in accordance with Exhibit "A", Scope of Services, Construction Project Manager agrees to provide prompt and efficient professional services in relation to the construction and management of the Project for the fees hereinafter specified. Construction Project Manager shall perform its work in accordance with the professional skill and care ordinarily provided by competent Construction Managers, practicing in the same or similar locality and under the same or similar circumstances and professional license; and as expeditiously as is prudent considering the ordinarily professional skill and care of a competent Construction Manager.

3.1.1.2 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:

- 3.1.1.2.1 Tasks to be accomplished for the Work Order;
- 3.1.1.2.2 The personnel who will accomplish the tasks;
- 3.1.1.2.3 The time of completion for each task; and

3.1.1.2.4 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.

3.1.1.3 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:

3.1.1.3.1 Scope of Services;

3.1.1.3.2 Time of Performance; and

3.1.1.3.3 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.

3.1.1.4 Supplemental Activities.

3.1.4.1 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.

3.1.4.2 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.

3.2 COORDINATE PERFORMANCE. Construction Project Manager shall coordinate all of its performance with the Director and such other person(s) as the Director may specify. Construction Project Manager shall promptly inform the Director and other person(s) of all significant events relating to its performance under this Agreement.

3.3 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.

3.4 PAYMENT OF CONSULTANTS.

- 3.4.1 Construction Project Manager shall make timely payments to all persons and entities supplying labor, materials or equipment for the performance of this Contract in accordance with the State of Texas Prompt Payment Act.
- 3.4.2 Construction Project Manager agrees to protect, defend, and indemnify the City from any claims or liability arising out of Construction Project Manager's failure to make such payments.
- 3.4.3 Disputes relating to payment of MWBE subcontractors shall be submitted to mediation in the same manner as any other disputes under the MWBE subcontract. Failure of Construction Project Manager to comply with the decisions of the mediator may, at the sole discretion of the City, be deemed a material breach leading to termination of this Agreement.

3.5 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.

3.6 INSURANCE.

3.6.1 Risks and Limits of Liability. Construction Project Manager shall maintain the following insurance coverages in the following amounts:

<u>COVERAGE</u>	<u>LIMIT OF LIABILITY</u>
Workers' Compensation	<ul style="list-style-type: none"> • 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: Bodily and Personal Injury; Products and Completed Operations Coverage	<ul style="list-style-type: none"> • Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence, and \$1,000,000 aggregate
Automobile Liability	<ul style="list-style-type: none"> • \$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Professional Liability Coverage	<ul style="list-style-type: none"> • \$1,000,000 per occurrence; \$2,000,000 aggregate

Excess Liability applicable to Commercial General Liability, and Automobile Liability	<ul style="list-style-type: none"> • \$1,000,000
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

- 3.6.2 Insurance Coverage. At all times during the term of this Contract and any extensions or renewals, Construction Project Manager shall provide and maintain insurance coverage that meets the Contract requirements. Prior to beginning performance under the Contract, at any time upon the Director's request, or each time coverage is renewed or updated, Construction Project Manager shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Construction Project Manager shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Construction Project Manager waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Construction Project Manager shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance 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.
- 3.6.3 Form of insurance. The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Contract. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) 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 Best's Key Rating Guide.
- 3.6.4 Required Coverage. The City shall be an Additional Insured under this Contract, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other Contract provisions. Construction Project Manager waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Construction Project Manager's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Contract. If professional liability coverage is written on a "claims made" basis, Construction Project Manager 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.

3.6.5 **Notice.** **CONSTRUCTION PROJECT MANAGER SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the 30-day period, Contractor shall provide other suitable policies in order to maintain the required coverage. If Construction Project Manager does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.

3.7 **INDEMNIFICATION.** **CONSTRUCTION PROJECT MANAGER 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 (COLLECTIVELY, THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY ARISING AS A RESULT OF CONSTRUCTION PROJECT MANAGER 'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONSULTANTS', OR SUBCONTRACTORS' ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS IN CONNECTION WITH ITS PERFORMANCE UNDER THIS AGREEMENT, WHETHER CONSTRUCTION PROJECT MANAGER IS IMMUNE FROM LIABILITY OR NOT. CONSTRUCTION PROJECT MANAGER SHALL INDEMNIFY AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. THE INDEMNITY SHALL APPLY WHETHER OR NOT THE EVENT IS CAUSED BY THE CONTRIBUTORY NEGLIGENCE OF THE CITY.**

3.8 **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 divulge such records or the information contained therein except as approved in writing by the Director or as otherwise required by law. Construction Project Manager shall obtain written agreement from its agents, employees, contractors, and subcontractors, which bind them to the terms of this Section.

3.9 **USE OF WORK PRODUCT.** Construction Project Manager 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 Documents, including Construction Documents, or any modifications or improvements to them, and the copyrights, patents, trademarks, trade secrets, source and object codes and any other possessory or proprietary rights therein, that are discovered, conceived, developed, written or produced by the Construction Project Manager, its agents, employees, contractors and subcontractors pursuant to this Contract (collectively, the "Works"), to have and to hold the same unto the City absolutely. This right of ownership shall include the City's ability to modify, sell, or license all computer programs, including all access to programming codes necessary to do so.

3.9.1 Construction Project Manager agrees that neither it nor any of its agents, employees, contractors or subcontractors 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 Director, the Construction Project Manager 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.

3.9.2 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 any copyrights, patents, trademarks, trade secrets or other possessory or proprietary rights arising hereunder. If any assistance by the Construction Project Manager is requested and rendered pursuant to this Section, the City shall reimburse Construction Project Manager for all out-of-pocket expenses incurred by Construction Project Manager in rendering such assistance. On termination of this Agreement, or upon request by the Director, Construction Project Manager shall deliver all Works to the City. Construction Project Manager shall obtain written agreements in the form specified in Exhibit "F" from its agents, contractors and subcontractors performing work hereunder which bind them to the terms contained in this Section.

3.9.3 Construction Project Manager may, however, retain copies of such Documents. Construction Project Manager shall have the right to use such copies internally, but the Construction Project Manager may not sell, license or otherwise market such Documents. Upon request by the Director, the Construction Project Manager shall deliver such Documents to the City.

3.10 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 2.1.16. Construction Project Manager shall immediately notify the Director of any suspension, revocation, or other detrimental action against his or her license.

3.11 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.

3.12 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.

3.13 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE. Construction Project Manager shall comply with the City's Equal Employment Opportunity Ordinance as set out in Section 15-17 of the Code of Ordinances.

3.14 MINORITY AND WOMEN BUSINESS ENTERPRISES PARTICIPATION.

3.14.1 It is the City's policy to ensure that Minority and Women Business Enterprises ("MWBEs") have the full opportunity to compete for and participate in City contracts. The objectives of Chapter 15, Article V of the City of Houston Code of Ordinances, relating to City-wide Percentage Goals for contracting with MWBEs, are incorporated into this Contract.

3.14.2 Construction Project Manager shall make good faith efforts to award subcontracts or supply agreements in at least **24%** of the value of this Contract to MWBEs. Construction Project Manager 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. To this end, Construction Project Manager shall maintain records showing:

3.14.2.1 Subcontracts and supply agreements with Minority Business Enterprises;

3.14.2.2 Subcontracts and supply agreements with Women's Business Enterprises; and

3.14.2.3 Specific efforts to identify and award subcontracts and supply agreements to MWBEs.

3.14.3 Construction Project Manager shall submit periodic reports of its efforts under this Section to the Director of Office of Business Opportunity in the form and at the times he or she prescribes.

3.14.4 Construction Project Manager shall require written subcontracts with all MWBE subcontractors and suppliers and shall submit all disputes with MWBE subcontractors to binding mediation in Houston, Texas if directed to do so by the Director of Office of Business Opportunity. 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, then the subcontract must also be signed by the attorneys of the respective parties.

3.15 DRUG ABUSE DETECTION AND DETERRENCE.

3.15.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Construction Project Manager shall comply with all the

requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Engineers, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Contract and is on file in the City Secretary's Office.

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

3.15.2.1 A copy of its drug-free workplace policy;

3.15.2.2 The Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "D"; and

3.15.2.3 A written designation of all safety impact positions or, if applicable, a Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F".

3.15.3 If Construction Project Manager files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six months during the performance of this Contract or on completion of this Contract if performance is less than six months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "D". Construction Project Manager shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each six-month period of performance and within 30 days of completion of this Contract. The first six-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 Contract.

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

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

3.16 TITLE VI ASSURANCES. The requirements and terms of the United States Department of Transportation Title VI program, as revised from time to time, are incorporated into this Contract for all purposes. Construction Project Manager has reviewed Exhibit "I", and shall comply with its terms and conditions.

3.17 PAY OR PLAY. The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into this Contract for all purposes. Construction Project Manager has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions.

ARTICLE 4.

DUTIES OF CITY

4.1 PAYMENT TERMS.

4.1.1 For services set out in Sections 3.1.2 and 3.1.3, excluding Section 3.1.2.7, 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:

4.1.1.1 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);

4.1.1.2 Estimated Reimbursable Expenses;

4.1.1.3 Estimated Consultant Subcontract Cost plus 8%; plus

4.1.1.4 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.

4.1.2 City shall pay Construction Project Manager for services set out in Section 3.1.2.7, 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 3.1.2.7.

4.1.3 If any of the following conditions listed in subparagraphs 4.1.3.1, 4.1.3.2, 4.1.3.3, or 4.1.3.4 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 4.4., for services performed under Sections 3.1.2 and 3.1.3, excluding services under Section 3.1.2.7.:

4.1.3.1 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;

4.1.3.2 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;

4.1.3.3 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

4.1.3.4 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 4.1.4.

4.1.4 For supplemental activities specifically authorized by the Director and performed in accordance with Section 3.1.4. and the authorization letter, the City shall pay Construction Project Manager the following for its services:

4.1.4.1 Raw Salary times Raw Salary Multiplier; plus

4.1.4.2 Consultant Subcontract Cost plus 10%; plus

4.1.4.3 Reimbursable Expenses; plus

4.1.4.4 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 3.1.2.15 that would exceed 15% of the lump sum, as demonstrated by the Construction Project Manager's submitted records of actual expenses, will be considered by the Director as supplemental activities for authorization and payment.

4.2 METHOD OF PAYMENT.

4.2.1 The City shall pay on the basis of monthly invoices submitted by Construction Project Manager and approved by the Director, showing the services performed and the fee. Invoices against the lump sum amount for the work order will be based on the approved work plan per Section 3.1.1. 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 pay Construction Project Manager within 30 days of the receipt and approval of the invoices. The City shall make payments to the Construction Project Manager at the address for notices.

4.2.2 The City shall deduct 5% from all progress payments up to 100% of the lump sum fee. The final 5% will be paid upon the issuance of a Certificate of Final Completion to the Contractor, Certificate of Completion of all tasks identified in the Scope of Services, and the submission of all Project documentation.

4.3 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.

4.4 LIMIT OF APPROPRIATION. Construction Project Manager recognizes that under certain provisions of the Charter of the City of Houston, the City may not obligate itself by contract to an extent in excess of an amount appropriated by the City Council and further recognizes that only **\$40,000.00** has been appropriated and budgeted by City Council to pay the cost of services hereunder. 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.

4.5 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.

4.6 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.

4.7 ACCESS TO DATA.

4.7.1 In addition to its other duties under this Contract, the City shall, to the extent permitted by law, perform the following services:

4.7.1.1 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.

4.7.1.2 Examine the Construction Documents submitted by the Construction Project Manager and render decisions pertaining thereto within a reasonable time so as to avoid unnecessary delay in the progress of the Construction Project Manager's services.

ARTICLE 5. TERM AND TERMINATION

5.1 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.

5.2 TERMINATION FOR CONVENIENCE BY CITY.

5.2.1 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.

5.2.2 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 shall proceed to promptly cancel all existing orders and Consultant subcontracts insofar as such orders or subcontracts are chargeable to this Agreement or Work Order. Within seven days after the effective date of notice of termination, Construction Project Manager shall deliver copies of all Documents to the Director and 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 prescribed fees to Construction Project Manager for services actually performed under this Contract up to the date of termination less such payment on account of charges previously made, in the same manner as prescribed in Article 4 of this Contract. Any installments or lump sum fees shall be prorated in accordance with the progress of the Work at the effective date of termination. Construction Project Manager may, if necessary, submit

invoices for vendor and Consultant charges reasonably necessary for the Project which are incurred prior to the effective date of termination and received by Construction Project Manager after its initial termination invoice.

5.2.3 Construction Project Manager understands and acknowledges that if the City determines not to proceed with this Contract, according to the terms of this article, the Director shall provide Construction Project Manager with a written notice of his intent to terminate this Contract and this Contract shall terminate upon Construction Project Manager's receipt of such written notice.

5.2.4 **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.**

5.3 TERMINATION FOR CAUSE BY THE CITY. City may terminate this Contract in the event of a material default by Construction Project Manager and a failure by Construction Project Manager to cure such default after receiving notice thereof, as provided in this Section. Default by Construction Project Manager shall occur if Construction Project Manager fails to observe or perform any of its duties under this Contract, if Construction Project Manager dies (if an individual), Construction Project Manager becomes insolvent, all or a substantial part of Construction Project Manager's assets are assigned for the benefit of its creditors, a receiver or trustee is appointed for Construction Project Manager, or for some other reason is unable to render services hereunder. Should such a default occur, the Director will deliver a written notice to Construction Project Manager describing such default and the proposed date of termination. Such date may not be sooner than the seventh day following receipt of the notice. The Director, at his or her sole option, may extend the proposed date of termination to a later date. If Construction Project Manager cures such default to the Director's reasonable satisfaction prior to the proposed date of termination, then the proposed termination shall be ineffective. If Construction Project Manager fails to cure such default prior to the proposed date of termination, then City may terminate its performance under this Contract as of such date, and Construction Project Manager shall deliver all Documents to the Director within seven days of the effective date of the termination. If the City's cost of obtaining completion of the work by other engineers, in combination with other direct costs sustained by the City as a result of the default, exceeds the remaining contract amounts unpaid to Construction Project Manager, the City shall not be obligated to make any further payment to Construction Project Manager. This provision does not relieve Construction Project Manager of any other obligation Construction Project Manager may have to the City. 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.

- 5.4 TERMINATION FOR CAUSE BY CONSTRUCTION PROJECT MANAGER.** Construction Project Manager may terminate its performance only upon default of the City. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. Should such default occur, Construction Project Manager shall have the right to terminate all or part of its duties under this Contract as of the 14th day following the receipt by the City of a notice from Construction Project Manager describing such default and intended termination, provided: (1) such termination shall be ineffective if within the 14 day period the City cures the default; and (2) such termination may be stayed beyond such 14 day period, at the sole option of Construction Project Manager, pending cure of the default.

ARTICLE 6.

MISCELLANEOUS

- 6.1 INDEPENDENT CONTRACTOR.** The relationship of Construction Project Manager to the City shall be that of an independent contractor.
- 6.2 FORCE MAJEURE.**
- 6.2.1 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.
- 6.2.2 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.
- 6.2.3 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.
- 6.2.4 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.**

- 6.3 BUSINESS STRUCTURE AND ASSIGNMENTS.** Construction Project Manager shall not assign this Contract at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in Chapter 9 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.
- 6.4 PARTIES IN INTEREST.** This Contract shall not bestow any rights upon any third party, but rather, shall bind and benefit the City and Construction Project Manager only.
- 6.5 NON-WAIVER.** 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. The Director is not authorized to vary the terms of this Agreement.
- 6.6 APPLICABLE LAWS.** This Agreement 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, and to the extent required by any agreement between the City and any Federal agency, the laws 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. This Agreement is performable in Harris County, Texas.
- 6.7 NOTICES.** 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.
- 6.8 CAPTIONS.** The captions at the beginning of the articles and sections of this Agreement are guides and labels to assist in locating and reading such articles and sections and, therefore, will be given no effect In construing this Agreement and shall not be restrictive of or be used to interpret the subject matter of any article, section, or part of this Agreement.

- 6.9 ACCEPTANCES AND APPROVALS.** 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 Construction Project Manager, its employees, agents, Consultants, or suppliers for the accuracy, competency, and completeness for any Documents prepared or services performed pursuant to the terms and conditions of this Agreement, 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 Construction Project Manager, its employees, agents, Consultants or suppliers pursuant to this Agreement.
- 6.10 INSPECTIONS AND AUDITS.** Representatives of the City shall have the right to examine and review (1) all books, records, and billing documents which are directly related to performance or payment under this Agreement, and (2) inspections of all places where work is undertaken in connection with this Agreement. Construction Project Manager shall maintain such books, records, and billings for three years after the cessation of its other duties under this Agreement. 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. This right of audit extends to the records of Construction Project Manager's Consultants, and Construction Project Manager's agreements with its Consultants shall provide this right to the City.
- 6.11 AMBIGUITIES.** In the event of any ambiguity in any of the terms of this Contract, it shall not be construed for or against any Party because of such Party's involvement in the preparation or drafting of this Contract.
- 6.12 ENTIRE AGREEMENT.** This Agreement merges the prior negotiations and understandings of the parties hereto and embodies the entire agreement of the Parties, and there are no other agreements, assurances, conditions, covenants (expressed or implied) or other terms with respect to the subject matter hereof, whether written or verbal.
- 6.13 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 the term of this Agreement, including but not limited to, the indemnity provisions, and Ownership of Documents provisions of Article 2 of this Contract.
- 6.14 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.

- 6.15 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.
- 6.16 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.
- 6.17 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.
- 6.18 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.
- 6.19 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.
- 6.20 CONSTRUCTION PROJECT MANAGER'S DEBT. IF CONSTRUCTION PROJECT MANAGER, 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 THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONSTRUCTION PROJECT MANAGER HAS INCURRED A DEBT, THE CONTROLLER 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 CONTRACT, 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 CONTRACT.

EXHIBIT "A"

SCOPE OF SERVICES

- 1.1 Construction Administration and Management Services.** Upon request by the Director the Construction Project Manager shall perform the following services for a Work Order.
- 1.1.1 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.
 - 1.1.2 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.
 - 1.1.3 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.
 - 1.1.4 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.
 - 1.1.5 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.
 - 1.1.6 Prepare the final estimate within two weeks after final inspection.
 - 1.1.7 Prepare and process the closeout "RCA" within 45 days after approval of the final estimate by construction contractor.
 - 1.1.8 Review and provide recommendations regarding the proposed construction schedule and updates thereof submitted by the construction contractor.
 - 1.1.9 Assist the City in conducting preconstruction and routine progress meetings, and record and distribute records of the meetings.

- 1.1.10 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.
- 1.1.11 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.
- 1.1.12 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.
- 1.1.13 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.
- 1.1.14 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.
- 1.1.15 Assist the City with the analysis and defense of claims relating to a Work Order and maintain Work Order records to support this effort.
- 1.1.16 Assist the City in the completion and acceptance procedures and tests required for a Work Order.
- 1.1.17 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.
- 1.1.18 Provide advice, reviews, and assistance to the City and the Construction Project Manager 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.
- 1.1.19 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.

- 1.1.20 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.
- 1.1.21 Provide constructability review of and input to proposed changes in the construction project as necessary.
- 1.1.22 Coordinate or monitor compliance of construction contractor regarding required permits and relevant laws.
- 1.1.23 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.
- 1.1.24 Familiarization with studies, reports, etc., prepared in advance of construction contract as assigned by a Work Order.
- 1.1.25 Review of working drawings and specifications related to the Project design where appropriate.
- 1.1.26 Provide advice and consultation concerning such working drawings and specifications, including particularly their adequacy, accuracy, and constructability.
- 1.1.27 Conduct meetings that include the Director, Construction Project Manager , and others prior to and during the construction phase of the Project and coordinate the above-mentioned parties.

2.1 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:

- 2.1.1 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.
- 2.1.2 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.

- 2.1.3 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.
- 2.1.4 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.
- 2.1.5 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.
- 2.1.6 Prepare and submit a report of daily construction activities. Maintain a daily progress diary to record work performed and significant job events.
- 2.1.7 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.
- 2.1.8 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.

EXHIBIT "B"

RAW SALARIES

Pursuant to Section 2.1. 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.

<u>EMPLOYEE CLASSIFICATION</u>	<u>MAXIMUM RAW SALARY RATES</u>
Project Manager	\$38.50
Resident Engineer	\$38.00
Inspector	\$27.00
Administrative Assistant	\$21.50

EXHIBIT "C"

CERTIFICATE OF INSURANCE

Please visit <http://purchasing.houstontx.gov/guide.shtml>, and find "Insurance & Indemnification" for the most current insurance certificates and requirements.

EXHIBIT "D"

DRUG POLICY COMPLIANCE AGREEMENT

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

Of _____
(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 Engineers (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 "E"

DRUG POLICY COMPLIANCE DECLARATION

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

of _____
(Construction Project Manager) (Name of Company)

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

This reporting period covers the preceding six months from _____ to _____, 20__.

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

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

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

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

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

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

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

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

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

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

EXHIBIT "G"

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 HEREOF, Subcontractor has executed this Assignment as of this _____ day of _____, 20____.

Subcontractor: _____

By: _____

Title: _____

EXHIBIT "H"
FORM POP 2
CERTIFICATION OF COMPLIANCE WITH
PAY OR PLAY PROGRAM

Available at <http://www.houstontx.gov/obo/popforms.html>

EXHIBIT "I"

CERTIFICATION OF AGREEMENT TO COMPLY WITH STANDARD DOT TITLE VI ASSURANCES APPENDIX A LANGUAGE

During the performance of this Contract, the Construction Project Manager, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

- (1) **Compliance with Regulations:** The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) **Information and Reports:** The Contractor 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 Recipient or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the Recipient, or the Texas Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the Recipient shall impose such contract sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:
 - (a) withholding of payments to the Contractor under the Contract until the Contractor complies; and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Recipient or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Recipient to enter into such litigation to protect the interests of the Recipient, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.