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2017-0335

CONSTRUCTION MANAGER-AT-RISK CONTRACT

BETWEEN

THE CITY OF HOUSTON

AND

AUSTIN | GILBANE JOINT VENTURE

FOR

MICKEY LELAND INTERNATIONAL TERMINAL PROJECT

PROJECT NO. 826

CIP No.: A-0800

SOLICITATION NO. Q-H37-MLITCMAR-2016-033

City of Houston – Houston Airport System
MLIT CMAR CONTRACT

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IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Contract as of the Effective Date.

CMAR:

Austin Commercial, LP.
By Peter B. Durbin
Name: Peter B. Durbin
Title: VP, Aviation Operations
Tax ID NO. 75-2846966

CITY:

THE CITY OF HOUSTON, TEXAS

Hilary J. Sezen
By Amanda Washington
Mayor

ATTEST:

By Alex S.
Corporate Secretary

AND (IF A JOINT VENTURE)

By Daniel M. Gildane
Name: DANIEL M. GILDANE
Title: SENIOR VICE PRESIDENT
Tax ID NO. 05-0495530

ATTEST:

By Carolyn L. Russell
City Secretary

APPROVED:

5/25/17
By Mario C. Diaz
Mario C. Diaz
Director, Houston Airport System

APPROVED AS TO FORM:

MSQ
Sr. Assistant City Attorney
L.D. File No. 204170008300

ATTEST:

By Brad a. Gordon
Corporate Secretary

COUNTERSIGNED:

J. B. Brown
City Controller

DATE COUNTERSIGNED:

5/25/17
("Effective Date")

**City of Houston – Houston Airport System
MLIT CMAR CONTRACT**

**CMAR CONTRACT
MICKEY LELAND INTERNATIONAL TERMINAL PROJECT**

This CMAR Contract ("Contract") is entered into and effective as of the Effective Date, by and between the **CITY OF HOUSTON, TEXAS**, a home-rule city (the "City") and Austin Gilbane Joint Venture ("CMAR"), a joint venture organized and existing under the laws of the State of Texas and authorized to do business in the State of Texas (each also referred to as "Party" individually or "Parties" collectively).

The City is: The City of Houston, Texas

Address for Written Notice: P.O. Box 60106, Houston TX 77205-0106

The City Engineer is: Devon Tiner, P.E.

CMAR is: Austin Gilbane Joint Venture

Address for Written Notice: 4828 Loop Central, Loop Central Three, Suite 150,
Houston, TX 77081

E-mail address: spenson@austin-ind.com

The Project is: Mickey Leland International Terminal Building

Project Location: George Bush Intercontinental Airport

Project No: CIP No. A-0800

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RECITALS

WHEREAS, the City has determined to expand the Mickey Leland International Terminal as part of the ITRP;

WHEREAS, the City has determined that the best method for accomplishing the overall expansion is to split the ITRP into several smaller projects to be procured separately;

WHEREAS, this Contract constitutes the procurement for one of the projects that will form part of the whole ITRP project;

WHEREAS, the City has determined to implement the Project using the construction manager-at-risk project delivery method in accordance with Chapter 2269 of the Texas Government Code (the “Enabling Law”), which determination was made in accordance with the Enabling Law;

WHEREAS, pursuant to the Enabling Law, the City issued a Request for Qualifications (“RFQ”) on April 22, 2016 in order to obtain Statements of Qualifications from CMAR firms interested in being included on a shortlist of qualified CMAR firms who would be invited to submit proposals for the performance of the CMAR work necessary for the Project;

WHEREAS, in accordance with the requirements and criteria for selection set forth in the RFQ, the City on July 22, 2016 selected four CMAR firms (including the CMAR) for inclusion on its shortlist of qualified CMAR firms;

WHEREAS, pursuant to the Enabling Law, the City issued a Request for Proposals (“RFP”) on August 3, 2016 to each of the CMAR firms included on its shortlist of qualified CMAR firms;

WHEREAS, each of the qualified CMAR firms, including the CMAR, submitted a proposal (comprising a sealed technical proposal and a separate sealed cost proposal) in response to the RFP on August 8, 2016;

WHEREAS, following the review and selection process established in the RFP and based on the evaluation criteria and scoring formula set forth in the RFP, the City selected the CMAR as the highest ranked CMAR firm among the qualified CMAR firms that submitted proposals in response to the RFP;

WHEREAS, on February 20, 2017, the City initiated negotiations with the CMAR, which negotiations have concluded with this Contract;

WHEREAS, the City desires to receive, and the CMAR desires to provide, CMAR services for the Project in accordance with the terms and conditions of this Contract;

NOW THEREFORE, for and in consideration of the mutual covenants, agreements, and benefits to the Parties herein named, it is agreed as follows:

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**ARTICLE 1
THE PROJECT**

1.1 Project Description. As of the Effective Date, City intends to construct the Project as set forth in **Exhibit “B”**. The date of Substantial Completion for the Construction Phase will be established when and if the Director accepts CMAR’s Guaranteed Maximum Price proposal.

**ARTICLE 2
CONTRACT DOCUMENTS AND INTERPRETATION**

2.1 Contract Documents. The “Contract Documents” comprise:

- 2.1.1 this Contract and all Exhibits;
- 2.1.2 any GMP Amendment;
- 2.1.3 any Change Order or other Modification or Amendment;
- 2.1.4 any Notice to Proceed; and
- 2.1.5 any Construction Drawings and Specifications.

2.2 Interpretation. The Contract Documents are intended to be complimentary, and what is set forth in any one document is as binding as if set forth in each document. The Parties recognize that Amendments and Modifications may provide for specific modification to the terms and conditions of other Contract Documents, in which case, the modified terms and conditions shall govern, as expressly set forth in the Amendment or Modification. However, all terms and conditions of such other Contract Documents that are not expressly modified or deleted by an Amendment or Modification shall remain in effect. **Section 2.3** shall govern matters of interpretation related to the applicability, stringency, and consistency of the Contract Documents, which are included among the Contract Standards. Unless stated otherwise in this Contract, if a conflict between the sections of this Contract and the exhibits arises, the sections control over the exhibits.

2.3 Applicability of Contract Standards. The CMAR shall be obligated to comply only with those Contract Standards which are applicable in any particular case. Where more than one Contract Standard applies to any particular performance obligation of the CMAR hereunder, each such applicable Contract Standard shall be complied with. In the event there are different levels of stringency among such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern. In the event of any inconsistency among the Contract Standards, the CMAR shall notify the Director. The Director’s determination as to the applicable standard shall be binding.

2.4 Defined Terms. Capitalized terms used in the Contract Documents have the meanings set forth in **Exhibit “A”**. Further interpretation provisions are set forth in **Exhibit “A”**.

ARTICLE 3 GENERAL PERFORMANCE REQUIREMENTS

3.1 Reliance. The CMAR acknowledges and agrees that the City is entering into this Contract in reliance on the CMAR's expertise with respect to the performance of the Work. The Project will serve an essential public service and will be critically important to enable the City to continue to meet its needs and obligations. The CMAR shall perform the Work in accordance with the Contract Standards to further the interests of the City and the Project.

3.2 Scope of the Work. The scope of the Work is divided into Preconstruction and Construction Phase Services, as more thoroughly described in **Exhibit "B"**. The CMAR recognizes that, notwithstanding this division, the components of the Work may overlap and agrees to perform all Work in accordance with the applicable Contract Standards. Except as authorized under a CGMP Amendment, in no event will the CMAR commence performance of any construction prior to the issuance of a Notice to Proceed following the GMP Amendment Date.

3.3 Information Provided by or on Behalf of the City. The City has procured the services of the CMAR, for among other reasons, its ability to work with the Design Professional in the development of the Project design, not as an Architect or Engineer, but as a construction manager and building contractor experienced in the type and scope of construction involved with the Project. As such, at certain times or milestones specified by the City, it shall be the responsibility of the CMAR to review the drawings and Project Manual, and advise the City of any error, inconsistency, or omission which was discovered, or which should have been discovered by a reasonably competent construction manager and/or contractor, and to timely recommend alternative solutions whenever the design affects construction feasibility, budget, risks, or schedules (all without assuming the Design Consultants' professional responsibility). Consistent with the scope of these duties, the City makes no representation or warranty with respect to any information provided to the CMAR by or on behalf of the City in connection with this Contract. The CMAR shall assess all risks related to the Project and independently verify and confirm all information supplied to it by or on behalf of the City and upon which the CMAR elects to rely in connection herewith. Notwithstanding the foregoing, CMAR assumes no liability for design errors in documents provided by the City or the Design Consultants. Except as may reasonably be requested by the CMAR, expressly permitted by this Contract and General Conditions, and provided there is no resulting increase to the GMP or the Contract Time (unless otherwise agreed by the Director in his sole discretion), CMAR shall have no right to relief hereunder, or to make any claim against the City, or to seek any adjustment to Contract Compensation or the Contract Times as the result of any error, omission, or insufficiency relating to any information provided to the CMAR by or on behalf of the City in connection with this Agreement, to the extent such error, omission, or insufficiency should have been identified by the CMAR during the development of the Construction Documents as part of the duties of the CMAR hereunder.

3.4 Related Projects: The CMAR acknowledges that the City may undertake other capital projects at or near the Project ("Related Projects") and agrees to accept the obligations of the CMAR concerning the Related Projects, as set forth in the General Conditions. Nothing in the Contract Documents shall be interpreted as granting the CMAR exclusive occupancy of the Project Site. The CMAR must ascertain to its own satisfaction the scope of the Project and the nature of any other contracts that have been or may be awarded for any Related Project(s).

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3.5 Responsibility for Personnel and CMAR-Related Entities. All obligations of the CMAR hereunder shall be performed by CMAR-Related Entities (subject to the limitations established herein) who are qualified to perform the specific services and meet all licensing and certification requirements of Applicable Law. The CMAR shall be fully responsible, in accordance with the terms and conditions of the Contract Documents, for all Work performed by all CMAR-Related Entities. The CMAR shall, as between itself and the City, be responsible and liable to the City for, and not relieved of, its obligations under the Contract Documents by, the acts, omissions, breaches, defaults, non-compliance, negligence, wilful misconduct, or other legal fault of each CMAR-Related Entity and all references in this Contract to any act, omission, breach, default, non-compliance, negligence, wilful misconduct, or other legal fault of the CMAR will be construed accordingly to include any such act, omission, breach, default, non-compliance, negligence, wilful misconduct or other legal fault committed by any other CMAR-Related Entity.

3.6 Key Personnel. The CMAR acknowledges that the identity and commitment of certain key management and supervisory personnel proposed by the CMAR in its Proposal were material factors in the selection of the CMAR to perform this Contract. Such personnel, their affiliations, and their anticipated roles in the performance of the Work are set forth in **Exhibit "D"**. The CMAR shall utilize such personnel to perform such services unless such personnel are unavailable for good cause shown. "Good cause shown" shall not include performing services on other projects for the CMAR or any of its Affiliates, but shall include termination for cause, employee death, disability, retirement, or resignation. In the event of any such permissible unavailability, the CMAR shall utilize replacement key management and supervisory personnel of equivalent skill, experience, and reputation. Any on-site personnel change shall be proposed to the Director with reasonable advance notice (no less than 30 days) for the Director's review and approval, which shall not be unreasonably withheld or delayed. The Director may exclude from the Project any personnel performing Work if the Director, acting reasonably, determines that an unworkable relationship has developed between the City and the individual.

3.7 Designated Representative. The individual identified in **Exhibit "D"** as the "Designated Representative" shall, until further designation under this Section, act as the designated representative of the CMAR with respect to this Contract and shall coordinate with the Director as to administrative matters under this Contract. The CMAR may replace the individual designated as its representative under this Contract from time to time by written notice to the Director, subject to the reasonable approval of the Director. The CMAR shall replace the individual designated as its representative under this Contract at any time upon written notice by the Director in the Director's reasonable discretion. Any individual designated as the representative of the CMAR under this Contract shall have sufficient qualifications and experience to serve as the CMAR's representative hereunder and shall be vested with the authority to act on behalf of the CMAR, to receive notices on behalf of the CMAR, to make binding decisions with respect to the performance of the Work, and to bind the CMAR with respect to any certification to be made by the CMAR hereunder. The designated representative shall be the Director's primary contact for the performance of the Work and shall be available, as required, for the benefit of the City and the Project.

ARTICLE 4 PRECONSTRUCTION SERVICES

4.1 Generally. The CMAR shall render and perform the Preconstruction Services for the City in accordance with **Exhibits "B" & "E"** and all other applicable Contract Standards. The

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CMAR's responsibility for the Preconstruction Services includes the responsibility to employ or subcontract with (subject to the limitations established herein) all necessary professionals, technicians and engineers, properly qualified, licensed and skilled in the various aspects of the Preconstruction Services, and to perform all services reasonably inferable from the description of the Preconstruction Services.

4.2 Notices to Proceed. The CMAR shall commence performing Preconstruction Services upon the date specified in a Notice to Proceed with Preconstruction Services issued by the Director. The CMAR is not entitled to reimbursement for any costs for performance of Preconstruction Phase Services incurred prior to the issuance of a Notice to Proceed. The CMAR acknowledges that the Preconstruction Services are segregated into discrete tasks associated with the advancement of the Preconstruction Services, as identified in **Exhibit "B"**, and that a Notice to Proceed with Preconstruction Services may be limited to certain specifically identified tasks. The City will therefore have the right to issue multiple Notices to Proceed with respect to Preconstruction Services, identifying the Preconstruction Services tasks to be performed by the CMAR.

4.3 Ownership and Use of Work Products.

- 4.3.1 CMAR conveys and assigns to the City its entire interest and full ownership worldwide in and to any work, invention, notes, plans, computations, data bases, tabulations, exhibits, reports, underlying data, photographs and other work products, and any modifications or improvements to them (collectively "Documents"), and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively "Proprietary Rights") that CMAR, its agents, employees, contractors, and Subconsultants (collectively "Authors") develop, write, or produce under this Contract (collectively "Works").
- 4.3.2 The Authors shall not claim or exercise any Proprietary Rights related to the Works. If requested by the Director, CMAR shall place a conspicuous notation on any Works which indicates that the City owns the Proprietary Rights.
- 4.3.3 CMAR shall execute all documents required by the Director to further evidence this assignment and ownership. CMAR shall cooperate with the City in registering, creating, and enforcing Proprietary Rights arising under this Contract. If CMAR's assistance is requested and rendered under this Section, the City shall reimburse CMAR for all out-of-pocket expenses it incurs in rendering assistance, subject to the availability of funds. On termination of this Contract, or if requested by the Director, CMAR shall deliver all Works to the City. CMAR shall obtain written agreements from the Authors which bind them to the terms in this Section.
- 4.3.4 All Works developed, written, or produced under this Contract 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."
- 4.3.5 CMAR may retain copies of the Documents for its archives. CMAR shall not otherwise use, sell, license, or market the Documents. The City, however, grants CMAR, and its respective members, a license to use the Documents solely for business development and marketing purposes.

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4.4 **CGMP.** The Parties anticipate that there may be some phases of Construction that are ready for commencement before the GMP Amendment Date. The CMAR may recommend such phases or elements of the Construction (“Advanced Packages”) to the Director, as appropriate, during performance of the Preconstruction Phase Services. The Director shall have the sole discretion to authorize an Advanced Package pursuant to this Section and **Exhibit “B”** but has no obligation to enter into any CGMP Amendment. Prior to any such authorization, the CMAR shall provide the Director with a CGMP Submittal in accordance with Section 4.5 and **Exhibit “F”**.

4.5 **CGMP Submittal.** The CMAR shall prepare and submit the CGMP Submittal in accordance with **Exhibit “F”** and all other applicable Contract Standards. In the event the Director believes the CGMP Submittal does not comply with the requirements of the Contract and **Exhibit “F”**, the Director shall provide written notice to the CMAR of any additions, corrections, or revisions required to achieve such compliance. The CMAR, without any increase in the Preconstruction Phase Services Fee, shall promptly take all necessary rectification action, making multiple re-submittals, if required.

4.6 **CGMP Negotiation and Execution.** If the Director agrees to authorize the commencement of a portion of Construction under a CGMP Submittal, the CMAR and Director shall negotiate and enter into a CGMP Amendment. A CGMP Amendment at a minimum shall incorporate and definitively address all of the items identified in **Exhibit “F”**, and shall contain any other commercial terms and conditions specific to the Advanced Package (but shall not alter the terms and conditions of this Contract). Advanced Packages may be structured in a manner that provides for the commencement of the related Construction at any time determined by the Parties.

4.7 **CGMP Amendment.** If the Parties mutually agree to the terms of the CGMP Submittal, following negotiations at the election of the Director in his sole discretion and subject to approval by the Director, the Parties will enter into the CGMP Amendment and the CGMP Amendment Date will be established hereunder. Subject to the appropriation of funds, the Director has the authority to enter into a CGMP Amendment. Upon the Director’s approval of a CGMP Amendment, the CGMP Amendment shall become a part of this Contract for all purposes.

4.8 **Complete Pricing.** It is the intention of the Parties that each CGMP Submittal, and any associated CGMP Amendment, includes complete pricing for the Work to be performed thereunder. At the time of submission of the CGMP, the CMAR will provide a schedule for the Work to be performed thereunder. In addition to the Cost of the Work, the CGMP Amendment will include an agreed upon Contingency and Allowances. Except for CGMPs completed prior to the NTP for Phase 2 Construction, to the extent there are unused funds in the CGMP, such underruns shall apply to the GMP Contingency. Underruns for CGMPs completed prior to NTP for Phase 2 Construction shall be returned to the City in the absence of a GMP. The Construction Phase Fee, however, is intended to and shall be applicable to all construction whether performed as part of the CGMP Amendment or otherwise with the Construction Phase. The Parties acknowledge and agree that the Preconstruction Phase Services fee and the rate for the Construction Phase Fee were negotiated by the Parties prior to the Effective Date and included in the Contract as executed on the Effective Date, and shall not be revised by the CGMP and/or GMP Submittal or the CGMP and/or GMP Amendment.

4.9 **CGMP Compensation.** The City shall pay the CGMP Price for the Advanced Package Work to the CMAR for Work properly performed and completed pursuant to the terms of the CGMP Amendment in accordance with, and subject to the limitations contained in this Contract,

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notwithstanding the fact that no GMP Amendment will be in effect at the time the Parties execute a CGMP Amendment. City agrees to release all retainage related to Advanced Package Work when CMAR completes the CGMP Work pursuant to the CGMP Amendment terms. All related Warranties, as applicable, for Work performed under the CGMP will commence upon completion of the CGMP Work

4.10 GMP Submittal. The CMAR shall prepare and submit the GMP Submittal in accordance with **Exhibit “F”** and all other applicable Contract Standards. In the event the Director believes the GMP Submittal does not comply with the requirements of the Contract including **Exhibit “F”**, the Director shall provide written notice to the CMAR of any additions, corrections, or revisions required to achieve such compliance. The CMAR, without any increase in the Preconstruction Phase Services Fee, shall promptly take all necessary rectification action, making multiple re-submittals, if required.

4.11 GMP Amendment. If the Director determines to accept the GMP Submittal, following negotiations at the election of the Director in its sole discretion and subject to approval by the City Council, the Parties will enter into the GMP Amendment and the GMP Amendment Date will be established hereunder and thereupon the Construction Phase shall commence. Upon countersignature by the City Controller, the GMP Amendment shall become a part of this Contract for all purposes.

4.12 Failure to Reach a GMP. In the event the City rejects the GMP Amendment, the City in its sole discretion may direct the CMAR to work with the Design Consultant at no additional cost to the City, to adjust the design and/or scope to attempt to bring the Guaranteed Maximum Price to an amount acceptable to the City or the City may elect to end its attempt to reach an agreement with the CMAR. The City shall be entitled to use any intellectual property developed by or on behalf of CMAR for this Project for the completion, maintenance and further development of the Project, or for any other purpose, without additional compensation to CMAR.

ARTICLE 5 **CONSTRUCTION SERVICES**

5.1 Generally. The CMAR shall render and perform Construction Phase Services for the City in accordance with **Exhibit “B”**, **Exhibit “C”**, and all other applicable Contract Standards. The CMAR’s responsibility for the Construction Phase Services includes the responsibility to employ or subcontract with (subject to the limitations established herein) all necessary professionals, technicians and engineers, properly qualified, licensed and skilled in the various aspects of the Construction Phase Services, and to perform all services reasonably inferable from the description of the Construction Phase Services.

5.2 Notices to Proceed. The CMAR shall commence performing Construction Phase Services upon the date specified in a Notice to Proceed with Construction Phase Services issued by the Director. The CMAR acknowledges that the Construction Phase Services are segregated into discrete tasks associated with the advancement of the Preconstruction Services, as identified in **Exhibit “B”**, and that a Notice to Proceed with Construction Phase Services may be limited to certain specifically identified tasks. The City will therefore have the right to issue multiple Notices to Proceed with Construction Phase Services, identifying the Construction Phase Services tasks to be performed by the CMAR.

5.3 The CMAR warrants, represents, covenants, and agrees that all of the services to be performed by it under or pursuant to this Contract shall be of at least the standard and quality

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which prevail among similar businesses and organizations with knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances and involving a project such as the Project, including the performance of work in a high volume and international airport with ongoing operations.

5.4 The CMAR's duties as set forth herein shall at no time be in any way diminished by reason of any approval by the City or the Director nor shall the CMAR be released from any liability by reason of such approval by the Director, it being understood that the City at all times is ultimately relying upon the CMAR's skill and knowledge in performing the services required hereunder.

5.5 The CMAR warrants, represents, covenants, and agrees that the CMAR and all persons connected with the CMAR directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.

5.6 The CMAR warrants, represents, covenants, and agrees to notify Director in writing within five days of anything within its knowledge which it discovers of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the CMAR (by the City or any other party) which the CMAR considers in its opinion to be unsuitable, improper, inaccurate, or defective in any way in connection with the purposes for which such document or data is furnished. Nothing shall excuse or detract from the CMAR's responsibilities or obligations hereunder in any case where such document or data is furnished unless the CMAR advises City in writing that in CMAR's opinion such document or data and any requests made therein for action are unsuitable, improper, inaccurate or defective, and City confirms in writing that it wishes the CMAR to proceed in accordance with the documents or data as originally given. CMAR shall suspend that portion of the Work affected by the reported discrepancy until clarification is received. If CMAR does not suspend work, any increase in cost as a result, including the necessity to perform any re-work, shall be borne by CMAR and not be reimbursable under this Contract. Notwithstanding the foregoing, CMAR shall be responsible for all errors and omissions and lack of coordination in its own documents and the documents created by those working for CMAR.

5.7 The CMAR warrants, represents, covenants, and agrees to furnish efficient business administration and superintendence and perform its services hereunder in the best way and in the most expeditious and economical manner consistent with the requirements of the Contract Documents.

5.8 In accordance with and not as an expansion of the time limitations set forth in the General Conditions, the CMAR warrants, represents, covenants, and agrees that it shall, at its own cost, make good any errors or omissions in the Preconstruction Services and Construction Phases it performs as soon as the CMAR becomes aware of such errors or omissions or is notified of such errors or omissions. Should the CMAR refuse or neglect to make good such errors or omissions within a reasonable time after receiving written notice requesting such remedial work, then the City shall be entitled to make good such errors or omissions at the expense of the CMAR. This commitment by CMAR is in addition to, and not in substitution for, any other remedy for errors or omissions in the Preconstruction Phase Services and Construction Phases which the City may have at law or in equity.

5.9 CMAR shall attend training on the HAS Project Management System and utilize that system for the numbering and tracking for all Work records, including, Modifications, requests for information, submittals and supplementary instructions, and shall provide updated records,

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including meeting minutes, at each meeting with City as requested. The numbering system shall be consistent with the HAS Project Controls System.

5.10 Subcontracts or other agreements shall conform to the applicable payment provisions of the Contract Documents, and shall not be awarded on the basis of cost plus a fee without the prior written consent of Director.

5.11 CMAR shall require its Subcontractors who have not competitively bid to disclose to Director their markups (both overhead and profit), estimates, and costs calculated in their bids or incurred or expected in sub-subcontracts and the Work performed, including any Change Order Work.

5.12 CMAR shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to CMAR by the terms of the Contract Documents, and to assume toward CMAR all the obligations and responsibilities that CMAR, by these Documents, assumes toward City. Each subcontract agreement shall preserve and protect the rights of City under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, CMAR shall require each Subcontractor to enter into similar agreements with sub-subcontractors. CMAR shall make available to the Director and to each proposed subcontractor prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors. CMAR shall provide City with a copy of each subcontract agreement upon request.

5.13 Each subcontract agreement is assignable by CMAR to City on acceptance by the Director of the assignment. CMAR agrees to execute such additional documents as City may request to confirm such assignments. CMAR shall include a provision in each subcontract agreement recognizing the rights of City pursuant to the foregoing contingent assignment. Despite such acceptance by City of any such assignment, City shall not be liable for anything under such subcontract prior to the acceptance by City of the assignment or for any liability of CMAR to the Subcontractor. Acceptance of any such assignment shall not relieve CMAR or the Subcontractor of their responsibilities and liabilities for any Work performed prior to City's acceptance of such assignment.

5.14 Nothing contained in the Contract Documents shall create any obligations or liabilities owed by City to any Subcontractor or Supplier. Except as may be required by law, City shall have no liability or responsibility for the performance or misperformance of any Subcontractor, Supplier, or consultant, even if City designated, required, identified or approved such Subcontractor, Supplier, consultant, or sub-consultant of any tier.

5.15 CMAR is an independent contractor and not an agent of City. CMAR shall be liable to City for acts and omissions that result in a breach of the obligations herein of CMAR and CMAR's Subcontractors and Suppliers of any tier, and their agents, employees and parties in privity of contract with any of them and anyone acting on behalf of any of them, and any other persons performing any of the Work directly or indirectly under contract with CMAR, including any design professionals and their consultants and sub-consultants of any tier.

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5.16 CMAR and any of its design professionals, consultants, the Subcontractors and Suppliers and their agents and employees warrant that the information provided to City about the qualifications, including financial information and past performance, is accurate, has not materially changed, and does not omit information that would materially affect those qualifications and that CMAR is financially sound, fully solvent, and experienced in and fully qualified to perform the type of Work to be performed under this Contract.

5.17 CMAR represents that it has: (a) visited the Project site, (b) taken such other steps as may be necessary to ascertain the nature and location of the Work and the general and local conditions that affect the Work or the cost thereof, and (c) investigated the labor situation, including the availability of all necessary labor and material.

5.18 CMAR shall coordinate with other Contractors and projects on or around the Project site, as well as the Project Team or other HAS staff, and to minimize disruptions to normal airport operations.

5.19 Without diminishing the other obligations of CMAR, CMAR represents and agrees that it will perform its services under no circumstances with less than the usual and customary standards of CMAR's profession or business and in compliance with all Applicable Laws and in strict accordance with the Contract Documents. CMAR agrees to correct in a timely manner and as may be directed by the Director and to bear the full cost of correcting CMAR's Work and services that are not in strict conformance with the Contract Documents or Applicable Laws or that are otherwise defective or negligently performed, those of its Subcontractors, Suppliers, and consultants, and any related damages or other harm. The term defective work or similar terms when used in the Contract Documents include Work that is not in strict conformance with the Contract Documents. CMAR agrees to perform Work required by the Contract Documents in a good and workman-like manner.

5.20 CMAR represents and agrees to perform its services under the Contract Documents in an expeditious and economical manner consistent with good business practices and the interests of City in accordance with the Project Schedule reflected in **Exhibit "I"**.

5.21 CMAR represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Contract.

5.22 Except for the obligations of City set forth in this Contract, City has no liability to CMAR or to anyone claiming through or under CMAR by reason of the execution or performance of this Contract.

5.23 CMAR shall give all required notices and comply with all Applicable Laws. The Work, including documents that are the responsibility of CMAR, shall be in accordance with all Applicable Laws. If CMAR otherwise performs any Work that is contrary to Applicable Laws, CMAR shall correct such Work at its expense and shall be liable for all costs, delays, and damages attributable thereto, including any damage to other Work or other property arising from or relating to the corrective Work.

5.24 CMAR shall establish, implement, and follow a quality control program for the Work during all Construction Phases. CMAR shall provide Director with a copy of the written quality control program.

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5.25 CMAR shall provide Value Engineering suggestions to Director. Whenever the term "Value Engineering" is used in conjunction with this Contract or the Project, it has its commonly accepted meaning within the construction industry and does not imply the practice of professional engineering without a license. If any Value Engineering activities constitute the professional practice of engineering, then such activities shall be performed by an engineer licensed in Texas.

5.26 CMAR shall give constant attention to the Work to facilitate the progress thereof, and shall cooperate with the Director, inspectors, and with other Contractors in every way possible. The Director may determine the areas in which the CMAR and Contractors shall work in the event of a disagreement, and the CMAR shall cooperate in such processes and decisions. The CMAR shall have a competent Superintendent on the Work at all times who is fully authorized as his/her agent on the Work. The Superintendent shall be capable of reading and fully understanding the plans and specifications and schedules, shall receive and fulfill instructions from the Director, and shall be present at the Work site at all times while Work is in progress.

5.27 The City will be performing additional work with other Contractors as well as continuing with its normal airport operations on or near the Work covered by this Contract. When separate contracts are let within the limits of any one project, CMAR shall conduct its Work so as not to interfere with or hinder the progress or completion of the work being performed by other Contractors. CMAR shall cooperate with other Contractors, City consultants, design professionals, City employees, and others as directed by the Director. In the event an interference cannot be reasonably avoided, CMAR shall notify the City before the Work is impacted to resolve the interference.

5.28 CMAR shall arrange its work and shall place and dispose of the materials being used so as to not interfere with the operations of other Contractors within the limits of the same project. CMAR shall join its work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

5.29 Subject to the obligations to cooperate with the City and Contractors with respect to contemporaneous operations and proximity at the Project site including, without limitation, relocating work areas, the CMAR remains solely responsible for its means, methods, techniques, sequences and procedures and safety programs in connection with its Work.

5.30 CMAR acknowledges that the Project site is, and at all times during the Work will be, within or around critically important areas of the operational airfield at IAH. CMAR agrees that at all times when any forces are mobilized to strictly adhere to rules and instructions regarding permitted activities and physical locations on the airfield given by any authorized HAS personnel. Such instructions will include, without limitation, demobilizing from Work areas on minutes' notice to allow aircraft movement; coordination of phased work areas to keep aircraft paths open and operational; vigilant cleaning and removal of all foreign object debris caused by its Work from any areas on which aircraft may travel. CMAR agrees and warrants that all delays and disruptions within the reasonable contemplation of those knowledgeable of airport operations (including absolute deference to aircraft operations) caused by such adherence to rules and instructions or coordination for activities as specified herein have been taken into account in preparing the Guaranteed Maximum Price and that CMAR will not seek any increase in the Guaranteed Maximum Price or the Contract Time on account of such adherence and coordination, with the exception of those airport operation delays which are longer than 48 hours (an "Exceptional Delay") and constitute critical delay to the final completion of the Project, but only to the extent that the aggregate number of days of critical Exceptional Delay exceed 14

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Calendar Days. Compensation for critical Exceptional Delays shall be limited to General Conditions costs for CMAR and Subcontractors for the extended period only, without markup for profit and overhead, CMAR agrees that the City's needs arising from its ongoing airport operations as described herein has been expressly contemplated by CMAR and shall not constitute active interference by the City. City will jointly coordinate the activities of its separate Contractors to minimize any such delay or disruption, as well as the impact of any such delay or disruptions.

5.31 All Subcontracts shall be awarded in accordance with the applicable provisions of *Texas Government Code Chapter 2269* through a process overseen by the Project Team. CMAR shall notify Director in advance in writing of the identities of all Subcontractors with which it intends to subcontract. CMAR shall not subcontract with any Subcontractor to which Director has a reasonable objection in accordance with *Texas Government Code Chapter 2269*. A notice of intent to employ a particular Subcontractor shall be given by the CMAR to the City as to permit Director adequate time for review of the prospective Subcontractor without delay to the Project and to allow time for CMAR to make substitute selections, but in no event shall such notice be given less than ten (10) days before the intended subcontract date. If Director has a reasonable objection to a proposed Subcontractor, CMAR shall propose another against whom Director has no reasonable objection. CMAR shall not be required to subcontract with any Subcontractor to which it has reasonable objection. When CMAR's Subcontractors for constructing the Work have been identified, they shall not be changed without Director's prior written approval, which shall not be unreasonably withheld. CMAR shall not incur any Subcontract costs prior to issuance by City of a Notice to Proceed for such Work. If the bidding process does not result in the selection of a subcontractor who is acceptable to the Director, the Director may ask the CMAR to submit a proposal for the specific portion of work for approval.

5.32 The CMAR shall (1) submit pricing for any proposed self-performed Work in the same manner as all other Subcontractors (2) perform self-performed Work in accordance with the same terms and conditions as its other Subcontractors, and (3) account for self-performed Work in the same manner as if the Work had been performed by other Subcontractors. In order to afford the City with maximum flexibility and the opportunity to achieve the best value, the CMAR shall not self-perform any work to which the Director has a reasonable objection.

ARTICLE 6 LIQUIDATED DAMAGES

6.1 **Liquidated Damages Generally.** Additional liquidated damages provisions are set forth in Article 9 of the General Conditions.

6.2 **Failure to Achieve Milestones.** The CMAR and City agree that failure to achieve the Project milestones in this Section by the dates set forth in the agreed upon Guaranteed Maximum Price proposal will cause damages to City and that actual damages from such harm are difficult to estimate accurately. Therefore, CMAR and City agree that CMAR and Surety are liable for and shall pay to City the amounts below per Day, on a cumulative basis, as liquidated damages and not as a penalty, for each and every Day or portion of a Day of delay beyond the milestone dates established in the approved Guaranteed Maximum Price proposals for the Project. CMAR and City agree that the amounts of liquidated damages fixed in this Section are reasonable forecasts of just compensation for harm to City resulting from CMAR's failure to achieve the milestones set forth herein. These liquidated damages shall be City's sole remedy for damages from delay by CMAR except that City shall be entitled to recover all of its actual,

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direct and consequential damages in the event liquidated damages are determined to be unenforceable, and City shall also be entitled to City's remedies under Article 14 of the General Conditions. CMAR and City agree that in the event the amount of liquidated damages set forth in this Section are held to be unenforceable for any reason, City shall be entitled to recover its actual, direct damages, if any, resulting from such delay as may be authorized by the laws of Texas. Liquidated damages for each of the Project milestones are as follows:

- 6.2.1 Completion of Phase 1 - Preconstruction Milestone and GMP Submittal: \$5,000.00 per Day. The milestone duration is 420 Calendar Days from Notice to Proceed.
 - 6.2.1.1. The GMP submittal by CMAR shall be no later than forty-five (45) Calendar Days following PMT delivery of Design Development (60% level-progress Construction Documents) to the CMAR for establishing a GMP.
- 6.2.2 Substantial Completion of Terminal D1 Construction Milestone (including the associated Landside and Airside packages): \$48,000.00 per Day. The estimated milestone duration is 785 Calendar Days from Phase 2- Construction Notice to Proceed.
- 6.2.3 Substantial Completion of Terminal D2 Construction Milestone (including the appropriate Landside and Airside packages): \$24,000.00 per Day. The estimated milestone duration is 1455 Calendar Days from Phase 2 Construction Notice to Proceed.
- 6.2.4 Substantial Completion of Terminal D3 Construction Milestone (including the appropriate Landside and Airside packages): \$12,000.00 per Day. The estimated milestone duration is 1,744 Calendar Days from Phase 2 Construction Notice to Proceed.
- 6.2.5 Final Completion of Phase 2- Construction Milestone of the balance of the Work: \$0.00 per Day. The estimated milestone duration is 1,774 Calendar Days from Phase 2 Construction Notice to Proceed.
- 6.2.6 The maximum aggregate liquidated damages assessed to the CMAR under the Construction Phase hereunder shall be limited initially to 50% of the CMAR's fee amount established by the GMP. Upon negotiation of a mutually acceptable early completion incentive package, the limitation of liability for liquidated damages shall be automatically increased to 100% of the CMAR's fee amount established by the GMP.
- 6.2.7 The maximum amount of consequential damages (excluding damages for delay, whether liquidated or otherwise) which shall be recoverable against CMAR under this Agreement shall not exceed the CMAR's fee (defined in 8.1.2) established by the Cost of the Work until such time that a GMP is agreed. This limitation of liability is separate from the limitation of liability in paragraph 6.2.6, and shall not be eroded for damages for delay (liquidated or otherwise).

6.3 **High Sulfur Diesel Fuel Usage.** The CMAR and City agree that incidents of high sulfur diesel fuel usage by CMAR will cause damages to City and that actual damages from such

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harm are difficult to estimate accurately. Therefore, CMAR and City agree that CMAR and Surety are liable for and shall pay to City the amount stipulated in this Section as liquidated damages. CMAR and City agree that CMAR and Surety are liable for and shall pay to City, as liquidated damages and not as a penalty, the amount equal to **\$1,200.00** per diesel operating vehicle or piece of motorized equipment per incidence of high sulfur diesel fuel usage per Day. CMAR and City agree that the amount of liquidated damages fixed in this Section is a reasonable forecast of just compensation for harm to City resulting from an incident of high sulfur diesel fuel usage. An incident of high sulfur diesel fuel usage as used herein means use of fuel in breach of the General Conditions. CMAR and City agree that in the event the amount of liquidated damages set forth in this Section are held to be unenforceable for any reason, City shall be entitled to recover its actual, direct, and consequential damages, if any, resulting from incidence of high sulfur diesel fuel usage as may be authorized by the laws of Texas.

6.4 Liquidated Damages for CGMPs. The Director shall issue a separate Notice to Proceed or Change Order for each phase of Construction and each phase of Construction shall have a separate substantial completion date and a separate liquidated damages amount, as appropriate.

ARTICLE 7 TIME

7.1 Time of the Essence. Time limits stated in the Contract Documents are of the essence. CMAR is responsible for schedule development and updating and reporting throughout the Project, including Preconstruction Services and Construction Services. CMAR shall comply in all regards with requirements set forth in the Contract Documents. The anticipated date for submitting a GMP shall be the date specified in the Preconstruction Phase Notice to Proceed. The Contract Time is 2,299 Calendar Days from Notice to Proceed for Phase 1- Preconstruction to Final Completion of the Work, excluding the GMP approval period (which is the time from CMAR submission of the GMP Submittal to Notice to Proceed for Phase 2-Construction) unless extended by Change Order.

- 7.1.1 A phase of Construction shall be deemed to commence on the Date of Commencement of the Work specified in a Notice to Proceed for a phase of Construction after approval of the CGMP or GMP proposal.
- 7.1.2 CMAR shall achieve Final Completion of the Work on or before the date agreed to in the GMP Submittal, subject to time extensions granted by Change Order.
- 7.1.3 THE TIMES SET FORTH FOR COMPLETION OF THE WORK IN THE NOTICE TO PROCEED WITH CONSTRUCTION AND THE GMP SUBMITTAL ARE AN ESSENTIAL ELEMENT OF THIS CONTRACT.

7.2 Services. The CMAR shall complete all services in accordance with the completion dates set forth in the Preconstruction Services Schedule, as such dates may be adjusted in accordance with the General Conditions. The CMAR recognizes that the Preconstruction Services Schedule is of the essence and that the City shall be entitled to the recovery of damages from the CMAR as set forth in Article 6.2.1 for the CMAR's failure to comply with the Preconstruction Services Schedule, subject to the terms and conditions of the Contract Documents.

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ARTICLE 8
CONTRACT COMPENSATION

8.1 General Payment Requirements.

- 8.1.1 In addition to the payment terms set forth in this Article, the general requirements for payment, including the procedures and timing for the Applications for Payment, for CMAR's Services are set forth in Article 9 of the General Conditions.
- 8.1.2 As of the Effective Date, the maximum amount payable, subject to adjustment pursuant to Change Order to the CMAR under this Contract, is as follows:

Preconstruction Phase Services (based upon 420 Calendar Day Phase 1 schedule):

Lump Sum – Preconstruction Services	\$5,136,000
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Construction Phase Services:

The CMAR's Fee and percentage amount based on the estimated Cost of the Work are as follows:

CMAR's Fee:	\$17,962,600
CMAR's Fee percentage:	3.80%
Agreed Cost of the Work:	\$472,700,000

- 8.1.3 As of the Effective Date, the maximum amount payable to the CMAR under this Contract is the sum referenced in Section 8.1.2 which is the total amount for compensation for the performance of Preconstruction Services. Without limiting any term or condition hereunder with respect to payments to the CMAR, the CMAR's entitlement to, and the City's obligation to pay, any additional compensation to the CMAR for the performance of the Work will be dependent upon the execution of a CGMP Amendment and/or the GMP Amendments. The CMAR recognizes that the City has no obligation hereunder to enter into any such amendments. In the event the Director and CMAR agree on a CGMP and/or GMP and the Director authorizes CMAR to proceed with Construction Phase Services, CMAR's compensation shall be calculated under Section 8.3.

8.2 Preconstruction Services Price – Phase 1 Only.

- 8.2.1 Subject to the City's limit of appropriation, for properly performed and completed Preconstruction Phase Services, City shall pay CMAR a lump sum amount of \$5,136,000 referenced in Section 8.1.2.
- 8.2.2 City will pay CMAR on the basis of invoices showing the percentage of services performed and materials purchased during the preceding month for each phase of Preconstruction Phase Services based upon the allocation of the Preconstruction Services Price set forth above. The Preconstruction Services

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Price shall be deemed to be full compensation to CMAR for all Preconstruction Phase Services, including all costs, overhead, and profit.

- 8.2.3 All payment requests for Preconstruction Phase Services shall be submitted on an Application for Payment and Schedule of Values approved by Director and includes all required attachments identifying payments to CMAR, as well as to all Subcontractors.
- 8.2.4 CMAR shall not be entitled to an increase in the Preconstruction Services amount set forth in this Section because of Project Schedule extensions or delays, or changes in the scope of the proposed Project, unless such extensions, delays, or changes are material and significant as determined by the Director in his reasonable discretion. By way of example, it shall be considered material and significant should the Preconstruction Phase be extended for an unreasonable period of time, as determined by the Director and the CMAR, due to circumstances beyond the control of either Party, such as delays caused by unforeseen modifications to the CIP or by TSA requirements added during Preconstruction Services.
- 8.2.5 During the Preconstruction Phase, the Director shall have the right but not the obligation, to negotiate performance incentives, and the City and CMAR may amend this Contract to incorporate such incentives, if any, provided that the CMAR has then met all its obligations under this Contract as determined by the Director in his sole discretion.

8.3 Construction Phase Payments – Phase 2 Only.

- 8.3.1 Pursuant to the terms of this Contract, City shall pay CMAR for CMAR's proper and complete performance of the Construction Phase Services, the Cost of the Work and the CMAR's Fee, up to the limit of the applicable CGMP or the Guaranteed Maximum Price in accordance with the payment provisions of the General Conditions. Payment by City shall be deemed full compensation to CMAR for the performance of the Construction Phase. In the General Conditions, references to adjustments in "cost" or "costs" refer to Costs of the Work as defined below, and references to CMAR's "home/branch office overhead" and "profit" refer to CMAR's Fee.
- 8.3.2 CMAR shall not receive any fee for Work deleted by Modifications. The CMAR's Fee shall be compensation in full to CMAR for all overhead and profit and all costs not otherwise recoverable.
- 8.3.3 The sum of the Cost of the Work and CMAR's Fee is guaranteed by CMAR not to exceed whatever Guaranteed Maximum Price Director and CMAR may agree upon in writing, subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by CMAR without reimbursement by City. No Change Order shall affect the Guaranteed Maximum Price unless the Change Order specifies the exact total change to the Guaranteed Maximum Price.

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- 8.3.4 In the event that the CMAR is required to pay or bear the burden of any new federal, state, or local tax, or of any rate increase of an existing tax (except a tax on income) with respect to its forces and/or its performance of the Work as a result of any statute, court decision, written ruling, or regulation taking effect after the Effective Date of this Contract, the Guaranteed Maximum Price shall be increased by the amount of the new tax or tax increase upon proof satisfactory to the Director that such increase has been applied to CMAR.
- 8.3.5 If the sum of the Cost of the Work and the CMAR's Fee for the Construction Phase is less than the Guaranteed Maximum Price for such Phase, then all such savings shall all be retained by City unless otherwise agreed in the CGMP and/or GMP as an incentive program.
- 8.3.6 Subject to the City's appropriation of funds, in full consideration of CMAR's services during Phase 2 – Construction the City shall pay the CMAR's Fee referenced in Section 8.1.2, inclusive of Advanced Package Work. CMAR agrees that if the Guaranteed Maximum Price, inclusive of CGMPs, increases or decreases from the amount originally agreed upon, the CMAR's Fee will increase or decrease based upon the actual Cost of the Work. Notwithstanding anything in the Contract Documents to the contrary, CMAR shall not earn a fee on the lump sum price of the Preconstruction Phase Services. CMAR's Fee is inclusive of CMAR's profit, general overhead and all expenses in connection with maintaining and operating CMAR's main office and any branch office, including:
 - 8.3.6.1. Salaries of persons employed in the main or branch offices of the CMAR whose time is devoted to the general conduct of the CMAR's business for the Project, such as project executives, operations managers, contract administrators, office managers, stenographers, plan clerks, file clerks, and draftsmen except to the extent that their time is actually spent on the Project and are identified on **Exhibit "D"**.
 - 8.3.6.2. Outside services and their expenses for estimating, personnel, accounting, budget control, audit, and management information systems (other than Preconstruction Services) relating to accounting in CMAR's office and even if at the Project site, except as specifically identified herein.
 - 8.3.6.3. Interest on the CMAR's capital or on money borrowed by the CMAR, including the capital employed by the CMAR in the performance of the Work.
 - 8.3.6.4. Amounts required to be paid by CMAR for Federal and/or State income and franchise taxes.
- 8.3.7 In addition to the payment procedures described in the General Conditions, the following payment procedures shall apply:
 - 8.3.7.1. The Schedule of Values may be revised from time to time to adjust allocations of costs to various line items as the costs become better known, but such adjustment shall be subject to the approval of the Director, which shall not be unreasonably withheld. Under no circumstances shall the Schedule of Values exceed the CGMP and/or GMP for the Project. The CMAR's Fee, labor and expenses for

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General Conditions Work, labor and expenses for any self-performed Work, and the contingency shall be shown as separate line items on the Schedule of Values.

- 8.3.7.2. The Schedule of Values submitted shall maintain the originally established value for each work classification line item, and shall contain any revisions to costs or cost estimates for each such classification. The format and tracking method of the original Schedule of Values and of all updates thereto shall be subject to the approval of Director.
- 8.3.7.3. Payment for CMAR's Fee shall be in the same proportion to the total fee as the amount requested for the Cost of the Work relative to the total Cost of the Work used in deriving the Guaranteed Maximum Price, inclusive of any CGMPs.
- 8.3.7.4. CMAR shall submit a monthly cost breakdown, including cost elements for staff labor and expenses over the duration of the construction period to Director for approval. Payment for CMAR's General Conditions shall be made on a monthly basis per the approved breakdown.
- 8.3.7.5. Payment for the Cost of the Work shall be made based on percentages of completion of each portion of the Work listed in Schedule of Values as of the end of the period covered by the Application for Payment, in accordance with the General Conditions.
- 8.3.7.6. Retainage as specified in the General Conditions will be applied to the entire amount requested in the CGMP and/or GMP, as applicable. Retainage will not be held on the Preconstruction Phase Services or the cost of the City's standard "pass-through" items, such as building permits, payment and performance bonds, and insurance costs. Retainage will be reduced for the Project and the Project will be closed out consistent with the relevant provisions of the General Conditions.
- 8.3.7.7. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work shall not exceed the unpaid balance of the Guaranteed Maximum Price (less retainage on Work previously completed).
- 8.3.7.8. Payments to Subcontractors shall be made based on the same percentage of Work completed that is allocable to that Subcontractor for each respective Schedule of Values classification including applicable retainage.
- 8.3.7.9. With each application for payment, CMAR shall submit a certified release of all claims, known or that should reasonably be known, and liens against the City, stating "In consideration for the payment requested herein and upon receipt of such payment, CMAR waives and releases all claims and liens of every sort against City relating to or arising out of the Work performed, except for such claims as have been properly submitted in writing in accordance with the Contract Documents." The final request for payment shall not be made until CMAR delivers to City a complete release by CMAR of all claims and

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liens of any sort arising out of the performance of the Work, affidavits from Subcontractors indicating they have been paid in full, other than amounts remaining to be paid to the CMAR for Work performed by that Subcontractor (which amounts shall be stated), a complete release of all claims and liens from all Subcontractors (except that, as to amounts remaining to be paid to that Subcontractor, such release may be made contingent upon City making payment to CMAR) and an affidavit that so far as CMAR has knowledge or information, the release includes and covers all materials and services over which CMAR has control for which a lien could be filed, but CMAR may, if any Subcontractor or consultant refuses to furnish a required affidavit or release, furnish a bond satisfactory to Director to indemnify City against any claim or lien of any sort and any related costs, including attorneys' fees. If any claim or lien of any sort remains unsatisfied after all payments are made, CMAR shall refund to City all moneys City may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees, and City shall have all remedies at law and in equity.

- 8.3.7.10. The aggregate total of payments to CMAR shall not exceed the total of the actual Cost of the Work as verified by Director from CMAR's final accounting plus the applicable CMAR's Fee as certified for payment in accordance with the Contract, but in no event more than the Guaranteed Maximum Price and approved Change Orders to Guaranteed Maximum Price plus Preconstruction Phase fee. If payments made to CMAR exceed that which is due and owing pursuant to this **Article 8**, then CMAR shall promptly refund such excess to City.
- 8.3.8. In addition to the City's other rights and any provision hereof to the contrary notwithstanding and to the extent reasonably necessary to protect itself, City shall not be obligated to make any payment (whether a progress payment or final payment) to CMAR hereunder if any one or more of the following conditions exist:
 - 8.3.8.1. The CMAR is in breach or default under this Contract;
 - 8.3.8.2. Any part of such payment is attributable to services, which are not performed in accordance with this Contract; provided, however, such payment shall be made as to the part thereof attributable to services which were performed in accordance with this Contract;
 - 8.3.8.3. The CMAR has failed to make payments promptly to Subcontractors or other third parties used in connection with the services for which City has made payment to CMAR; or
 - 8.3.8.4. If Director determines that the amount remaining under the Guaranteed Maximum Price will not be sufficient to complete the services in accordance with this Contract, no additional payments will be due CMAR hereunder unless and until CMAR, at CMAR's sole cost, performs a sufficient portion of the remaining services so that such portion of the amount remaining under the Guaranteed

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Maximum Price is determined by City to be sufficient to so complete the then remaining Work.

- 8.3.9 Nothing contained herein shall require the City to pay the CMAR an aggregate amount exceeding the Guaranteed Maximum Price or to make payment if in the City's belief the cost to complete the Work would exceed the Guaranteed Maximum Price less previous payments to CMAR.
- 8.3.10 No partial payment made hereunder shall be, or shall be construed to be, final acceptance or approval of that part of the Work to which such partial payment relates, or a release of CMAR of any of CMAR's obligations hereunder or liabilities with respect to such Work.
- 8.3.11 CMAR shall promptly pay all bills validly due and owing for labor and material performed and furnished by CMAR-Related Entities in connection with the performance of the Preconstruction and Construction Phase Services.
- 8.3.12 City shall have the right to verify and audit for a period of seven (7) years after final payment for the Construction Phase, the details set forth in CMAR's billings, certificates, accountings, cost data, and statements, including all underlying costs and expenses in the Cost of the Work, either before or after payment therefor, by (1) inspecting the books and records of CMAR with respect to the Project during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing CMAR's business employees; (4) visiting the Project site; and (5) other reasonable action. City shall have the right to audit all costs, the basis for those costs, and all underlying expenses relating to CMAR's performance herein, including but not limited to, the Cost of the Work, particularly, without limitation, labor rates and hourly salary rates set forth in **Exhibit "D"**.
- 8.3.13 CMAR shall establish and maintain a reasonable accounting system that enables the City to readily identify CMAR's assets, expenses, costs of goods, and use of funds. The City and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Contract kept by or under the control of the CMAR, including, but not limited to those kept by the CMAR, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; backcharge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.
- 8.3.14 CMAR shall, at all times during the term of this Contract and for a period of seven years after the termination or completion of this Contract, maintain such records, together with such supporting or underlying documents and materials. The CMAR shall at any time requested by the City, whether during or after completion of this Contract, and at CMAR's own expense make such records available for inspection and audit (including copies and extracts of records as required) by the

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City. Such records shall be made available to the City during normal business hours at the CMAR's office or place of business and subject to a three day written notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the City.

- 8.3.15 CMAR shall ensure the City has these rights with CMAR's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the CMAR and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the CMAR's obligations to the City. Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the City unless the following criteria are met: (i) If the audit identifies overpricing or overcharges (of any nature) by the CMAR to the City in excess of one half of one percent (.5%) of the total contract billings (excluding items comprising Labor Burden), the CMAR shall reimburse the City for the total costs of the audit and/or (ii) If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, and if such findings are not reasonably refuted, the City may recoup the costs of the audit work from the CMAR. CMAR shall be given a reasonable opportunity to review and dispute in writing such findings, and the Director shall consider such information, if provided to the City. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the CMAR's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the City's findings to CMAR.
- 8.3.16 The acceptance by CMAR or CMAR's successors of final payment under this Contract, shall constitute a full and complete release of City from any and all claims, demands, and causes of action whatsoever which CMAR or CMAR's successors have or may have against City under the provisions of this Contract except those previously made in writing and identified by CMAR as unsettled at the time of the final request for payment in a document captioned "Unsettled Claims" included with CMAR's final request for payment.

8.4 Cost of the Work.

- 8.4.1 Definition. The term Cost of the Work means actual costs of Phase 2 – Construction plus any actual costs for Advanced Package Work, excluding mark-up, which the CMAR necessarily incurs to properly perform the Work in strict compliance with the Contract Documents. Such costs shall be at rates and amounts not higher than the standard paid at the place of the Project except with the prior written consent of Director to that specific rate or amount being higher than the standard. Cost of the Work shall not include costs not necessarily incurred or incurred at higher than permitted rates or amounts. Cost of the Work includes only the items set forth in this Section, which shall all be subject to verification by audit.

8.4.2 Labor Costs.

- 8.4.2.1. Actual hourly wages paid to construction workers directly employed by CMAR who perform construction of the Work at the Project site or,

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with the Director's prior written consent, at off-site workshops, when available. For hourly workers employed by CMAR, CMAR shall provide certified payrolls and any other documentation requested by City to verify wages and hours, and compliance with the City's wage rates identified in **Exhibit "H"**. Actual wages paid may include premium payments for overtime work or night work for time actually spent in the performance of the Work when such premium payments have been demonstrated to be in accordance with the CMAR's normal business practice and is included in the Guaranteed Maximum Price. Premium time shall not accrue prior to the completion of 40 hours per week of work by any given individual.

- 8.4.2.2. Actual wages or salaries (inclusive of Labor Burden) of CMAR's Key Personnel who are identified on **Exhibit "D"** together with their Allowable Hourly Rate – but only for documented time when directly involved in performance of the Work. CMAR shall identify actual wages and salaries of Key Personnel within fourteen (14) Calendar Days from NTP for Preconstruction Services and upon submission of CMAR's Construction Phase Guaranteed Maximum Price proposal and upon submission of CGMP's. Allowable Hourly Rate means the rate for a particular staff classification identified in **Exhibit "D"**, which includes actual wages or salaries (inclusive of Labor Burden). The salaries of CMAR's supervisory personnel are subject to a not-to-exceed increase of 3% per year; the first year beginning on the date that Director approves CMAR's Construction Phase Maximum Guaranteed Price proposal. The 3% increase shall be available to CMAR each year thereafter not to exceed seven years or at the completion or termination of this Contract, whichever occurs first. The annual not-to-exceed increase of 3% is available hereunder only to the extent it reflects a concurrent and equal increase in the supervisory personnel's salaries or wages. Any increase or portion thereof not used in a given year shall expire and does not "bank" or "accumulate." Notwithstanding, Cost of the Work for purposes of calculating payment for CMAR's supervisory and administrative personnel when directly involved in performance of the Work shall be based on the "actual hourly pay rate" set forth in **Exhibit "D"**. Projected wage increases should be reflected in the Guaranteed Maximum Price Proposal. Actual wages paid may include premium payments for overtime work or night work for time actually spent in the performance of the Work when such premium payments have been demonstrated to be in accordance with the CMAR's normal business practice and is included in the Guaranteed Maximum Price. Premium time shall not accrue prior to the completion of 40 hours per week of work by any given individual. Labor Burden for overtime payments shall be eliminated or reduced to equal the CMAR's actual substantiated cost for such burden. Should CMAR require employees, other than those listed on **Exhibit "D"**, CMAR shall provide written notice to the Director setting forth all the information described above. If for any reason, Director reasonably objects to any such employee, CMAR shall not use that employee to perform on the Project. Failing reasonable objection by the Director, the employee,

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together with the employee's daily billing rate, shall automatically become a part of **Exhibit "D"**. The Labor Burden rate shall be based on the actual cost of direct wages or salaries of CMAR's employees incurred in the interest of the Project. For billing purposes only, this rate shall be established annually, subject to verification by the City's auditors, based on the CMAR's Labor Burden for the previous year. The components which comprise the Labor Burden, as set forth in **Exhibit "A" – 2.1.74**, shall not change throughout the term of the Project. The City shall be allowed to audit the actual cost of labor burden each year, and City shall be entitled to a refund to the extent that it has paid CMAR more than its actual Labor Burden costs. Initially, the labor burden will be set at **55%**, subject to verification by the City's auditors. It will be reset each year based on the audited rate for the prior year. Under no circumstances shall the City pay more for labor burden than the percentage established for billing purposes for any given year. Labor Burden for overtime payments shall be eliminated or reduced to equal the CMAR's actual substantiated cost for such burden.

- 8.4.2.3. Actual out of town travel expenses of CMAR's personnel incurred directly and solely in support of the Project with prior written approval of the Director or specifically identified in the negotiated cost proposal but only to the extent permitted by City's policies on reimbursement for travel.
- 8.4.2.4. Actual costs paid or incurred by CMAR for labor costs arising out of taxes, insurance, and benefits which are (i) required by law, (ii) required by collective bargaining agreements, (iii) or as otherwise customary so long as such costs are based on the actual wages of construction workers properly included in the Cost of the Work as defined herein and are approved in advance by the Director.

8.4.3 Subcontractor Costs

- 8.4.3.1. Payments actually made by CMAR to Subcontractors for prosecution of the Work, in accordance with the requirements of their agreements with CMAR, but only for agreements to the extent they have been specifically consented to in writing by Director. Consent to such agreements shall not create any liability for City and shall not excuse CMAR from complying with the terms of this Contract.

8.4.4 Costs of Materials and Equipment Incorporated in the Completed Construction

- 8.4.4.1. Costs, including transportation, of materials and equipment incorporated or to be incorporated into the Work.
- 8.4.4.2. Costs of materials described in the preceding subparagraph in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. City shall be entitled to take possession of excess materials not incorporated into the Work, or at

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Director's option, CMAR shall sell such materials and deduct the gross proceeds from the Cost of the Work.

8.4.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

- 8.4.5.1.** Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by CMAR at the site and fully consumed in the performance of the Work; and if not fully consumed, then the cost shall be based on the cost of the item less its fair market value. Cost for items previously used by CMAR shall mean fair market value prior to use on the Project. The cost for hand and small tools shall not exceed 3% of the direct payroll costs for employees of CMAR.
- 8.4.5.2.** Rental charges for temporary facilities, machinery, equipment, excluding hand tools which are provided at the Project site, whether rented from CMAR or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. The aggregate rental charges for an item used on this Project (including the rental charges for items used to replace it) shall not under any circumstances exceed 75% of the value of that item or 75% of any applicable option purchase price, whichever is lower. Machinery and equipment owned by CMAR or any person affiliated with or owned or controlled by CMAR or persons affiliated with CMAR shall not be charged at more than the market rate for such equipment in the Houston area or 90% of current published rental rates of the Associated Equipment Dealers, for such equipment, whichever is less.
- 8.4.5.3.** Costs of removal of debris from the Project site.
- 8.4.5.4.** Costs of postage and parcel delivery charges, standard and reasonable telephone service at the Project site and reasonable petty cash expenses of the Project site office, incurred directly and solely in support of the Work, and all incurred at the Project site.
- 8.4.5.5.** That portion of the reasonable travel and subsistence expenses of CMAR's personnel that are consistent with the City's travel policies and incurred while traveling solely in the discharge of duties directly connected with the Work, but not including travel expenses or commuting expenses incurred within Houston and its extra-territorial jurisdiction.
- 8.4.5.6.** Area specific site periodic and final clean up, not previously included, and in accordance with all Applicable Laws and regulations.
- 8.4.5.7.** Any hazardous materials handling, abatement and disposal cost(s).

8.4.6 Miscellaneous Costs

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- 8.4.6.1. Sales, use, or similar taxes imposed by a governmental authority that are related to the Work and for which CMAR is liable. Notwithstanding, City is a home-rule municipal corporation and CMAR shall avail itself of all exemptions which may exist for such taxes based on City's status.
- 8.4.6.2. Fees and assessments for building permits and for other permits and inspections that CMAR is required by the Contract Documents to pay for or obtain.
- 8.4.6.3. Premiums for insurance and bonds to the extent directly attributable to this Contract, including without limitation professional liability insurance and pollution insurance. Any premium allocation plan to this Project by CMAR must be approved by the City's Legal Department.
- 8.4.6.4. Testing fees pursuant to the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded.
- 8.4.6.5. Intellectual property royalties and licenses for items specifically required by the Contract Documents which are, or will be, incorporated into the Work. If a particular design, process, or product of a particular manufacturer is required by City, then costs of payments made in accordance with legal judgments against CMAR resulting from suits for such infringement, payments of settlements made with City's written consent, and reasonable legal fees related to the infringement are eligible as a Cost of the Work and shall not be included in the calculation of CMAR's Fee or the Guaranteed Maximum Price (but shall still be subject to the limit covered by the Appropriated Funds). Notwithstanding the foregoing, if CMAR had reason to believe the required design, process, or product is an infringement, such payments and fees shall not be a Cost of the Work and CMAR shall be responsible for such payments, fees and losses unless CMAR notifies Director of the potential infringement promptly before proceeding and in writing.
- 8.4.6.6. Utility company charges including meter fees, tap fees and utility consumption charges.
- 8.4.6.7. Contingency allowed by the Contract Documents, and identified as a line item in the Schedule of Values.
- 8.4.6.8. Costs of cell phones and vehicles, not otherwise included in the Labor Burden, for those employees approved by the Director.
- 8.4.6.9. Costs of on-site computers, printers, monitors, software, maintenance and other electronic equipment approved in advance and in writing by the Director, used solely for the Project.

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- 8.4.6.10. That portion of the cost of subcontractor default insurance or similar product for enrolled subcontractors or suppliers, which comprises only the risk transfer premium, and not prefunded deductibles or any other deposits, prepayments or charges of any type, and only as agreed to in advance by the Director following full transparency into the policy and the charges.
- 8.4.6.11. Other costs approved in advance in writing by Director at Director's sole option and discretion.

8.5 Costs Not Included in the Cost of the Work.

- 8.5.1 The Cost of the Work shall not include the items listed in this Section:

- 8.5.1.1. Except as provided in Section 8.4.2, salaries and other compensation of CMAR's personnel stationed at CMAR's principal office or offices other than the Project site office.
- 8.5.1.2. Expenses of CMAR's principal office and offices other than the Project Site office.
- 8.5.1.3. Overhead and general expenses.
- 8.5.1.4. Excluding CMAR's Fee, markup imposed by CMAR on other direct costs (ODCs) such as reimbursable expenses and pass-through costs from CMAR and its Subcontractors and Suppliers.
- 8.5.1.5. CMAR's capital expenses, including interest on CMAR's capital employed for the Work.
- 8.5.1.6. Rental costs of machinery and equipment, except as specifically provided in this Contract.
- 8.5.1.7. Costs due in whole or in part to the fault or negligence of CMAR, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to, costs of the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property.
- 8.5.1.8. Costs of entertainment.
- 8.5.1.9. Costs incurred or that should have been incurred for Preconstruction Phase Services.
- 8.5.1.10. Any legal, accounting, professional, or other similar costs incurred by CMAR, including costs incurred in connection with the prosecution or defense of any dispute, mediation, arbitration, litigation, or other proceeding related to or arising from the Project.

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- 8.5.1.11. Any sales, use, income, franchise, and similar taxes paid by CMAR. Any fines, penalties, sanctions, or other levies assessed by any governmental body against CMAR.
- 8.5.1.12. The cost of any and all insurance deductibles and self-insured retentions payable by CMAR, and all uninsured losses and costs whether due to the failure of CMAR or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents, or otherwise.
- 8.5.1.13. Costs that would cause the Guaranteed Maximum Price to be exceeded.
- 8.5.1.14. All profit, profit expectations and costs associated with profit sharing plans such as personnel bonuses, incentives, and rewards, company stock options, or any other like expenses of CMAR.
- 8.5.1.15. Legal and administrative costs to review and negotiate this Contract and all other Contract Documents.
- 8.5.1.16. Costs incurred by CMAR resulting from the failure of CMAR or its Subcontractors to coordinate their work with that of City and its other contractors, if any, after agreeing to schedules therefor.
- 8.5.1.17. Liquidated damages imposed by City.
- 8.5.1.18. Any costs arising out of the intentional acts or negligence of CMAR, its Subcontractors, or any person or entity for whom any of them may be liable, including, without limitation, costs related to defective, rejected, or nonconforming Work within the Contract Time.
- 8.5.1.19. Costs including, but not limited to, the failure to perform of any Subcontractor or the bankruptcy or insolvency of any Subcontractor.
- 8.5.1.20. Costs for licenses, re-inspections and improperly timed permits and inspections.
- 8.5.1.21. Costs related to warranty work.
- 8.5.1.22. Costs associated with deferred compensation and bonuses.
- 8.5.1.23. Costs associated with Subcontractor default Insurance or similar products, except for the actual risk transfer premium as specifically allowed in Section 8.4.
- 8.5.1.24. Any other cost not specifically and expressly described in this Contract as a Cost of the Work.
- 8.5.1.25. Notwithstanding anything in the Contract Documents to the contrary, the Lump Sum fee for CMAR's Preconstruction Services or other

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costs or expenses for CMAR's Preconstruction Services shall not be included in the Cost of the Work.

8.6 Discounts, Rebates and Refunds of the Cost of the Work. The Cost of the Work to be paid by City shall be credited with the following items:

- 8.6.1 Proceeds of the sale of all tools, surplus materials, construction equipment, and temporary structures which have been charged to the Work other than by way of rental, and remaining after completion, whether such sale is made to the City, the CMAR, or to some other party; and any such sale, if made to others than the City, shall be at fair market price. Upon completion of the Work or when no longer required, all tools, construction equipment and materials charged to the Cost of the Work shall be sold by CMAR (unless turned-over to the City as set forth above) and the CMAR shall use its best efforts to obtain the highest price in respect of such sales.
- 8.6.2 If City makes funds available to CMAR, discounts earned by the CMAR through advance or prompt payments. CMAR shall provide sufficient advance notice of available discounts and the need for funds to be available to the City for the City to obtain the benefit of the discounts. The CMAR shall obtain all possible trade and time discounts on bills for material furnished, and shall pay said bills within the highest discount periods. The CMAR shall purchase materials for this Project in such quantities as will provide the most advantageous prices to the City.
- 8.6.3 Reasonable market value as approved by the Director at the time of removal of all materials, tools, and equipment actually purchased for the Work and charged as a Cost of the Work and which is retained by the CMAR upon completion of the Work.
- 8.6.4 Rebates, discounts, or commissions allowed to and collected by the CMAR from suppliers of materials or from Subcontractors, together with all other refunds, returns, or credits received for return of materials, or on bond premiums, dividends or other compensation received from the surety or insurance and sales taxes.
- 8.6.5 CMAR shall reimburse City for deposits made by City and not returned to City due to the negligent or intentional acts of the CMAR. Should CMAR not promptly so reimburse City upon demand, City shall be entitled to recover said amount from CMAR, including, but not limited to, by deducting the amount from payments due the CMAR.

8.7 Limit of Appropriation.

- 8.7.1 The City's duty to pay money to the CMAR for any purpose under this Contract is limited in its entirety by the provisions of this Section.
- 8.7.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has allocated the sum of \$5,502,000 for Preconstruction Services and \$ [NONE] for Advanced Packages as Appropriated Funds to pay money due under this Contract for Work, as may be required (the "Original Appropriation"). The executive and

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legislative officers of the City, in their sole discretion, may appropriate additional funds for this Contract (the "Supplemental Appropriation"), but they are not obligated to do so.

- 8.7.3 The aggregate of all sums duly authorized by the City to be allocated to pay money due under this Contract, including the Original Appropriation and all Supplemental Appropriations, constitute the Appropriated Funds. The City shall never be obligated to pay any money under this Contract in excess of the Appropriated Funds. The CMAR must assure itself that sufficient Appropriated Funds have been made to pay for services it provides. If Appropriated Funds are exhausted, the CMAR's only remedy is suspension or termination of its performance under this Contract and the CMAR has no other remedy in law or in equity against the City and no right to damages of any kind.
- 8.7.4 The CMAR shall closely monitor expenditures under this Contract and shall notify the Director when amounts payable by the City hereunder for authorized Work are equal to 80% of the Appropriated Funds, even if such amounts payable have not yet been billed to the City. At such point, if additional amounts payable by the City hereunder for the CMAR's continued performance of the authorized Work would exceed the amount of remaining Appropriated Funds, the CMAR has the right to suspend performance of the authorized Work by seven (7) days' advance written notice to the Director describing the cause and the CMAR's planned suspension. Once Appropriated Funds have been increased, the CMAR shall resume performance of the authorized Work and may be entitled to equitable adjustment in accordance with the applicable provisions of the Contract Documents. If after more than 180 days Appropriated Funds have not been increased, the CMAR shall have the right to terminate its performance in accordance with the applicable provisions of the Contract Documents. However, termination shall not relieve CMAR of its continuing obligations to the City already incurred. The City shall not under any circumstances be obligated to seek a Supplemental Appropriation.

8.8 Construction Phase Performance Incentives.

- 8.8.1 Upon completion of the Preconstruction Phase, the City and CMAR may amend this Agreement to incorporate performance incentives, provided that the CMAR has met all its obligations under this Agreement through the Preconstruction Phase as determined by the Director in his sole judgment. Such mutual amendment may occur at the time the City appropriates funds for the Construction Phase of the Project.

**ARTICLE 9
REPRESENTATIONS AND WARRANTIES**

9.1 Representations and Warranties of the City. The City represents and warrants that:

- 9.1.1 The City is a home-rule city in the State of Texas, with full legal right, power and authority to enter into and to perform its obligations under this Contract.
- 9.1.2 This Contract has been duly authorized, executed and delivered by all necessary action of the City and constitutes a legal, valid, and binding obligation of the City,

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enforceable against the City in accordance with its terms, except to the extent that its enforceability may be limited by the Bankruptcy Code and by equitable principles of general application.

9.2 Representations and Warranties of the CMAR. In addition to any other representations and warranties made by the CMAR hereunder, the CMAR represents and warrants that:

- 9.2.1 The CMAR is a joint venture, duly organized, validly existing and in good standing under the laws of Texas. The CMAR has the authority to do business in the State of Texas and in any state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Contract.
- 9.2.2 This Contract has been duly authorized, executed and delivered by all necessary corporate action of the CMAR and constitutes a legal, valid and binding obligation of the CMAR, enforceable against the CMAR in accordance with its terms, except to the extent that its enforceability may be limited by the Bankruptcy Code or by equitable principles of general application.
- 9.2.3 To the best of its knowledge after due inquiry, neither the execution nor delivery by the CMAR of this Contract nor the performance by the CMAR of its obligations in connection with the transactions contemplated hereby nor the fulfillment by the CMAR of the terms or conditions hereof: (a) conflicts with, violates, or results in a breach of any constitution, law, governmental regulation, by-laws, or certificates of incorporation applicable to the CMAR; or (b) conflicts with, violates or results in a breach of any order, judgment, or decree, or any contract, agreement, or instrument to which the CMAR is a party or by which the CMAR or any of its properties or assets are bound, or constitutes a default under any of the foregoing.
- 9.2.4 No approval, authorization, order or consent of, or declaration, registration, or filing with, any Governmental Authority is required for the valid execution and delivery of this Contract by the CMAR except as such have been duly obtained or made.
- 9.2.5 Except as disclosed in writing to the City, there is no legal proceeding, at law or in equity, before or by any court, arbitral tribunal, or other Governmental Authority pending or, to the best of the CMAR's knowledge after due inquiry, overtly threatened or publicly announced against the CMAR, in which an unfavorable decision, ruling, or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Contract by the CMAR or the validity, legality, or enforceability of this Contract against the CMAR, or any other agreement or instrument entered into by the CMAR in connection with the transactions contemplated hereby, or on the ability of the CMAR to perform its obligations hereunder or under any such other agreement or instrument.
- 9.2.6 Except as disclosed in writing to the City, there are no material and adverse claims or demands based in environmental, contract, or tort law pending or threatened against the CMAR or any of its Affiliates with respect to any facilities

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designed or constructed by the CMAR or any of its Affiliates that would have a material and adverse effect upon the ability of the CMAR to perform the Work.

- 9.2.7 Neither the CMAR nor any of its Affiliates has any knowledge of any material violation of any law, order, rule, or regulation with respect to any facilities designed or constructed by the CMAR or any of its Affiliates. This paragraph does not expand the obligations of CMAR under paragraph 3.3.
- 9.2.8 The information supplied and representations and warranties made by the CMAR in all submittals made in response to the RFQ and RFP with respect to the CMAR (and to its knowledge, all information supplied in such submittals with respect to any Affiliate or CMAR-Related Entity) are true, correct, and complete in all material respects.
- 9.2.9 The CMAR is under no obligation, commitment or impediment of any kind, whether contractual or otherwise, that will limit or prevent performance of its obligations under this Contract.
- 9.2.10 The CMAR is financially secure and no action relating to the Bankruptcy Code or suspension of payments by the CMAR or any Affiliate has, to the best of its knowledge after due inquiry, been taken or is threatened.
- 9.2.11 The CMAR:
 - 9.2.11.1. has examined, carefully studied, and thoroughly understands the Contract Documents;
 - 9.2.11.2. has visited the Project site and has become familiar with and is satisfied as to the general, local, and Project Site conditions that may affect cost, progress, and performance of the Work;
 - 9.2.11.3. is familiar with and is satisfied as to all Applicable Laws that may affect cost, progress, and performance of the Work without assuming design liability that the drawings and specifications provided by the Architect of Record or Engineer of Record conform to all Applicable Laws;
 - 9.2.11.4. has carefully studied all information concerning the Project site and the performance of the Work which have been identified or made available by the City prior to the Effective Date; and
 - 9.2.11.5. is prepared to perform the Work in accordance with Contract Standards and subject to the terms and conditions of the Contract Documents.

**ARTICLE 10
MWBE COMPLIANCE**

- 10.1 CMAR shall comply with the City's Minority, Women and Small Business Enterprise ("MWSBE") programs as set out in Chapter 15 of the City of Houston Code of Ordinances. For

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Preconstruction Services, Contractor shall make good faith efforts to award subcontracts or supply agreements in at least **10%** (combined aggregate) of the value of the Preconstruction Services portion of this Agreement to MBEs and/or WBEs. CMAR acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunity and will comply with them. The Director will provide the goals for Construction Services prior to the establishment of the GMP and/or CGMPs, as applicable.

ARTICLE 11
BONDS AND INSURANCE

11.1 Within 10 days of the date the CMAR executes this Contract, CMAR shall provide performance and payment bonds on forms prescribed by City in **Exhibit "G"**, unless in the discretion of the Director, the CMAR furnishes a security bond acceptable to the Director, to ensure that the CMAR will furnish the required performance and payment bonds when a CGMP or GMP is established. The penal sum of the payment and performance bonds shall be equal to the construction budget as specified in the request for proposals or qualifications, or as otherwise specified by the Director. When a CGMP or GMP is established, the CMAR shall provide performance and payment bonds in accordance with the requirements of the General Conditions.

11.2 CMAR shall purchase and maintain professional liability, errors and omissions insurance, covering the Preconstruction Phase Services and Construction Phase Services provided under this Contract, as is acceptable to and approved by the Director. The insurance shall have minimum policy limits as agreed by the CMAR and the Director as part of the establishment of CGMPs and/or the GMP. CMAR shall maintain the insurance throughout the course of the Work and for a minimum of two years following Date of Substantial Completion. The professional liability insurance policies must be furnished to the Director prior to performance. No policy providing the insurance shall be cancelled, materially altered, or allowed to expire without 30 days prior written notice to the Director.

11.3 Prior to commencing the Work, CMAR shall be required to purchase and maintain the insurance coverages set forth in Article 11 of the General Conditions; provided however, that CMAR may delay purchase and maintenance of Owner's and Contractor's Protective Liability, Installation Floater, and Property and Casualty Coverage until no later than 10 days of the date the Director accepts the CGMP and or GMP Submittals, as applicable. The CMAR shall not commence Construction Phase Services unless all insurance coverages set forth in Article 11 of the General Conditions are in full force and effect.

11.4 CMAR shall not request payment, and City shall not be required to pay for CMAR's additional general liability insurance, builder's all risk insurance or any other form of insurance coverage that is in excess of the required coverage amounts specified in this Contract and in Article 11 of the General Conditions, and City shall be entitled to repayment of any amounts paid in excess of what City is required to pay. The additional costs for coverages in addition to those coverages specifically required by this Contract shall be the sole responsibility of CMAR.

11.5 City reserves the right to review the insurance requirements set forth in this Article and the General Conditions during the effective period of the Contract and to make reasonable adjustments to the insurance coverages and their limits when deemed necessary and prudent by City based upon changes in statutory law, court decisions, or the claims history of the industry or CMAR. CMAR shall use its best efforts to comply with City's requests hereunder,

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and a Change Order shall be issued compensating CMAR for the increased costs of insurance premiums incurred as a result thereof.

11.6 City shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the Parties or the underwriter of any of such polices or to the extent that such deletion, revision, or modification results in increased costs for insurance premiums and City does not agree to compensate CMAR for such increased costs after receiving notice from CMAR of such increased costs. To the extent the losses should have been covered by insurance required by the Contract Documents that CMAR failed to provide, then actual losses not covered by insurance as required by this Article shall be paid by the CMAR.

11.7 CMAR shall also procure Pollution Liability Insurance as authorized and approved by the Director, to provide insurance coverage for CMAR with respect to its obligations, if any, whether included in the CGMP and/or GMP, directed or agreed to by change order for hazardous materials abatement, handling and disposal. The actual limits are as defined in Table 1 unless mutually agreed otherwise as part of a CGMP and/or GMP Amendment.

11.8 City may establish an Owner Controlled Insurance Program (“OCIP”) for this Project. In the event City procures an OCIP, CMAR may participate in the OCIP. If and when the OCIP is established, the Director shall send notice to CMAR and CMAR must respond within 10 days either opting into or out of the OCIP. If CMAR opts into the OCIP, the insurance requirements describe herein (except pollution liability) shall be eliminated. If CMAR opts out of the OCIP, all insurance requirements described herein remain mandatory. The City and CMAR shall work collaboratively on the insurance program for the Project (OCIP and separate insurance policies that will be paid for by the City as Cost of the Work). In the event the City and CMAR are unable to reach agreement on (i) the coverages and limits for insurance policies that will be provided as part of the OCIP and (ii) the coverages and limits for separate insurance policies that CMAR will need to obtain and bill as Cost of the Work, then CMAR has the right to purchase additional coverage as is reasonable, and bill the reasonable cost of such policies as a Cost of the Work.

**ARTICLE 12
TERMINATION AND SUSPENSION**

12.1 Termination rights shall be as provided in the General Conditions and Applicable Laws.

12.2 The City's termination of this Contract shall not relieve the CMAR or any of its employees of liability for violations of this Contract, any act or omission, or negligence of the CMAR.

12.3 As of the date of termination of this Contract, the CMAR shall furnish to Director all statements, accounts, reports, and other materials as are required hereunder or as have been prepared by the CMAR in connection with the CMAR's responsibilities hereunder. City shall have the right to use the ideas and designs therein contained for the completion of the services described by this Contract, for completion of the Project, or otherwise. All drawings, plans, specifications, renderings and models, etc., prepared by the Design Consultant are the property of City or Design Consultant, as set forth in the terms and conditions of the agreement between

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City and the Design Consultant. They are not to be used by any person or entity other than City on other projects unless expressly authorized by City in writing prior to such use.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 Exhibits. All exhibits hereto are hereby incorporated herein by reference.

13.2 Assignments. This Contract is a personal service contract for the services of CMAR, and CMAR's interest in this Contract, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party, except as provided by the Texas Business and Commerce Code.

13.3 Entire Contract; Modifications; Conflicts. This Contract supersedes all prior agreements, written or oral, between CMAR and City and shall constitute the entire Contract and understanding between the parties with respect to the subject matter hereof. This Contract and each of its provisions shall be binding upon the Parties and may not be waived, modified, amended or altered except by a writing signed by City and CMAR. If there is a conflict between this Contract and the General Conditions, then the provision which provides the greatest benefit to City shall govern.

13.4 Captions. The captions of paragraphs in this Contract are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. CMAR and City shall both be deemed equally to be the drafters of the Contract Documents, and the Contract Documents shall not be construed against City or CMAR as the drafter.

13.5 Governing Law. This Contract and all of the rights and obligations of the Parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. Exclusive venue for litigation shall be located in Harris County, Texas.

13.6 Non-Waiver. If either Party fails to require the other to perform a term of this Contract, that failure does not prevent the Party from later enforcing that term and all other terms. If either Party waives the others' breach of a term, that waiver does not waive a later breach of this Contract. An approval or direction by the Director, or by any other employee or agent of the City, of any part of CMAR's performance does not waive compliance with this Contract or establish a standard of performance other than that required by this Contract and by law.

13.7 Binding Effect. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

13.8 Appointment. City hereby expressly reserves the right from time to time to designate by notice to CMAR one or more representatives to act partially or wholly for City in connection with the performance of City's obligations hereunder. CMAR shall act only upon instructions from such representatives unless otherwise specifically notified to the contrary.

13.9 Notices. All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Contract shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid,

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and addressed as set forth in the preamble or to such other person or address as may be given in writing by either party to the other in accordance with the aforesaid.

13.10 Dispute Resolution. The dispute resolution procedures, which shall be applicable to all Phases of this Contract, are set forth in the General Conditions and in the Dispute Avoidance and Review process attached as **Exhibit "J"**.

13.11 Severability. In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid or unenforceable provision had not been included herein.

13.12 Independent Contractor. CMAR recognizes that it is engaged as an independent contractor and acknowledges that City will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. CMAR, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer, partner, employee or agent of City by reason hereof, and that it will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of City, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. CMAR hereby agrees to make its own arrangements for any of such benefits as it may desire and agrees that it is responsible for all income taxes required by Applicable Law.

13.13 CMAR'S DEBT. IF CMAR, 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 CMAR HAS INCURRED A DEBT, IT SHALL IMMEDIATELY NOTIFY CMAR IN WRITING. IF CMAR DOES NOT PAY THE DEBT WITHIN THIRTY (30) DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CMAR UNDER THIS CONTRACT, AND CMAR WAIVES ANY RE COURSE THEREFOR. CMAR 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
DEFINED TERMS**

ARTICLE 1. INTERPRETATION

1.1 This Contract, including all Contract Documents, will be interpreted in accordance with the following:

- 1.1.1 **General.** The interpretation and miscellaneous provisions of the General Conditions apply to all Contract Documents and Work. References to sections, paragraphs, articles or other provisions shall be deemed to mean those contained in this main body of the Contract unless specified otherwise.
- 1.1.2 **Entire Contract.** This Contract, including all Contract Documents, contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Contract. Without limiting the generality of the foregoing, this Contract shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions, including those contained in the RFQ (if any), the submittal made by the CMAR in response thereto, the RFP, the proposal made by the CMAR in response thereto, and any amendments or supplements to any such documents.
- 1.1.3 **Gender and Plurality.** Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.
- 1.1.4 **Headings.** The table of contents and any headings preceding the text of the articles, sections and subsections of this Contract shall be solely for convenience of reference and shall not affect its meaning, construction or effect.
- 1.1.5 **References to Hereto.** The terms "hereto," "hereby," "hereof," "herein," "hereunder" and any similar terms refer to this Contract.
- 1.1.6 **References to Including.** The words "include," "includes" and "including" are to be construed as meaning "include without limitation," "includes without limitation" and "including without limitation," respectively.
- 1.1.7 **References to Statutes.** Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.
- 1.1.8 **References to Governmental Authorities.** Each reference to the City or a Governmental Authority is deemed to include a reference to any successor to the City or such Governmental Authority or any organization or entity which has taken

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over the functions or responsibilities of the City or such Governmental Authority. Each reference to a private Person that is not an individual is deemed to include a reference to its successors and permitted assigns.

- 1.1.9 **References to Documents and Standards.** Each reference to an agreement, document, standard, principle or other instrument includes a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.
- 1.1.10 **Delivery of Documents in Digital Format.** In this Contract, the CMAR is obligated to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The CMAR agrees that all such documents shall be submitted to the City both in printed form (in the number of copies indicated) and, at the City's request, in digital form. Digital copies shall consist of computer readable data submitted in any standard interchange format which the City may reasonably request to facilitate the administration and enforcement of this Contract. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.
- 1.1.11 **Severability.** If any provision of this Contract is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Contract. If any such provision of this Contract is held to be invalid, unenforceable or illegal, the Parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Contract as nearly as possible to its original intent and effect.
- 1.1.12 **Drafting Responsibility.** The Parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Contract to the effect that ambiguous or conflicting terms or provisions should be construed against the Party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.
- 1.1.13 **Counterparts.** This Contract may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Contract.
- 1.1.14 **Governing Law.** This Contract and all of the rights and obligations of the Parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. Exclusive venue for litigation shall be located in Harris County, Texas.

ARTICLE 2. DEFINITIONS

- 2.1 As used in the Contract Documents, the following terms shall have the meanings set forth below:

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- 2.1.1 **Actual Cost:** A verifiable amount paid for labor, material, equipment and supplies in the performance of the Work.
- 2.1.2 **Addenda:** Any addenda to the Drawings or Specifications or other Contract Documents identified as Addenda, if any, in the Contract Documents.
- 2.1.3 **Advance Work Package:** A portion of the Cost of Work that the CMAR proposes to the Director for construction work before the GMP has been finalized. A CGMP shall be agreed upon for each Advance Work Package.
- 2.1.4 **Affiliate:** With respect to any particular company or entity, a company or entity that: (a) owns and controls, directly or indirectly, such company or entity; (b) is owned and controlled, directly or indirectly, by such company or entity; (c) is owned and controlled, directly or indirectly, by the same company or entity that owns and controls such company or entity; (d) is a member of a joint venture with such company; or (e) either entity is the joint venture and the other company is a member of the joint venture.
- 2.1.5 **Air Operations Area (AOA):** Any area of the airport intended to be used for the landing, takeoff or surface maneuvering of aircraft and support equipment and all of the area within the airport security fence.
- 2.1.6 **Airport Improvement Program (AIP):** A funding source that provides grants to public agencies for planning and development of public use airports. Eligible projects include improvements related to enhancing safety, capacity, security and environmental concerns.
- 2.1.7 **Allowance:** "Allowance" means "Cash Allowance" as defined herein.
- 2.1.8 **Applicable Law:** All laws, treaties, ordinances, judgments, decrees, injunctions, writs, orders, codes, rules, regulations, permits, and interpretations of any Governmental Authority having jurisdiction over the Parties, the Project, the Work, the Contract Documents, and each other document delivered hereunder or in connection herewith.
- 2.1.9 **Basic Services:** All disciplines identified within the Contract Documents and all related usual and customary design, consultant, and other services necessary and reasonably inferable to complete the Project, or any phase of the Project, in accordance with the City's requirements and the terms of the Contract.
- 2.1.10 **Beneficial Occupancy:** When the City takes possession of and operates the Work (or portions of the Work) for its intended purposes.
- 2.1.11 **BIM:** Building Information Modeling. The digital or electronic representation of the project model and includes the process to create the model.
- 2.1.12 **Bonds:** Performance Bond, Payment Bond, Maintenance Bond, Bid Bond, Proposal Bond and other Surety instruments executed by Surety. When in singular form, refers to individual instrument.

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- 2.1.13 **Bridging Documents:** The documents included in the Design Criteria Package as defined in Texas Government Code Section 2269.306 and 2269.358.
- 2.1.14 **Business Enterprise:** Any business entity registered in a program authorized by 49 C.F.R. § 26 (where applicable) or City Code of Ordinances, Chapter 15, Article V, relating to Equal Opportunity Employment and taking affirmative action to ensure that applicants are employed and employees are treated without regard to race, religion, color, sex, national origin, or age. The term "Business Enterprise" may include any Disadvantaged Business Enterprise ("DBE"), Minority Business Enterprise ("MBE"), Woman Business Enterprise ("WBE"), Small Business Enterprise ("SBE"), Person with Disability Enterprise ("PDBE"), and any Historically Underutilized Business ("HUB").
- 2.1.15 **Business Enterprise Policy:** Contract documents and applicable policies relating to Business Enterprises and authorized under 49 C.F.R. § 26 or City Code of Ordinances, Chapter 15, Article V.
- 2.1.16 **Calendar Day:** Shall mean Day.
- 2.1.17 **Capital Improvement Program (CIP):** HAS's Capital Improvement Program.
- 2.1.18 **Cash Allowance:** An estimated sum of money to be used only for a limited class of expenditures such as utility relocation costs, fees for special licenses or permits, or other "pass-through" costs that would be the same for any contractor. Cash Allowances may not be used to purchase goods or services that are not specified in the Contract. The unspecified items must be purchased according to the terms of the General Conditions. A Cash Allowance may be referred to in the Contract Documents as an "Allowance".
- 2.1.19 **CBP:** U.S. Customs and Border Protection.
- 2.1.20 **Change Order:** Written instrument prepared by the City and signed by Director or his designee with notice to the City's Chief Procurement Officer, and signed by CMAR, specifying the following: (1) a change in the Work or Preconstruction Phase Services; (2) a change in Contract Price, if any; and (3) a change in Contract Time, if any. The value of a Change Order is the net amount after offsetting all deductions against all additions effected by the Change Order.
- 2.1.21 **City:** The City of Houston, a home rule municipality located principally within Harris County, Texas, including its successors and its authorized representatives.
- 2.1.22 **City Engineer:** City Engineer or the City employee representing the City Engineer, designated in the Contract and authorized to represent City, or successors.
- 2.1.23 **Claim:** Written demand or written assertion by one Party seeking adjustment of the Contract, payment of money, extension of time, or other relief under the Contract and includes, but is not limited to, claims for materials, labor, equipment, delay, changes, adjustments, substitutions, fees and third party claims. The Party making the Claim has the responsibility to substantiate the Claim.

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- 2.1.24 **CMAR:** The Construction Manager-at-Risk identified in the preamble of this Contract, including its successors and authorized representatives.
- 2.1.25 **CMAR-Related Entity:** The CMAR, its Subcontractors, Suppliers, subconsultants including professionals, technicians, engineers and anyone for whose acts any of the foregoing CMAR may be legally or contractually liable, including officers, directors, employees, representatives, agents, consultants and contractors.
- 2.1.26 **CMAR Fee:** The fee for the CMAR's profit and general overhead calculated as a percentage of Cost of the Work (except pass-through Allowances, insurance and Bonds) determined by the City at the time of acceptance of the CGMP and/ or GMP, as applicable.
- 2.1.27 **Contingency:** The dollar amount set out in the Guaranteed Maximum Price Proposal that is available for unanticipated impacts that are not otherwise the basis of a Change Order, and which may only be used upon prior written approval by the Director at his sole discretion for (i) any increased costs required for schedule recovery, if any; (ii) any increase in the costs of materials and equipment set forth in approved CGMP and/or GMP; and (iii) any other costs that Director in his sole discretion deems appropriate to be covered by contingency. All unused contingency shall revert to the City at final completion of the Construction Phase. The Contingency shall not be used for costs incurred as a result of: (1) any failure to perform or insolvency; (2) fines or penalties imposed by any governmental body for negligent acts; (3) any failure to coordinate work with that of the City or its contractors after agreeing to a schedule; (4) any acts of negligence not attributable to the City or its separate contractors; and (5) any costs related to defective, rejected, or nonconforming Work, materials, or equipment.
- 2.1.28 **Co-Location:** A system under which the CMAR's Key Personnel are located "under one roof" along with the Program Management Team in a location near the site.
- 2.1.29 **Commissioning:** A quality-focused process for enhancing delivery of a project. The process focuses upon verifying and documenting that the facility and all its systems and assemblies are planned, designed, installed, tested, operated, and maintained to meet HAS's requirements.
- 2.1.30 **Commissioning Authority (CxA):** A third party firm contracted with the City to oversee the CMAR's commissioning plan.
- 2.1.31 **Commissioning Plan (CxP):** Developed by the Commissioning Authority with the assistance of the Program Management Team (PMT) per the requirements of the Contact Documents and Scope of Work. The CxP provides structure, checklists, testing forms, schedules for all systems and equipment being installed.
- 2.1.32 **Component Guaranteed Maximum Price (CGMP):** A guaranteed maximum price for construction of a defined incremental element of Work.
- 2.1.33 **Component Guaranteed Maximum Price (CGMP) Amendment:** CGMP Submittal accepted and approved by the Director.

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- 2.1.34 **Component Guaranteed Maximum Price (CGMP) Submittal:** The proposal for the CGMP Amendment submitted by CMAR to the Director.
- 2.1.35 **Construction Documents (CD):** All of the graphic and written information prepared or assembled by the Design Consultant for communicating the design and for the bidding and construction of the Project.
- 2.1.36 **Construction Phase:** The phase of the Project during which the CMAR implements and executes the construction Work required by the Contract Documents.
- 2.1.37 **Construction Services:** The services more fully described as Construction Services in **Exhibit “B”**.
- 2.1.38 **Contract:** This agreement between the Parties including all exhibits, any written amendments authorized by City Council and CMAR, any CGMP Amendments, a GMP Amendment, and any Change Orders authorized by this Contract.
- 2.1.39 **Contract Documents:** The executed Contract and all Exhibits, any CGMP or GMP Amendment, any Notice to Proceed, Change Orders or other Modification or Amendments, and Construction Drawings and Specifications.
- 2.1.40 **Contract Price:** The monetary amount originally stated in the Contract adjusted by Change Order, if any.
- 2.1.41 **Contract Standards:** The standards, terms, conditions, methods, techniques and practices imposed or required by: (1) Applicable Law; (2) good engineering and construction practice; (3) the baseline design documents, if any; (4) the insurance requirements; (5) good operating practice, (6) applicable equipment manufacturers' and suppliers' requirements and recommendations; and (7) any other standard, term, condition or requirement specifically provided in the Contract Documents to be observed by the CMAR.
- 2.1.42 **Contract Termination:** For purposes of CMAR's indemnity obligation, the Contract terminates upon the earlier of Final Completion or termination by either Party pursuant to the terms of the Contract.
- 2.1.43 **Contract Time:** The number of days stated in the Contract to complete the Work, plus days authorized by Change Order.
- 2.1.44 **Contractor:** A construction contractor or construction manager other than the CMAR hired by the City that may work on the Project or in connection with the Project, except as set out in the Division 01 Specifications.
- 2.1.45 **Correction Period:** The period during which the CMAR shall be obligated to replace or correct deficiencies in Products and/or the Work, which period shall be one year following Substantial Completion and acceptance of the Project, or discrete phase thereof, unless the applicable manufacturer or subcontractor, if any, provides a longer correction period, in which event the longer correction period shall apply.

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- 2.1.46 **Cost of the Work:** Cost of the Work has the meaning set forth in **Section 8.4** of the Contract.
- 2.1.47 **Date of Commencement of the Work:** Date established in Notice to Proceed on which Contract Time will commence. This date will not be changed by failure of CMAR, or persons or entities for whom CMAR is responsible, to act.
- 2.1.48 **Date of Substantial Completion:** Date that construction, or portion thereof designated by the Director, is certified by Director to be substantially complete.
- 2.1.49 **Day:** Whether capitalized or not, unless otherwise specifically provided, means calendar day, including weekends and legal holidays. In the case of plural “days”, those days will be consecutive.
- 2.1.50 **Design Consultant:** Person or firm, under contract with the City, to provide professional services during Preconstruction and Construction and its authorized representatives.
- 2.1.51 **Design to Budget:** The process by which the Design Consultant designs the Project to ensure the Agreed Cost of the Work is not exceeded.
- 2.1.52 **Director:** The Director of the Houston Airport System, or any person designated by the Director to perform one or more of the Director's duties under this Contract.
- 2.1.53 **Drawings:** Graphic and pictorial portions of the Contract that define the character and scope of the Work.
- 2.1.54 **Effective Date:** The date the City Controller countersigns the Signature Page of this Contract.
- 2.1.55 **EPM:** The Executive Program Manager hired by the City to lead and manage, in consultation with the Director, the ITRP to successful completion. Roles include Executive Program Manager, Manager of Projects, Program Controls Manager, Manager of Design, and Manager of Construction.
- 2.1.56 **FAA:** The Federal Aviation Administration.
- 2.1.57 **Final Completion:** The full completion of the Work in accordance with the Contract Documents, without limitation, the satisfaction of all outstanding and Punch List items, and the issuance of a Certificate of Occupancy by all permitting and licensing entities.
- 2.1.58 **Furnish:** To supply, pay for, deliver to the site, and unload.
- 2.1.59 **General Conditions:** The requirements, terms and conditions set forth in **Exhibit “C”** of this Contract, which may include terms and conditions that are substantially the same as those found in this Contract and therefore shall be read together and interpreted by City and CMAR to eliminate conflict between the two. However, should a conflict exist, after Director and CMAR have used best efforts to reconcile the conflict, the provision most favorable to the City shall prevail.

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- 2.1.60 **General Conditions Work:** CMAR's on-site management, administrative personnel, insurance, Bonds, equipment, utilities, and incidental work, including field labor and materials. General Conditions includes, but is not limited to: all supervision and project management, including superintendent, assistant superintendent; permits; mobilization; de-mobilization; field engineers and helpers, professional surveyor; field office; field office furnishings; office supplies; field office maintenance and repair; copiers and supplies; storage; communication devices (telephone, radio, etc.); project signs; construction fence – install/remove/maintain; access construction; general clean-up; finish areas clean-up; dumpsters; temporary water service; temporary electrical service; temporary lighting; temporary telephone; temporary weather protection; temporary fire protection; equipment start and testing; monthly ice and cups, monthly toilets; monthly water; and quality control.
- 2.1.61 **General Requirements:** The sections of Division 01 Specifications that specify administrative and procedural requirements and temporary facilities required for the Work.
- 2.1.62 **Governmental Authority:** Any federal, foreign, state, local or municipal governmental body; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal. Notwithstanding the foregoing, Governmental Authority shall not include the Director or his designees.
- 2.1.63 **GSE:** Ground Support Equipment.
- 2.1.64 **Guaranteed Maximum Price (GMP):** The amount agreed upon by City and CMAR as the maximum cost to City for the Work for the Construction Phase, including the Cost of the Work and the CMAR's Fee for the Construction Phase. The GMP includes all CGMPs.
- 2.1.65 **Guaranteed Maximum Price (GMP) Amendment:** GMP Submittal accepted by the Director and approved by City Council.
- 2.1.66 **Guaranteed Maximum Price (GMP) Submittal:** The proposal for the GMP Amendment submitted by CMAR to the Director.
- 2.1.67 **HAS:** The Houston Airport System, a department of the City of Houston.
- 2.1.68 **IAH:** George Bush Intercontinental Airport/Houston.
- 2.1.69 **Inspector:** City's employee or agent authorized to assist with inspection of the Work.
- 2.1.70 **Install:** Unpack, assemble, erect, place, anchor, apply, work to dimension, finish, cure, clean, protect, and similar operations.
- 2.1.71 **ITRP:** The IAH Terminal Redevelopment Program.

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- 2.1.72 **ITRP Enabling Projects:** Projects included in the HAS CIP designed to serve the newly constructed MLIT and FIS facilities as well as a new roadway system and airfield improvements. These projects include, among others, the MLIT Apron and Taxilanes, the Project Management Office Building, the ITRP Enabling Utilities-Landside, and the East Aircraft Parking Hardstand.
- 2.1.73 **Key Personnel:** Those people having authority and responsibility for planning, directing and controlling the activities of the CMAR, either directly or indirectly.
- 2.1.74 **Labor Burden:** Indirect costs associated with employees' compensation. Typical costs associated with the burden include payroll taxes, worker's compensation and health insurance, paid time off, training and associated travel expenses not reimbursed under Section 8.4.2.3 and 8.4.5.5, vacation and sick leave, pension and retirement contributions including employee stock ownership plans and other customary benefits. Labor Burden includes actual costs paid or incurred by the CMAR for labor costs arising out of taxes, insurance, and benefits that are required either (1) by Company policy or (2) by collective bargaining agreements. Labor Burden shall NOT include profit, general and administrative costs, home and branch office overhead, profit sharing, bonuses, vehicle allowances, cell phones, computer charges and other costs not directly related to employee costs.
- 2.1.75 **Legal Holiday:** Day established by the City Council as a holiday.
- 2.1.76 **Major Unit Price Work:** An individual Unit Price item, (1) whose value is greater than five percent of Original Contract Price, (2) whose value becomes greater than five percent of Original Contract Price as the result of an increase in quantity, or (3) whose value is \$100,000, whichever is least.
- 2.1.77 **Milestone:** An event activity that has zero day duration and is typically used to represent the beginning or end of a certain stage of the Project.
- 2.1.78 **Minor Change in the Work:** A written change in the Work ordered by Director that does not change Contract Price or Contract Time, and that is consistent with the general scope of the Contract.
- 2.1.79 **MLIT:** The Mickey Leland International Terminal, or Terminal D at IAH.
- 2.1.80 **Modification:** Change Order, Work Change Directive, or Minor Change in the Work, all of which must be in writing and in conformance with HAS's existing processes.
- 2.1.81 **Notice of Noncompliance:** A written notice by Director to CMAR regarding defective or nonconforming work that does not meet the Contract requirements and that establishes a time by which CMAR shall correct the defective or nonconforming work.
- 2.1.82 **Notice to Proceed:** A written notice by the Director to CMAR establishing (a) the Date of Commencement of the Work for a phase of Construction or (b) the date CMAR is to begin performing Preconstruction Services.

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- 2.1.83 **OCIP:** Owner Controlled Insurance Program.
- 2.1.84 **Office of Business Opportunity:** Any reference to, or use of, the “Office of Affirmative Action” shall mean the City’s Office of Business Opportunity, or any such future name to which it is changed.
- 2.1.85 **ORAT:** Operational Readiness, Activation and Transition.
- 2.1.86 **Original Contract Price:** The monetary amount originally stated in the Agreement
- 2.1.87 **Overhead:** Indirect or fixed expenses of operating a business, including both home office locations and offsite and jobsite locations.
- 2.1.88 **Owner:** The City of Houston, Texas.
- 2.1.89 **Parties:** The CMAR and the City. When in singular form, refers to either the City or CMAR (as appropriate).
- 2.1.90 **PDM:** Program Definition Manual for the Mickey Leland International Terminal – Final Version December 2014.
- 2.1.91 **Phase:** Either the Project’s Preconstruction Phase or the Project’s Construction Phase, as those terms are defined in the Contract Documents.
- 2.1.92 **PMSS:** Program Management Support Services consisting of staff contracted by the City to provide systems, services and staff as an integrated team to manage and execute the ITRP in support of the EPM.
- 2.1.93 **Pollutant Facility:** Any facility regulated by the State of Texas to protect the health and environment from contamination by Pollutants, including without limitation, landfills, oil and gas production and storage facilities, wastewater facilities, waste injection wells, and storage tanks (including drums).
- 2.1.94 **Pollutant:** Any materials subject to the Texas Solid Waste Disposal Act.
- 2.1.95 **Preconstruction Phase:** The phase of the Project during which the CMAR implements and executes the preconstruction Work required by the Contract Documents. The Preconstruction Phase may be referred to in this Contract as “Phase 1 – Preconstruction”.
- 2.1.96 **Preconstruction Services:** The services more fully described as Preconstruction Services in **Exhibit “B” and “E”**.
- 2.1.97 **Price Proposal:** The completed price proposal form submitted by the CMAR.
- 2.1.98 **Product:** Materials, equipment, or systems permanently incorporated into the Work (or to be incorporated into the Work) and temporarily used in performance of the Work. Products may include existing construction or components intended for reuse.

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- 2.1.99 **Product Data:** Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by CMAR to illustrate a Product.
- 2.1.100 **Program:** IAH Terminal Redevelopment Program (ITRP). The Project is part of the Program.
- 2.1.101 **Project:** Total construction, of which the Work performed under the Contract Documents, may be the whole or a part, and which may include construction by the City or by separate contractors as more fully described in the Contract. The Project is defined in the preamble of this Contract.
- 2.1.102 **Project or Program Manager:** Also referred to in this Agreement as "Program Management Team" or "PMT". HAS, EPM and PMSS professionals or firms employing professionals, engaged by City to be the Director's authorized representative for administration of the Work. Titles used within City's departments may be different from those used in this definition. Unless otherwise designated by Director, references in the Contract Documents to the Project or Program Manager shall refer to Director. More than one Project or Program Manager may be under contract with the City.
- 2.1.103 **Project Manual:** The specifications for the Work. Certain provisions of the Project Manual may be revised during Preconstruction Services. If any revisions to the Project Manual are inconsistent with the material terms of this Contract, this Contract shall control.
- 2.1.104 **Project Schedule:** The CMAR's full scope of Works and Services, time phased and logic linked, in a schedule that represents how the CMAR intends to reach Final Completion within the Contract Time.
- 2.1.105 **Project Team:** The City (including the Project Manager, City Engineer and other City employees and representatives working in connection with the Project), EPM, PMSS, CMAR, Design Consultant(s), any separate contractors employed by City, and other consultants employed for the purpose of programming, design, and construction of the Project. The constitution of the Project Team may vary at different times during the Preconstruction Services and Construction Phase of the Project. The Project Team, excluding those designated by the CMAR, will be designated by the Director and may be modified from time to time by him, without additional time or compensation being awarded to the CMAR.
- 2.1.106 **Proposal Documents:** Documents submitted by CMAR that may or may not have Price Proposal as part of the submittal.
- 2.1.107 **Provide:** Furnish and Install, complete, ready for intended use.
- 2.1.108 **Punch List:** Uncompleted work items that the CMAR must complete in order to achieve Final Completion.

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- 2.1.109 **Quality Control (QC):** Those standards, systems, processes, procedures and activities exercised by the CMAR, subcontractors and suppliers to ensure that the Work is constructed in accordance with the Contract Documents.
- 2.1.110 **Safety Impact Position:** CMAR's employment position involving duties that if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health or safety of the employee, co-workers, and/or the public.
- 2.1.111 **Samples:** Physical examples that illustrate Products, or workmanship, and establish standards by which the Work is judged.
- 2.1.112 **Schedule of Values:** The detailed, itemized list of prices and costs that establishes the value of each part or component of the Work, developed by CMAR in accordance with the Contract Standards and accepted by Director to serve as the basis for progress payments for the Work.
- 2.1.113 **Shop Drawings:** Drawings, diagrams, schedules, and other data specially prepared for the Work by CMAR, Subcontractor or Supplier, to illustrate a portion of the Work.
- 2.1.114 **SIDA:** Security Identification Display Area. The SIDA is the secure area after which an identification badge must be visible and displayed.
- 2.1.115 **Special Conditions:** Any additional provisions identified as Special Conditions, if any, in the Contract Documents.
- 2.1.116 **Specifications:** Divisions 01 through 17 of the documents (as defined in the CSI MasterFormat™) that are incorporated into the Contract, consisting of written General Requirements and requirements for Products, standards, and workmanship for the Work, and performance of related services.
- 2.1.117 **Statement of Qualification:** Document submitted by either CMAR or Design Consultant in response to a Request for Qualifications, to demonstrate its ability to perform the requested services.
- 2.1.118 **Subcontractor:** Person or firm that has direct or indirect contract with CMAR or with another Subcontractor to perform a portion of the Work and its authorized representatives.
- 2.1.119 **Substantial Completion:** The stage in the progress of the Work or designated portion thereof where the Work is sufficiently and suitably complete in accordance with the Contract Documents, as determined by the Director, which will not be unreasonably withheld, so that the City can take Beneficial Occupancy, and the balance of the Work, including all Punch List work can reasonably be expected to be completed within 30 Calendar Days, unless otherwise agreed by the Director.
- 2.1.120 **Superintendent:** Employee of CMAR having authority and responsibility to act for and represent CMAR.

City of Houston – Houston Airport System

MLIT CMAR CONTRACT

Exhibit A – Defined Terms

2.1.121 **Supplier:** Manufacturer, distributor, materialman, or vendor having a direct agreement with CMAR or Subcontractor for Products, or services and its authorized representatives.

2.1.122 **Surety:** Corporate entity that is bound by one or more Bonds and is responsible for completion of the Work, including the correction period, and for payment of debts incurred in fulfilling the Contract. Surety shall include co-surety or reinsurer, as applicable.

2.1.123 **TSA:** Transportation Security Administration.

2.1.124 **UMP:** The IAH Utilities Master Plan.

2.1.125 **Underground Facilities:** Pipes, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments and encasements containing such facilities that exist below ground level.

2.1.126 **Unit Price:** An amount stated in the Contract for an individual, measurable item of work, which, when multiplied by actual quantity incorporated into the Work, amounts to full compensation for completion of the item, including work incidental to it.

2.1.127 **Work:** All services, supervision, labor, materials, supplies, equipment, Products and other items for a phase of construction required to perform this Contract (whether contemplated or partially contemplated) in strict accordance with the Contract Documents (as such may be modified or amended), including all things reasonably inferable from the Contract Documents and all of the foregoing provided or to be provided by the CMAR to fulfill the CMAR's obligations under the Contract Documents. The Work may constitute the whole or a portion of the Project.

2.1.128 **Work Change Directive:** A written change in the Work, ordered by Director, that is within the general scope of the Contract and consisting of additions, deletions, or other revisions. A Work Change Directive will state proposed basis for adjustment, if any, in Contract Price or Contract Time, or both.

**City of Houston – Houston Airport System
MLIT CMAR CONTRACT
Exhibit B – Scope of Services**

EXHIBIT "B"

MLIT CMAR

SCOPE OF SERVICES

EXHIBIT B

MLIT CONSTRUCTION MANAGER AT RISK SCOPE OF SERVICES

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ATTACHMENT A - PROJECT BOUNDARY GRAPHIC

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MLIT CONSTRUCTION MANAGER AT RISK SCOPE OF SERVICES

SECTION 1 - GENERAL

1.01 INTRODUCTION

- A. The Houston Airport System (HAS) has identified a significant need for the development of additional facilities at George Bush Intercontinental Airport (IAH) to handle aircraft, passengers, and cargo departing to and arriving from, domestic and international destinations on scheduled and chartered flights.
- B. To support the airlines' growth plans in Houston, HAS and airlines will complete a major Capital Improvement Program (CIP), known as the IAH Terminal Redevelopment Program (ITRP) and hereinafter referred as the "Program", that will include constructing a new 11-gate concourse (New Terminal C North currently under construction) undertaken by United Airlines (UA) and reconstructing and integrating the existing Terminal C North and Terminal D into a new single common-use international facility – the Mickey Leland International Terminal (MLIT), known as the "Project" undertaken by HAS. This Scope of Services is focused on the planning, programming, design and construction of the new MLIT including coordination of airside, landside and roadway improvements, and utilities to serve the Project boundary.
- C. Capitalized terms used, but not otherwise defined, in this Exhibit shall have the same meaning as the terms defined in the body of this Contract unless indicated otherwise.

1.02 MLIT VISION

- A. Key to this Project's success is to support the Houston Airport System's Vision Statement to establish Houston as a five-star global gateway where the magic of flight is celebrated. The Construction Manager-at-Risk (CMAR) will embrace the following HAS core values as they relate to the MLIT planning, design, and construction:

Relationships	Service
▪ We work together with integrity; treat every individual with courtesy and respect.	▪ We WOW our customers through a "can do" attitude and respond quickly to meet and exceed their expectations.
▪ We honor our commitments and behave in a manner that earns trust.	▪ We find ways to bring fun and joy into our work and bring customers along for the ride.
▪ We promote collaboration and teamwork across the organization.	▪ We respond promptly and effectively.
▪ We are reliable and trustworthy; we honor our promises and commitments.	▪ We show respect, compassion and let people know we care.
▪ We are open, positive and constructive in our feedback.	▪ We willingly provide the necessary time and effort to meet the customer's needs.

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Relationships	Service
<ul style="list-style-type: none"> ▪ We treat people like they want to be treated. ▪ We take responsibility for our actions. ▪ We lead by example. 	<ul style="list-style-type: none"> ▪ We are flexible and adaptive in a dynamically changing business environment. ▪ We display enthusiasm and passion for our work.
Innovation	Excellence
<ul style="list-style-type: none"> ▪ We have the courage and willingness to consider new and unconventional ways of thinking. ▪ We assume responsibility for learning new things. ▪ We embrace new ideas. ▪ We listen with an open mind. ▪ We are future-focused; "I've always done it this way" does not exist in our vocabulary. ▪ We recognize change as an opportunity. 	<ul style="list-style-type: none"> ▪ We strive for quality and skillful execution without compromise. ▪ We use the power of total employee involvement to achieve our organizational goals. ▪ We foster a culture of shared values that gets things done. ▪ We take calculated risks needed to achieve results. ▪ We look for new and more effective ways to do business. ▪ We encourage continuous improvement.

B. To support the HAS mission and core values, the MLIT design will adhere to the following overarching themes:

1. **Convenient**, simple, functional, and intuitive for the entire passenger experience;
2. **Flexible** design to safeguard for innovation and changes to technology, operations, and security;
3. **Technology-enabled** for automated processing and customer convenience;
4. Creating a **sense of place** reflective of the Houston community and environment;
5. **Contemporary** and timeless design with use of natural light for an open, expansive feel;
6. **Modular** features that enable off-site construction in controlled environments with on-site assembly to expedite construction, reduce material waste, control quality, and enable easier interior updates;
7. **Maintainable** facilities and systems that consider whole-life cycle costing; and
8. **Sustainable** and energy efficient.

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1.03 MLIT PLANNING OBJECTIVES

- A. The MLIT Program Definition Manual (PDM), dated December 2014, outlines the Program background, existing conditions, Program requirements, development plan, conceptual design criteria and Program phasing to be validated by the Design Consultant and CMAR. During the Program definition process, the HAS planning team generated guidelines and objectives through several sources, including interviews with HAS staff, workshops, and discussions with airport stakeholders. These sources guided the planning and subsequent design efforts for the MLIT as documented in the MLIT PDM.
- B. The MLIT design shall address the following key planning objectives as stated in the MLIT PDM:
 1. Provide additional international gate capacity within the Project boundary;
 2. Provide a high level of customer service;
 3. Meet airline requirements for contact gates and passenger processing facilities;
 4. Replace aging infrastructure, ensuring a focus on the maintainability and total cost of ownership of new assets;
 5. Develop a terminal facility that utilizes space efficiently;
 6. Develop a terminal facility that maximizes concession revenue opportunities;
 7. Increase opportunities for non-airline revenue sources;
 8. Maximize airside envelope to establish flexible and high gate utilization; and
 9. Maintain existing operations and number of wide-body gates during construction phasing.
- C. Additional considerations include the following:
 1. Plan for the complete passenger experience from drop-off through customs and baggage collection with clear wayfinding and physical flow that enables a simple and clear operation;
 2. Address passenger needs for 24/7 operation that include available concessions, sleep pods, and comfortable lounge-type seating;
 3. Consider pay-per-use club with services that may include a spa with shower facility;
 4. Connection point between arrivals to the Federal Inspection Services facility must be seamless;
 5. Design the terminal facility with adequate and functional support for back-of-house operations including maintenance and equipment room space;
 6. Plan for concessions logistics – consider how materials and deliveries move though the facility from the loading dock to designated spaces, away from the

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- passengers and within a back of house environment; plan for centralized storage for concessions;
7. Consolidate operational spaces to support an efficient operation;
 8. Design the facility to both integrate art within the terminal design elements and to consider placement of art when planning facility interiors;
 9. Integrate advertising with the art program; plan for retail and commercial advertising to fit within the design;
 10. Plan for the modern passenger, including mobile device charging stations;
 11. Design for a tight building envelope that is properly sealed with energy efficient materials and glazing; and
 12. Consider the passenger's luggage needs to enable unencumbered shopping and relaxation.

1.04 INTERNATIONAL CUSTOMER RESEARCH

- A. To develop a deep understanding of the international customer hierarchy of needs in support of the Project, HAS conducted a series of focus groups to inform a conjoint analysis. Focus groups of business and leisure travelers were comprised of both US residents traveling internationally, as well as departing international travelers in the following regions: Mexico, Europe, Asia, and the Middle East.
- B. The report describing a list of airport amenities and features to be considered as part of the Project design will be considered by the Design Consultant during design of the MLIT.

SECTION 2 - PROJECT DESCRIPTION

2.01 OVERVIEW

- A. The new MLIT will replace both existing Terminal C North Pier and the entire Terminal D facility with a new single consolidated terminal building planned to occupy four levels. The south face of the new MLIT will be constructed to the north of the current building location to accommodate landside roadway improvements. The proposed new MLIT will be planned for 15 wide-body gates including 4 gates for A380 aircraft, depending on the fleet mix, primarily on two double-loaded pier concourses. These gates will also be able to accommodate up to 30 narrow-body aircraft in alternative configurations.
- B. The new MLIT replaces all of the terminal processing functions of existing Terminal D, while expanding capacity and providing the desired passenger amenities and experience found in a world class international terminal. The Project includes all the work contained within the Project boundary as shown in **Attachment A** to this Scope of Services, such as the new MLIT and its associated landside and apron work and utilities; and connections to other airport facilities, such as terminal processor facilities at the Federal Inspection Services (FIS) located within Terminal E and connection to

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Terminal B (Terminal New C North). The Project boundary will vary based on final design of the Terminal and Apron. In addition, provisions will need to be made for connection (with a future pedestrian bridge) between the MLIT and an existing parking structure over North Terminal Road as well as enabling direct access to a future hotel that may be constructed adjacent to the Project.

- C. Work within the Project boundary, located outside the terminal building, is generally defined to include, but not be limited to:
 - 1. Apron pavement systems and associated infrastructure and utilities, including but not limited to, grading and storm water drainage, apron lighting, potable water, sanitary sewer, preconditioned air, ground power, power and communications, passenger boarding bridges and foundations, and hydrant fueling system from the terminal building curtain wall to the tail-of-stand-road (vehicle service road), including the vehicle service road and pavement markings.
 - 2. Hydrant fueling system design from the aircraft fueling hydrants to the NCN connection point of the main hydrant fueling system located south of Taxiway NB and east of NJ. Remaining apron pavement and utilities system design will be under a related project.
 - 3. Landside work, extension of the utilities conveyance corridor to the east end of the MLIT footprint, and roadway modifications. Landside work includes roadway modifications required for improved flow of vehicular traffic in and around the MLIT, additional curbside and bypass lanes in front of the terminal, and new signage and wayfinding. The landside project includes development on the landside, or public areas, along North Terminal Drive in front of the MLIT terminal and transition to the NCN terminal, and associated roadway utility work. The new MLIT curbside will be shifted slightly north from the existing Terminal D curbside to create space for new arrivals and departures lanes and curbsides, while reconstruction of the existing roadway will create bypass lanes through this congested area.
- D. In order to maintain operation of the airport during redevelopment of the MLIT, construction of the Terminal and associated work will need to be phased. Preliminary considerations for Project construction phases are identified below:
 - 1. Enabling Packages – Design Consultant and CMAR shall jointly develop Enabling Packages to be issued as early procurement (work) packages for Component Guaranteed Maximum Price (CGMP) proposals, such as temporary sterile corridor(s), temporary baggage handling system, hydrant fuel main extension from NCN tie-in to the tie-in at the existing fuel main, and other enabling projects identified during the preconstruction period.
 - 2. D1 Pier and Western Terminal Processor and Frontal Gates
 - 3. D2 Pier and Eastern Frontal Gates
 - 4. D3 Pier and Eastern Terminal Processor

[Note that the D3 (East) Pier has been removed and replaced with an eastern approach façade and associated site development. Connection to the FIS must be maintained and program requirements within the D3 Pier are to be provided]

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as needed within the D2 Pier. This requirement supersedes the D3 Pier requirements as stated in the MLIT PDM.]

- E. The Project is to be designed with constructability and passenger experience at its core. Therefore, the Project must be designed and constructed in multiple phases to allow continuation of passenger services in the existing terminals, while the existing Terminal D is decommissioned and demolished in phases. Construction phasing as described within the MLIT PDM is primarily a west to east flow of construction, where construction does not begin until United Airlines vacates the existing C North Pier following completion of the new Terminal C North (NCN) Pier. The City is evaluating an option; however, to accelerate construction by advancing construction of the D2 pier and constructing the new terminal from east to west. For planning purposes, the intent is that a minimum of six (6) contact gates remain operational during the MLIT construction, including four (4) positions for wide-body and two (2) positions for A380 aircraft.
- F. Each phase of MLIT construction will require design and construction of temporary infrastructure to enable construction of the piers while maintaining existing operations and protecting the passenger experience. Design Consultant in collaboration with the CMAR will need to address the temporary infrastructure in each phased construction package to maintain passenger, landside, airside, airport wide work, utilities infrastructure, and Terminal E FIS access and control of sterile corridors. In addition, logistics management must be ensured within the MLIT and back-of-house corridors and building access during each phase of construction. The CMAR will identify construction phasing options that enable efficient Project construction while fully satisfying the operational requirements of the airport. The CMAR will collaborate with the Design Consultant to ensure that design of the temporary and final facilities enables maintenance of operations and efficient construction.

2.02 PROGRAMMATIC FUNCTIONS

- A. The Project includes international passenger services and support facilities including: ticketing check-in, hold rooms (departure lounges), baggage handling and claim areas, passenger and baggage screening, passenger amenities, customer service areas, and non-airline facility support space. The Project will include, but is not necessarily limited to, programmatic functions listed below:
 1. Ticket Counter and Support Areas
 2. Security Checkpoint lanes with safeguarded planning for growth plus a separate employee security checkpoint
 3. Baggage Handling Systems
 4. Federal Agency Facilities
 5. Checked Baggage Inspection System
 6. Concourses and Hold rooms
 7. Children's play areas

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8. Lactation Rooms (Mother's Nursing Stations)
9. Airline Operations Area Shell Space
10. Airline Clubs Shell Space – plan for minimum 70,000 square feet (total of 7 clubs) with vertical circulation at the club level and provision for direct club level boarding access for two A380 and one wide-body aircraft parking positions.
[NOTE: This space requirement supersedes requirements stated in the MLIT PDM.]
11. Friends, Family and Relatives Center (FFRC) that may also be planned as part of Airline Club space
12. Airside Systems, Paving, and Utilities into and out of the building as coordinated with the related projects
13. Governmental VIP Suite (Diplomatic Room) for visiting dignitaries located on the departure level
14. Performance stage on departure level in high traffic area
15. Furniture, Fixtures and Equipment (FF&E)
16. Art Program Coordination and Provisions
17. Tenant/Concessionaire Shell Spaces for Food, Retail, Convenience, and Ancillary Services (to be built-out under separate contracts per phased construction) including Concessionaire Storage. Concessionaire space to be planned at the central core area and at the gates. Include consolidated vending areas planned as part of Concessionaire space.
18. Customer Service Areas
19. Loading Dock
20. Ground Transportation Facilities
21. Interior/Exterior Dynamic and Static Wayfinding Devices, including Airside Gate Signs
22. Passenger Boarding Bridges (PBB) - plan for two PBB at all wide-body and three PBB at all A380 capable gates
23. Aircraft Pre-Conditioned Air (PCA) Systems
24. Aircraft Ground Power 400 Hz Systems
25. Passenger Conveying Systems (vertical/horizontal circulation)
26. Passenger Information Communications Systems, Flight Information Display Systems (FIDS)
27. Baggage Information Display System (BIDS), Ramp Information Display System (RIDS), and Gate Information Display Systems (GIDS)
28. Aircraft Potable Water

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29. Aircraft Sanitary Waste
30. Aircraft Guidance Parking System
31. Ground Service Equipment Battery Charging System
32. Building Systems (Structural, Curtainwall, Plumbing, Fire Protection, Mechanical, Electrical, Utility, Communications, and Security)
33. Modifications to existing Terminal B-D connector to allow connection to the new facility
34. Extension and modifications to existing tunnel connecting the FIS in Terminal E to the Project
35. Flexibility for direct connection to a future hotel
36. Hydrant Fueling System for identified aircraft layout

2.03 RELATED PROJECTS

- A. CMAR shall coordinate with Design Consultant and other design teams, the Program Management Team (PMT), airline representatives, project stakeholders, and other tenants and contractors executing concurrent capital improvement and tenant improvement projects, with respect to all aspects of this Project. The following projects are either in construction or are planned to be awarded under separate procurement packages for separate project delivery.
- B. The CMAR will be required to collaborate with the design consultants and contractors for these projects and other project being performed at IAH to facilitate applicable linkages with the MLIT Project.
- C. The CMAR is responsible to collaborate to ensure that required operation of the airport is able to be maintained across applicable project sites.

2.03.1 UNITED NEW TERMINAL C NORTH (NCN) PIER

- A. This project's design and construction is being managed separately by United Airlines with expected final completion by Second Quarter 2017. The project will construct a new concourse pier on the north ramp in between the existing Terminal B North gates and the existing Terminal C North Pier. At completion of the NCN (referred to as Terminal B in the PDM) project, United Airlines will vacate the existing Terminal C North pier and relocate operations to the NCN. This will allow demolition to begin on the existing Terminal C North pier, which is required for the construction of the Project.
- B. In addition to the terminal, the NCN Project scope includes:
 1. Terminal B to D Connector: This is the small linear pier running parallel to the terminal roadway west of the existing Terminal C North Pier, containing existing Gates C24-C27 and a United Club lounge. This area and two bays of concessions is the only portion of the Terminal C North Pier that will remain when the pier portion of the concourse is demolished to make way for the new MLIT D1 pier. The west end of this facility will be modified to integrate with the

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NCN Pier. After demolition of the existing Terminal C North pier, the east end of this facility will be integrated with the new MLIT.

2. Renovation of Gates C24-C27 and the United Club lounge is United Airlines' responsibility, within the NCN Project. Renovation of the two bays of concessions is the responsibility of this Project. The purpose of maintaining the two bays of concessions area is to provide access for United Airlines to and from the NCN to the existing C Processor, and to provide vertical circulation service to the apron level. Phased construction of the MLIT will demolish the existing Terminal C North Pier, which serves as the connection between the existing C Processor, APM Station and the B-D Connector. For the B-D Connector to have continued access to the C Processor and APM station, a temporary pedestrian bridge will need to be constructed. The MLIT Design Consultant and CMAR teams will be responsible for maintaining this connection.
3. NCN Roadways and Drainage: There will be no new passenger ticketing, baggage claim, or curbside associated with the NCN project; however, there will be phased landside demolition and construction associated with a new Utilidor and to maintain acceptable vehicle access for terminal and airside support services operations. Landside North Terminal roadways will be completely rebuilt at the end of the program.
4. NCN Apron and Utilities: NCN apron and utilities consist of all the supporting apron and underground utilities associated with the NCN pier concourse. Utilities include the high voltage system, sanitary sewer, storm sewer, domestic water, fire protection, natural gas, and jet fuel. Design and construction of these facilities are the responsibility of United Airlines. The jet fuel main line system, which is in conflict with the NCN project site, will be demolished and rerouted around the north end of the NCN and extend along the north side of the NCN Project site and capped within a new vault for future connection to the MLIT Project. A new hydrant fuel loop system will be installed around the entire NCN, tapping off the new lines and connecting to the existing system near the east end of the B-D Connector.

2.03.2 ITRP ENABLING UTILITIES - LANDSIDE

- A. This project is being procured under a separate design-build project, expected to commence during fourth quarter 2016 with construction expected to start by the third quarter 2017. The project scope includes design and construction of water storage tanks and distribution pumping for domestic and fire protection water service to IAH terminal facilities; reclaimed water (treated at the City of Houston wastewater treatment plant) that is planned for use at IAH facilities for cooling tower make-up, irrigation, and flushing toilets; chilled and heating hot water distribution from the IAH central utility plant; 12.5kV site power distribution from a new electrical receiving station; a new 2MW standby power generator to serve the Project on a prioritized load basis; and information technology, communications, and fiber optic (FO) trunk lines including new SCADA system, to be constructed within an underground concrete utility conveyance corridor (Utilidor) below the north side of the vehicle service road. The Utilidor and services will be terminated at the west end of the Project boundary, where

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it will be connected to the MLIT Project. This Project includes design of utilities services to the MLIT from the Utilidor connection point.

- B. The Utilidor will include installation of required utilities for the NCN and MLIT projects. The Utilidor will be sized to accommodate installation, maintenance, replacement, and access for operations and maintenance staff to service piping, valves, fiber and cabling installed within the Utilidor. At designated points of service, the Utilidor will branch off and connect to the NCN and MLIT buildings, as well as provide for future service connections to other central terminal area facilities, for service connections to mechanical, electrical, and communications rooms.
- C. The Utilidor will be constructed in segments to align with the service needs of the MLIT construction phases. The design and phased construction approach will take into account the potential need for direct-buried temporary chilled and heated water supply lines which may be required outside the Utilidor.
- D. Refer to the IAH Utilities Master Plan, dated September 12, 2014, for additional detail related to utilities planned to serve the MLIT.

2.03.3 EAST AIRCRAFT PARKING HARDSTAND

- A. This project is being procured under a separate design-build project, expected to commence fourth quarter 2016, with construction expected to start by the third quarter 2017. The project scope includes design and construction of a new aircraft parking hardstand to be constructed northeast of the Project boundary and will enable construction of the proposed Project by providing a new apron parking area for boarding, de-boarding, and parking of aircraft that may be displaced by the Project construction. The hardstand will provide gate support services (i.e., hydrant fueling, ground power, pre-conditioned air, etc.) for aircraft utilizing the parking positions.

2.03.4 MLIT APRON AND TAXILANES

- A. This project includes new apron pavement systems and associated infrastructure and utilities from the outer edge of the tail-of-stand road (vehicle service road) to the object free area of Taxiways NB and SF. Design and construction management services for this project is planned to be procured separately during the fourth quarter of 2016, with construction expected to start during the second quarter of 2017.

This project, which will be constructed immediately adjacent to and around the perimeter of the MLIT Project, will require specific coordination between the projects.

2.03.5 FEDERAL INSPECTION SERVICES (FIS) RENOVATION AND EXPANSION

- A. The FIS Renovation and Expansion project will enlarge the existing FIS to improve operations and provide increased capacity to meet growing demand. This project includes renovation of the existing FIS facilities for improved functionality, expansion eastward of the baggage handling system, and a new dedicated CBP parking structure. This project requires close coordination with the MLIT to enable maintenance of existing operations and to construct the connections between the MLIT Project and the reconfigured FIS.

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- B. Design and construction management services for this project is planned to be procured separately during the second quarter of 2016, with construction expected to start during the second quarter of 2017. The PDM for this project will be available for review.

2.03.6 AIRPORT-WIDE SYSTEMS

- A. Airport-wide Systems projects are associated with, and needed to properly develop and operate the facilities defined in the ITRP. Not all are required to be completed before the Project is initiated. These projects range from additional off-site power distribution system improvements needed for service reliability, to information technology backbone improvements, and inter-terminal train (ITT) system improvements.

2.03.7 TENANTS

- A. Tenant improvements are projects within the MLIT that third party tenants are responsible for designing and constructing the build-out. There are five major groups of tenants responsible for space build-out within the program: Airlines, concessionaires and third party service providers, Customs and Border Protection (CBP), Transportation Security Administration (TSA), plus other federal agencies. Their construction and/or installation of equipment must be phased and coordinated with the each of the construction phases so that tenant improvements are operational with the opening of that phase of the Project. Primary tenants providing design and construction components of the ITRP are federal agencies related to safety, security and border protection, the airlines, and concessions. Some of these agencies provide their own design guidelines as referenced in the PDMs. Both airlines and concessions have public (customer) and back-of-house areas.

2.03.8 PROGRAM MANAGEMENT OFFICE (PMO) BUILDING

- A. To improve program management efficiency and interaction between HAS staff, stakeholder representatives, the PMT, plus the multiple consultant and contractor organizations, HAS will be constructing a Program Management Office (PMO). The PMO will provide a centralized facility for all designated HAS staff members, designated stakeholder representatives, the PMT's key staff members, PMSS teams, principal consultant and contractor staff members, and other designated personnel. In addition, the PMO will provide conference and training facilities to support the ITRP and a consolidated location for all ITRP-related document control, records management, reproduction, and CAD/GIS functions. The PMO will be located at 115 Standifer Road.
- B. The CMAR may be required to house key management personnel during design and construction in this location to enhance collaboration with the Project Team. To facilitate work planning, HAS may provide laptop computers, monitors, and project management-related software for the CMAR's personnel based in the PMO. Worker parking and a transportation staging area is planned to be located in proximity to the PMO site for support of workers on the Project site.

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- C. Prior to completion of the PMO, the HAS may provide alternate office space within or near IAH boundaries for the CMAR to perform Services, which is subject to availability.

2.03.9 HAS INFRASTRUCTURE

- A. Additional projects either planned or in construction at IAH, identified within the HAS Capital Improvement Plan (CIP), include taxiway rehabilitation and additional airfield improvement projects, plus utility infrastructure projects.

2.03.10 FUTURE PROJECTS

- A. In addition to the above identified projects, the CMAR will be required to interface with projects defined in the future that may not yet be identified as part of the CIP.

SECTION 3 - PROJECT ADMINISTRATION

3.01 GENERAL SERVICES

- A. The CMAR shall be required to provide complete Preconstruction Services and perform all Construction Work associated with the Project, including furnishing of all, labor, materials and equipment, necessary and reasonable to complete the entire contemplated scope of Work in accordance with HAS requirements and the terms of the Contract. The Work includes, but is not limited to; permitting, supervision, testing, inspection, integration, commissioning system components and interfacing with third-party commissioning services provider for integrated systems testing, information technology, systems integration and activation, regulatory requirements, project closeout, and all necessary general conditions that maybe reasonably inferred.
- B. The CMAR will be designated as the "Prime Contractor" for the MLIT Project.
- C. The CMAR will be required to coordinate and work with the Program Management Team (PMT) and the HAS contracted Design Consultant. There will be a separate Design Consultant being procured by HAS under separate solicitation for the Project.
- D. The CMAR is responsible for the management and implementation of general services works and security for the Project site. This includes, but is not limited to: management of miscellaneous site preparation activities, escorting and work force transportation to and from the areas of work, subcontractor/trade work force logistics, clean-up and housekeeping, temporary works for construction, public safety barriers, fencing, partitions etc., traffic maintenance, and temporary signage.
- E. The CMAR is responsible for management of the Project environmental plan and sustainability initiatives related to the site. This includes the tracking, disposition and reporting of demolition work, salvage of any materials, and reuse of any materials.
- F. Some work will be completed within the secure area of the airport. Security Identification Area or SIDA badges will be required for employees, as will full security measures and escorting.

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- G. A portion of the Project may be funded by the Federal Aviation Administration (FAA) Airport Improvement Program and airport collected passenger facility charges. All work for the Project must be awarded to subcontractors via an open and fair competitive procurement process. The CMAR will be required to administer a bidding process to select subcontractors for the Project. The CMAR's competitive procurement process must be open, fair and transparent, and should result in the CMAR selecting subcontractors that provide the best value to HAS.

3.02 PROJECT ROLES AND RESPONSIBILITIES

- A. This section defines general roles and responsibilities for the entities involved in the Project.
- B. HAS, EPM and PMSS representatives comprise the Program Management Team (PMT).

Entity	Responsibility
City of Houston (City)	<ul style="list-style-type: none">▪ The City of Houston is the owner and approver of all Contracts executed for work at Houston Airports, including the Intercontinental Airport of Houston (IAH).▪ The Houston City Council approves all Contracts and changes to Contracts, unless otherwise delegated.▪ Delegated authority for work within the Houston Airport System is granted to the Director of the Department of Aviation.
Houston Airport System (HAS)	<ul style="list-style-type: none">▪ HAS, through the Director (Department of Aviation) or their designee, represents the City of Houston with respect to management and operation of the Airport.▪ Use of the terms City or HAS may be used interchangeably.▪ Approves, makes decisions throughout project phases▪ Ensures that HAS required decisions are made in a timely manner.▪ Facilitates communication with City of Houston, Department of Public Works and Engineering (PWE) and Building Standards Group (BSG) to keep all parties informed of project progress and construction permit submittals.▪ Provides key input on owner requirements related to planning, art program, technology, finance, operations, maintenance, security, and safety.

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Entity	Responsibility
Executive Program Management (EPM) Team	<ul style="list-style-type: none"> ▪ Provides overall leadership of the ITRP and advises HAS on project status and key decisions affecting scope, schedule, budget, safety, and quality. ▪ Develops policies, procedures, and execution plans to deliver the Program and Projects. ▪ Coordinates all work to be undertaken with HAS divisions, HAS departments and external stakeholders (such as airlines, concessionaires) as necessary for the timely and quality execution of the Program. ▪ Engages and collaborates with airlines and other airport stakeholders to minimize disruption of operations and services throughout the duration of the Program.
Program Management Support Services (PMSS) – Project Management	<ul style="list-style-type: none"> ▪ Led by Project Manager representatives from Program Management Support Services (PMSS) staff; provides overall management of the ITRP Projects. ▪ Acts as interface between the Executive Program Management Team, the Design Consultant and the Construction Manager at Risk (CMAR). ▪ Ensures integration and execution of project-specific controls systems. ▪ Manages contracting and project management processes through all phases of design and construction. ▪ Ensures change management decision-making is defined, documented and understood. ▪ Provides overall administrative management of contracts with the design consultants and construction contractors.
Program Management Support Services (PMSS) Team - Construction Management	<ul style="list-style-type: none"> ▪ Led by Construction Manager representatives from the Program Management Support Services (PMSS) staff; provides management of contractors engaged to deliver ITRP projects. ▪ Provides management of cost, schedule, quality, security and safety. ▪ Manages contracting and project management process through all phases of construction. ▪ Manages the contractor's performance in accordance with the terms and conditions of the Contract.

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Entity	Responsibility
Program Management Support Services (PMSS) Team - Design Management	<ul style="list-style-type: none"> ▪ Led by Design Manager representatives from the Program Management Support Services (PMSS) staff; provides management of design consultants engaged to deliver ITRP projects. ▪ Provides management of the design process, managing scope to budget, compliance with project requirements plus safety and security throughout design. ▪ Manages and tracks design from concept through construction permit packages and delivery of record close-out documents. ▪ Manages the design review process through all phases of design. ▪ Manages the Design Consultant's performance in accordance with the terms of the Contract.
Design Consultant Project Manager	<ul style="list-style-type: none"> ▪ Design Consultant provides execution for all phases of design to produce a final design that achieves Project objectives, scope, schedule, safety in design, and budget. ▪ As prime consultant, leads and coordinates sub-consultants and specialty consultants.
Construction Manager at Risk (CMAR)	<ul style="list-style-type: none"> ▪ Provides management during preconstruction and construction phases for cost, schedule, work package planning and sequencing, quality, safety and constructability. ▪ Performs design reviews and provides recommendations for design alternates to identify and resolve constructability issues and to assist in maintaining budget and schedule. ▪ As prime contractor, leads and coordinates all sub-contractors.
Commissioning Authority (CxA)	<ul style="list-style-type: none"> ▪ Verifies testing and operational intent of all applicable elements of the Project scope ▪ Performs design phase reviews focused on 'commissionability', functionality, maintainability, sustainability and best practices. ▪ Participates in concurrent design phase reviews with the PMT, other consultants and contractors, as applicable. ▪ Develops overall Commissioning Plan requirements as the basis for the CMAR to develop the Project technical commissioning plans.

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3.03 HOUSTON AREA CONSTRUCTION EDUCATION COLLABORATIVE

- A. The Houston City Council has approved funding for Lone Star College to train construction workers and trades at an IAH facility to be renovated for this purpose. The Houston Area Construction Education Collaborative (HACEC) will operate out of this facility. It is the intention that the CMAR become aligned with this initiative, employ graduates of the program, and integrate these skilled workers into the Project workforce.
- B. The HAS, in partnership with local community colleges, has formed the HACEC. The mission of the HACEC is to provide safety and security training, as well as construction trade skills training, to construction contractor employees. HAS funds the delivery of the training curriculum through payment of a per-labor-hour contribution for every hour worked by construction contractor employees on HAS-designated capital projects.
- C. All ITRP construction contractor employees are required to successfully complete the HACEC safety/security training prior to mobilizing on the job site.

SECTION 4 - PHASE 1 PRECONSTRUCTION SERVICES

4.01 OVERVIEW

- A. The period of performance for Phase 1 Preconstruction Service will commence with an issuance of a Notice to Proceed (NTP) and will terminate upon HAS's acceptance of the MLIT GMP in accordance with the Work Phases and Milestones section of the RFQ.
 - 1. Immediately upon issuance of the NTP, the CMAR shall thoroughly review and become familiar with the Project scope, requirements and constraints, including:
 - a. The goals and objectives of the Project
 - b. Development and management of the Design to Budget
 - c. Required project construction quality standards and requirements
 - d. The development of project reports
 - e. The needs and requirements of HAS and other Project participants
 - f. The Project site available records, as-builts, specifications, local conditions and all related limitations and constraints
 - g. Schedule assumptions and constraints
 - 2. CMAR services are intended to be provided in a collaborative Project team environment. The CMAR is required to be engaged in the Project Design and Construction Document development process working with the PMT and

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the Design Consultant. The CMAR shall collaborate, advise, assist, estimate, schedule and provide recommendations to members of the Project team on the design and construction aspects of the Project.

4.02 KEY PERSONNEL

- A. The CMAR shall provide all dedicated Key Personnel and support staff at the start of Preconstruction Services and throughout the Project as necessary to complete all Preconstruction and Construction Phase Services.
- B. The CMAR Key Personnel shall be located on-site at an HAS-provided facility and shall be dedicated to the Project to perform those tasks required in the Contract.

4.03 PRECONSTRUCTION MEETINGS

4.03.1 KICKOFF MEETING

- A. Prior to commencing work and at a specific time and place to be determined by HAS, meet with the PMT for a Project kickoff meeting. The PMT, CMAR's key personnel, Design Consultant and the Project team key personnel will be required to attend the Kickoff Meeting. The goals of the kickoff meeting are:
 1. To integrate the CMAR with the Project team
 2. To achieve consensus from the overall Project team on any issues and concerns
 3. To confirm that Scope of Services requirements are understood
 4. To establish and explain policies and procedures for completion of a successful project
 5. To establish expectations of the Project schedule
 6. To establish expectations of the ongoing cost estimate process
 7. To establish clear lines of communication and points of contact for each Project team

4.03.2 BI-WEEKLY PROJECT UPDATE MEETINGS

- A. Following the Kickoff meeting, the CMAR shall organize and lead Bi-weekly Project Update Meetings throughout the duration of the Contract. The Bi-weekly Project Update meetings shall be attended by the CMAR and PMT key personnel. The purpose of this meeting is to address design, construction and other risks and elements affecting the Project. The CMAR shall use this meeting to review and update the following project related matters to the PMT:
 - a. Safety (Incident) Management
 - b. CMAR's Risk Management Register/Issue Log
 - c. Design Development Issue Log

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- d. Potential Change to the Work
 - e. Coordination and Logistic Planning
 - f. CPM Schedule (Critical Path or Near Critical Path)
- B. Any issue in the opinion of the CMAR and/or the PMT that has the potential to impact the planning, management, or execution of the Project will be discussed in the Bi-Weekly Update Meeting. Such as maintaining the budget, schedule, scope and quality objectives.
- C. The CMAR shall submit the aforementioned project update documents to the PMT at least three business days prior to the Bi-weekly Project Update Meeting.

4.03.3 DESIGN PROGRESS MEETINGS

- A. The PMT will schedule regular Design Progress Meetings to monitor progress of the Design portion of the Work. These meetings will start within 30 days from the date of the Phase 1 NTP after the project is awarded to the CMAR and will occur as follows:
 - 1. Phase 1 Design to Budget Period: Once a week minimum and as required to accomplish the Design to Budget task.
 - 2. Phase 2: Bi-weekly until submittal completion then as needed and determined by the PMT.
- B. Attendee: Design Progress Meetings will be attended by:
 - 1. The PMT
 - 2. The CMAR's key personnel
 - 3. Major subcontractors as they become available.
 - 4. Others as directed by the PMT
- C. Agenda: The Design Consultant will be responsible for developing the meeting agendas in collaboration with the CMAR. The purpose of the meeting is to discuss significant items that could affect completion of the Construction Documents and that have a major impact on the quality, cost and overall schedule of Work.
- D. Minutes: The CMAR will record and distribute meeting minutes, regardless of whether someone else is also doing the same to facilitate verification of a complete and accurate understanding of the meeting. The minutes shall be issued to the PMT for review and comment within two (2) days of the meeting.

4.04 PRELIMINARY SCHEDULE

- A. The CMAR shall coordinate the requirements of this Section with Specification Section 01 32 16, Project Schedules and Progress Reporting.
- B. Within Thirty (30) days after NTP, the CMAR shall prepare and submit a preliminary schedule for execution of the Work for PMT review and response.

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- C. The Preliminary Schedule shall include Design Consultant's design activities as appropriate to identify the collaborative activities between the CMAR and the Design Consultant.
- D. The CMAR shall update the Preliminary Schedule as required to reflect progress of the Work and as indicated in the Contract. Such updates shall not be construed as relieving the CMAR of its complete and exclusive control over the means, methods, sequences, and techniques for executing the Work.

4.05 DESIGN TO BUDGET

- A. Within forty-five (45) Calendar Days of NTP for Preconstruction services, the CMAR and Design Consultant will develop a cost component framework (template). The CMAR and Design Consultant will jointly use their experience, knowledge, and industry information from similar projects to develop an initial Probable Cost of the Work. The cost component framework, the Probable Cost of the Work, and the Agreed Cost of the Work must be approved by the Director prior to proceeding with Schematic Design.
- B. During the design process, the CMAR shall conduct site visits and field investigations to ensure plans and specifications accurately reflect current field conditions and make recommendations for changes to the plans and specifications if necessary, based on these findings.
- C. During the design process, the CMAR will conduct constructability reviews and provide input and suggestions to align the design with the Agreed cost of Work. The CMAR, working with the PMT and the Design Consultant will perform more detailed analysis of selected items to include analysis of alternative methods, systems, materials, equipment, or designs feasible to complete the construction at the lowest reasonable cost while achieving HAS's Project objectives.
- D. The CMAR will evaluate opportunities and make recommendations to improve maintainability and sustainability and reduce lifecycle costs and energy use.
- E. The Probable Cost of the Work shall not exceed the Agreed Cost of the Work accepted by the Director.
- F. Cost Estimating and Reporting
 - 1. The CMAR will provide cost estimating throughout the Preconstruction and Construction Phases. The CMAR will utilize an electronic data-base program to research and store pricing of various construction items. All estimates will build-off and reconcile to the approved Probable Cost of the Work. The estimates developed by the CMAR at each Design Milestone (30%, 60%, 90%, and 100%) in addition to the monthly estimates, will be used by HAS during negotiations with the CMAR to set the GMP or CGMPs. All estimates shall be open book.
 - 2. The CMAR will work with the PMT's cost estimators in reconciling methods and information sources for the pricing of construction elements. As estimates are developed, the CMAR shall develop a system to manage and organize the various estimates utilizing the Work Breakdown Structure (WBS) provided by the PMT.

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3. During Preconstruction, the CMAR will provide monthly cost estimate reports. The reports shall include the updated Probable Cost of Work, changes and variances from previous report and/or selected milestone reports, constructability review summary, list of value engineering/lifecycle cost reduction recommendations, and market updates.
4. Once construction is authorized, the CMAR will provide a monthly budget report/buy-out report with their request for payment summarizing the Work accomplished in the month for which the request is being submitted, the forecast cost to complete, a summary of the pending and authorized GMP or CGMP adjustments, Work planned for the following month, progress percentage complete of Work deliverables, current status per budget line item, plus variances and deviations from the Agreed Cost of Work.

G. Cost Estimate Reconciliation and Presentation

1. Design Consultant will submit design options and deliverables throughout the Design Phases to the CMAR, through the PMT, in order for the CMAR to provide cost estimates. The CMAR will conduct meetings with the Design Consultant participates and the PMT to discuss the CMAR's cost estimates, receive clarification, and reconcile any differences that may exist. Following the cost estimate reconciliation, the Design Consultant in collaboration with the CMAR will prepare a technical memorandum describing the cost estimate resolution process and any remaining unresolved differences between the respective estimates in relation to the Agreed Cost of The Work.
2. The PMT will arrange a meeting between the Director, CMAR, and the Design Consultant to discuss the technical memorandum, the reconciled cost estimate and any outstanding differences. This meeting will include discussion of the unresolved differences in the estimates and if the estimate exceeds the Agreed Cost of the Work, identify areas where the progressed design can be modified to bring the Project within the Agreed Cost of the Work. The technical memorandum shall include an assessment of the impact of potential changes to the progressed design on aesthetics, function and impact to the maintainability or efficiency of the Project. The intent of the meeting is to obtain acceptance of any design modifications and the Agreed Cost of the Work from the Director.
3. The PMT will document decisions reached and any Agreed Cost of the Work adjustments resulting from the cost estimate presentation meeting.

4.06 DEVELOPMENT OF THE GUARANTEED MAXIMUM PRICE (GMP) OR COMPONENT GUARANTEED MAXIMUM PRICE (CGMP)

- A. When the Design Consultant has completed and issued the Design Development (60% Design Completion) submittal, the CMAR shall be responsible for preparing and submitting a proposed GMP to construct the MLIT within the within the Agreed Cost of the Work.
- B. The PMT will develop a parallel estimate which will be used to reconcile and negotiate the GMP which, when accepted by the Director, will be submitted to the Houston City Council for approval.

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- C. Should HAS and the CMAR not be able to reach an agreement on the GMP, HAS may, at their sole discretion, use the work products produced to-date to complete the Project.
- D. HAS will require a GMP for the Project no later than the 60% Design stage; however, HAS may authorize the CMAR to proceed with early packages in order to meet the Project schedule. If early packages are issued, an independent CGMP submittal and negotiation process will be followed.
- E. HAS will issue a request to the CMAR to establish the GMP or CGMP Proposal for the complete Project or for multiple Work Packages(s). The CMAR shall deliver to HAS a proposed GMP or CGMP Proposal, with a detailed estimate prepared by the CMAR which will be reviewed by the PMT before being deemed to be adequately supported prior to submittal to the Director for review and acceptance. Each GMP or CGMP proposal shall include the following sections:
 1. Section One: Summary of Work, including a list of all Construction Documents.
 2. Section Two: GMP or CGMP Price Summary with line item Schedule of Values.
 3. Section Three: Project Team and Burden Rates
 4. Section Four: Scope Clarifications and Assumptions.
 5. Section Five: Procurement Plan.
 6. Section Six: GMP or CGMP Construction Schedule.
 7. Section Seven: Analysis of impact on the Total Construction Budget and Project Schedule.
 8. Section Eight: MBE/WBE/DBE/SBE participation level, including a total-to date participation level status report.
 9. Section Nine: Permitting Plan.
 10. Section Ten: Risk Management Plan.
 11. Section Eleven: Construction Work Plan.
 12. Section Twelve: Commissioning and Activation Plans.
 13. Section Thirteen: Project Manuals.
 14. Section Fourteen: Bonds.
 15. Section Fifteen: Insurance.
- F. In addition to the Cost of Work, a GMP or CGMP may include agreed-to allowances needed to complete the scope of work that cannot be defined in a bid package or the CMAR's Contingency. This Contingency is the CMAR's contingency and may not be used for any costs not specifically allowed herein and may only be used with the PMT's written permission. The PMT shall track the net, cumulative unused Contingency until Project completion, at which time the balance of the unused Contingency will revert to City.

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- G. For the GMP or each CGMP, the CMAR shall develop a corresponding Schedule of Values, including the Schedule of Stored Materials, if applicable.
- H. The GMP or each CGMP will be subject to modification for changes as allowed by the Contract Documents.
- I. The actual price paid by the City to the CMAR shall be the actual incurred Cost of Work plus the CMAR's fee as defined by the Contract.

4.07 CMAR MANAGEMENT PLAN

- A. Within Thirty (30) days after NTP, the CMAR shall prepare a CMAR Management Plan, to be reviewed and accepted by the PMT, which documents the CMAR's plan for delivery of the Project. The CMAR Management Plan shall be updated monthly to reflect actual project progress and shall be submitted to the PMT at least one week prior to the Monthly Progress Review Meetings. The CMAR Management Plan shall address, but not be limited to:
 - 1. Project Management and Administration Plans.
 - a. Project communications plan in accordance with ITRP policies and procedures.
 - b. Preconstruction and Construction Organization Chart.
 - c. Schedule management plan.
 - d. Management reporting plan.
 - e. Pay request preparation and submittal plan.
 - f. Record keeping and document control plan.
 - g. Change management plan.
 - h. Project Procurement Plan
 - i. Material Management Plan
 - j. Coordination and Logistics Plan
 - k. Subcontracting Plan
 - l. Construction Work Plan
 - 2. Preconstruction Evaluation Report
 - a. Project Schedule incorporating design activities and progress.
 - b. CMAR's constructability recommendations including construction phasing, site logistics and traffic control.
 - c. Identify opportunities for increased efficiency and/or innovation.

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- d. Material recommendations and risks due to inflation, lead times, resource availability and supply demands.
 - e. Design option reviews including a comparison of the risks and benefits of the different design element types and their corresponding schedule, cost, construction related impacts.
 - f. Development of the Project Procurement Plan outlining supporting CMAR deliverables and project buy out.
 - g. Forecast and Trend Reports that identify and itemize specific events which cause Design to Budget variations.
 - h. Any issue that, in the opinion of the CMAR, should be considered in the planning, management, or execution of the Project to maintain budget, schedule, scope and quality objectives.
 - i. Recommendations and identification of issues concerning the Project schedule, risk analysis and mitigation, and other required information updated based on the design development and changes to the Project known at the time of submittal.
3. Risk Management Plan
- a. The CMAR shall prepare a Risk Management Plan that will include risk identification, allocation and mitigation based upon the Work Package(s). Risks to be addressed include, cost, schedule, design/constructability risks, and any other matter that affects the execution of the Project. The CMAR shall work with PMT to review and update the preliminary list of preconstruction and construction related risks. The CMAR shall conduct risk analysis workshops to develop a Risk Matrices and supporting documents for the Preconstruction and Construction phases of the Project that:
 - 1) Lists the related program risks.
 - 2) Creates a qualitative ranking of the risks most critical to the achievement of Project schedule and budget limitations.
 - 3) Definition of the potential cost and schedule impacts of the identified risks.
 - 4) Includes research and development of documents and materials on topics specific to the identified Project risks and opportunities.
 - 5) Proposed risk mitigation strategies.
4. Material Management Plan
- a. Prepare a plan for ordering materials and equipment and provide a monthly procurement, fabrication, and delivery status report.

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- b. Identify long-lead and early procurement materials plans, including definition of materials for which the CMAR will intend to seek payment for stored materials.
5. Quality Control (QC) Program.
- a. The CMAR shall submit a Quality Control Program for Preconstruction and Construction Phase Services for the Project for the PMT review and acceptance. The CMAR shall ensure that all services comply with the Project requirements and all procured materials conform to plans, technical specifications and any other project requirements, whether constructed by the CMAR or procured from Subcontractors or vendors. The CMAR shall assume full responsibility for the QC Program execution throughout the Preconstruction and Construction phases of the Project.
 - b. The CMAR shall be responsible for all activities necessary to manage, control, and document Work to ensure compliance with the QC Program established to comply with the requirements of the Contract Documents. The CMAR responsibilities include, but are not limited to;
- 1) Ensuring adequate resources (labor, equipment and materials) are provided for quality control services to be accomplished on and off-site by its organization,
 - 2) Pre-inspection of work prior to notifying the PMT for inspections,
 - 3) Coordinating with suppliers and subcontractors,
 - 4) Tracking and resolution of non-conformance issues,
 - 5) Hiring and management of certified quality control laboratories and professionally credentialed consultants appropriate to meet the Contract Documents requirements.
6. Industry Outreach, Trade Participation and Bid Research
- a. The CMAR shall perform sufficient industry outreach to ensure that adequate trade and MBE/WBE/SBE participation, as required by the Contract, occurs for each Work Package and the complete Project. The CMAR shall also conduct bid research to determine that bids were reasonable as well as responsive to the Work Packages.
7. Subcontracting Plan
- a. The CMAR shall develop and submit to the PMT a subcontracting plan that addresses all Subcontractor required elements of the Contract as well as how the CMAR plans to meet the criteria.
8. Construction Work Plan
- a. The CMAR shall develop a Construction Work Plan which shall define the CMAR's approach to constructing the Project. At a minimum, the Plan shall include:

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- 1) Project management systems necessary for successful execution of the Project and use of how they are integrated into HAS's systems. The PMT will implement project management systems specific to this Project.
- 2) Phasing, Coordination and Logistics Plans tied to the Project schedule.
- 3) Construction Disruption Mitigation Analysis, which includes coordination of airfield safety, logistics and airport/airlines operations.
- 4) Field office and staging area needs.
- 5) Plans and actions taken to comply with environmental requirements and permits.
- 6) Use and access to public roadways.
- 7) Coordination of Work and communication of construction activities with the PMT regarding airlines, tenants and other stakeholders including utility disruptions.
- 8) Protection of private and public properties, including lease properties on the airport site.
- 9) Dust/dirt/debris mitigation.
- 10) Temporary erosion control.
- 11) Storm water drainage management.
- 12) Vibration control and monitoring.
- 13) Proposed construction means and methods validation.
- 14) Temporary facilities.
- 15) 3rd party coordination with utilities and other entities.
- 16) Construction zone accommodation of vehicular, GSE equipment and aircraft traffic.
- 17) Safety Plan.
- 18) Security Plan.
- 19) Temporary construction signage.
- 20) Traffic Control Plan.
- 21) Temporary dust walls and construction enclosure strategy for passenger facing areas.

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- 22) Maintenance of vehicular service roads, taxiways/ taxilanes and aprons during emergencies.
- 23) Vehicle provisions.
- 24) Public and worker health and safety protection.
- 25) Security of work site including Airport Operational Areas.
- 26) BIM Execution Plan.
- 27) Commissioning Plan.
- 28) Closeout Plan
- 29) Hazardous material abatement, handling and disposal, including but not limited to contaminated groundwater, contaminated soil, asbestos containing building material, lead containing building material and mold containing building material.

SECTION 5 - PHASE 2 CONSTRUCTION SERVICES

5.01 GENERAL

- A. Upon issuance of the Phase 2 NTP, the CMAR shall provide all labor, materials, equipment, temporary utility service and facilities to construct the entire Project as required by the Contract Documents. Those policies and procedures defined in the Preconstruction Phase Services section of this document shall be maintained, enhanced and utilized throughout management of Construction Phase Services.
- B. The CMAR will be solely responsible for construction means and methods of the Work.
- C. The CMAR shall comply at all times with any and all verbal and /or written instructions by the PMT regarding routes of travel to be used in moving personnel and/or materials to and from the Project site. The deliveries of materials and removal of construction related debris may be required to be done at night. The CMAR shall work with the PMT on the schedule of any night work that needs to be performed on HAS property. Delivery vehicles, material trucks and heavy equipment shall enter and depart through a point designated by the PMT. Except as otherwise directed or approved by HAS, vehicles in use on the Airport shall be confined to the Project site. Only operators with current restricted area driving passes issued by HAS will be permitted to operate vehicles in the AOA. When an operator does not have a current pass, a HAS authorized driver must escort the operator.
- D. The CMAR will be required to solicit bids from subcontractors for the various trade packages. Under management of the CMAR, the selected subcontractor/trade will provide all materials, equipment and labor including the necessary coordination, supervision, programming, scheduling, cost control, contract administration, field engineering, commissioning, and closeout and support services to accomplish the work covered by each work package. Based on prior HAS approval, the CMAR

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can self- perform up to 20% of the value of the GMP or each CGMP. Award of the Work will be based on a competitive process witnessed by HAS.

- E. The CMAR will be responsible for completing all Work related to the MLIT Project whether or not Work is contained in one trade package or subcontract or another, but is on or contained in one of several bid packages as prepared for the Project.
- F. The CMAR will be responsible to interact and efficiently coordinate with the various HAS departments, FAA, and the Transportation Security Administration (TSA), and other agencies and utility companies, etc., as required and address all federal, state, county and city permitting requirements. The PMT will be kept fully informed regarding communication with these parties and shall be included in all meetings, unless otherwise chosen by the PMT. All communications with these parties shall be documented by the CMAR for inclusion in the Project records and appropriate submittal to the PMT.

5.02 COORDINATION RESPONSIBILITIES

- A. The CMAR shall coordinate all construction operations included in the Contract to ensure efficient and orderly development and installation of each part of the Work. The CMAR's coordination responsibilities include but are not limited to:
 1. Preparing and issuing trade bids to obtain early design assist input from Subcontractors, when applicable.
 2. Scheduling and managing the documentation and permitting process with the various Regulatory Agencies with jurisdiction over the Project.
 3. Scheduling and managing the submittal process.
 4. Preparing and managing the Project Safety and Security Plans.
 5. Scheduling construction operations in the sequence required to obtain the best results where installation of one part of the Work depends on installation of other components, before or after its own installation.
 6. Coordinating the installation of all components to ensure maximum performance and allow access for required maintenance, service, and repair, including but not limited to mechanical, electrical and plumbing systems.
 7. Making adequate provisions to accommodate items scheduled for future installation.
 8. Resolving actual or potential conflicts between Subcontractors concerning coordination, interference, and sequencing.
 9. Coordinating Code and Permit documentation requirements.
 10. Implementation of all systems integration and commissioning for compliance with contractual and permitting requirements.
 11. Coordination with ORAT and Activation teams to support the requirements for turn-over of the completed Project to HAS.

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- B. The CMAR shall not delegate responsibility for project coordination to any Subcontractor.

5.02.2 COORDINATION WITH THE PROGRAM MANAGEMENT TEAM

- A. The CMAR shall notify the PMT in writing, a minimum of thirty (30) calendar days in advance, of any activity that will be outside the Contract limits or that would interfere with HAS's daily operation. Utility interruptions (shutdowns or connections) require at a minimum thirty (30) days advance written notice or as otherwise directed HAS for longer durations.
- B. Within 30 days of Phase 1 NTP, the CMAR shall notify PMT of any foreseeable Project work that requires interruption of primary airport facilities or infrastructure. Any such work shall be specifically identified on the Project schedule, included with the CMAR Management Plan and discussed with the PMT and affected HAS representatives regarding the required notice period and actual scheduling of work.
- C. Observation of Work by HAS or the PMT shall not be interpreted as relieving the CMAR from responsibility for coordination, superintendence, scheduling, and direction of the Work.
- D. Coordinate with the PMT to assure that Work on the project site, access to and from the project site, and the general conduct of operations is maintained in a safe and efficient manner, and that disruption and inconvenience to existing facilities and property is minimized.

5.03 CONSERVATION

- A. The CMAR will coordinate construction activities to ensure that operations are carried out with consideration given to conservation of energy, water, and materials.
- B. The CMAR will salvage materials and equipment involved in performance of, but not actually incorporated into, the Work. Refer to the Contract Documents for disposition of salvaged materials that are designated as HAS's property.

5.04 PROJECT REPORTS

- A. Daily Construction Reports
 - 1. Prepare and submit within 24 hours at the end of each construction work day, Daily Construction Reports which record at a minimum, the following information describing the daily events, incidents, accomplishments, and general progress as well as environmental conditions on the Project:
 - a. Description of construction activities performed.
 - b. Meetings and significant decisions.
 - c. Accurately recorded high and low temperatures, and general weather conditions at the site, including the presence and quantity of rain, sleet, or snow, wind direction and speed, and the relative humidity.

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- d. Project security and safety compliance.
 - e. Unusual events (including the discovery of missing or damaged materials).
 - f. The list of all Subcontractors (of any tier) at the Project site.
 - g. The list of other Contractors at the Project site.
 - h. The total number of all workers at the Project site, subdivided into:
 - 1) The number of CMAR's workers at the Project site.
 - 2) The number of subcontractor workers at the Project site, by subcontractor, vendor, etc.
 - i. The CMAR and Subcontractors' equipment at the Project site.
 - j. Material deliveries for the Project by location of delivery.
 - k. Quality related issues and Non-Conformance Reports.
- B. Material Location Reports
- 1. At weekly intervals, prepare and submit a comprehensive list of materials delivered to and stored at the Project site. The list shall be cumulative, showing materials previously reported plus items recently delivered. Include with the list a statement of progress and delivery dates for materials or items of equipment fabricated or stored away from the Project site.
 - 2. For material stored off-site, the CMAR shall provide the address where fabricated equipment and materials are stored (see General Conditions for further requirements).
- C. Field Condition Reports
- 1. Immediately upon discovery of a difference between field conditions and the Contract Documents, the CMAR shall prepare and submit a detailed report in accordance with the provisions of the Contract.

5.05 PROJECT MEETINGS

The person designated to make decisions binding to and on behalf of the CMAR, defined as the CMAR's Project Manager, shall attend all of the meetings described below. Meetings in addition to those described below may be required for special purposes as determined by the PMT.

- A. Scheduling Conference
- 1. A scheduling conference is required during both Phase 1 and Phase 2 of the Project.
 - 2. Attendees: PMT, the CMAR and its Project Manager, Superintendent, major Subcontractors, Design Consultant and other major Consultants and other

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concerned parties shall each be represented at the conference by persons familiar with and authorized to conclude matters relating to the Work.

3. Agenda:
 - a. Introduction to the CMAR's scheduling team's qualified personnel that will develop and update the project schedule.
 - b. Content, format, and submittal requirements and reports.
 - c. Schedule for other concurrent work under HAS's separate contracts and coordination with other work and personnel.
 - d. Review time required for submittals and resubmittals.
 - e. Review time required for RFI's, Change Orders and Regulatory.
 - f. Agency Reviews and Approvals, and project logistics.
 - g. Requirements for tests and inspections by independent testing and inspecting agencies.
 - h. Time required for completion and startup procedures. List of Contract activities to be included in schedule. Procedures for updating schedule.
 - i. Project scheduling and document management software.
4. Minutes: The CMAR will record and distribute meeting minutes, regardless of whether someone else is also doing the same to facilitate verification of a complete and accurate understanding of the meeting. The minutes shall be issued to the PMT for review and comment within two (2) days of the meeting.

B. Preconstruction Conference

1. The PMT will schedule a preconstruction conference and organizational meeting, following the Phase 2 scheduling conference and before start of construction.
2. Attendees: PMT, the CMAR and its Project Manager, Superintendent, Quality Control Manager, major Subcontractors, Design Consultant and other concerned parties shall each be represented at the conference by persons familiar with and, authorized to conclude matters relating to the Work.
3. Agenda: The purpose of the meeting will be to discuss items of significance that could affect progress, including the following:
 - a. Introduction/designation of Key Personnel and their duties
 - b. Procedures to be followed during performance of the Work
 - c. Construction phase schedule
 - d. Critical work sequencing and long-lead items
 - e. Phasing

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- f. Work restrictions
 - g. Work hours
 - h. Procedures for processing change requests
 - i. Procedures for requesting information (RFIs)
 - j. Procedures for testing and inspecting
 - k. Procedures for processing Applications for Payment
 - l. Distribution of the Construction Documents
 - m. Submittal procedures
 - n. Preparation of record documents
 - o. Use of the premises and if applicable, existing building(s)
 - p. Parking availability
 - q. Office, work, and storage areas
 - r. HAS occupancy requirements
 - s. Responsibility for temporary facilities and controls
 - t. Equipment deliveries and priorities
 - u. Safety
 - v. First aid
 - w. Security
 - x. Project in-progress site cleaning
 - y. Construction waste management
4. Minutes: The CMAR will record and distribute meeting minutes, regardless of whether someone else is also doing the same to facilitate verification of a complete and accurate understanding of the meeting. The minutes shall be issued to the PMT for review and comment within two (2) days of the meeting.
- C. Project Coordination and Logistics Meetings
- 1. The CMAR will schedule and administer coordination and logistics meetings among all parties affected by the Work, as required to effectively manage performance of the Project.
 - 2. Attendees shall include, but are not limited to, the PMT, CMAR, Design Consultant, relevant Subcontractors, applicable Consultants and applicable, representatives of entities or Regulatory Agencies affected by or having jurisdiction over the Work plus stakeholders that will be affected by the Project.

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3. The CMAR shall plan ahead for work that requires approvals from regulatory agencies and other logistical considerations to allow for a reasonable review and preparation time.
4. Refer to the Contract Documents for specific requirements on utility work and shutdowns, navigation and traffic impact plans, and other logistical and environmental mitigation or special construction work.
5. The CMAR shall develop an agenda incorporating all operational impacts identified in the CMAR's logistical and coordination plan into the Project schedule to allow for at least thirty (30) days' notice before implementation of Work affecting normal operations of the premises Airport operations, unless more time is indicated in the Contract Documents or defined by the PMT.
6. The CMAR shall identify all oversized, over-weight and/or long materials to be delivered to the Project site and shall define specific plans for the handling of these materials for review and acceptance by the PMT.
7. The CMAR shall identify long-lead materials and establish a plan to obtain the materials to not unnecessarily impact the Project schedule.
8. Applications for Area Shutdown Request (ASR) and Utility Shutdown Request (USR) are required to be submitted by the CMAR at least 30 days prior to the proposed shutdown time, unless otherwise defined by the PMT based on the level of impact to the affected facilities. Primary airport infrastructure shutdowns will require longer notification periods, defined through coordination with the PMT and the affected parties.
9. The CMAR shall coordinate with HAS for identification and inclusion of HAS defined blackout periods within the Project Schedule.
10. Traffic Control Plans for impacts to vehicular traffic must be prepared by professionals in traffic management. The plans must meet HAS drawing standards and are required to support ASR applications. (See Division 01 55 26 Traffic Control for further requirements)
11. Agenda to include:
 - a. Review of current ASR and USR work as well as look-ahead scheduling for all project work.
 - 1) Provide appropriate narratives, schedules, documentation and graphics to adequately describe planned work and to meet requirements of ASR and USR applications.
 - b. Plans for forthcoming ASR and USR work,
 - c. Long-lead materials procurement plans,
 - d. Project coordination and logistics plan, and
 - e. Traffic control plan

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12. The CMAR is to publish minutes of the meetings. Minutes to include: topics discussed, alternatives considered, reasons that given alternatives were either discarded or adopted, attendees and copies as appropriate of documents distributed. Publish minutes within two days of the meeting to all attendees and to other appropriate parties as identified.

D. Weekly Progress Meetings

1. The PMT will schedule and administer weekly progress meetings following Phase 2 NTP. The PMT will distribute agendas in advance of the meeting and minutes of each meeting to those in attendance. The CMAR shall coordinate the meeting agendas with the PMT for issuance.
2. Attendees: In addition to the PMT, Consultants, the CMAR management team, applicable Subcontractors, plus other entities concerned with current progress or who are involved in planning, coordination or performance of future activities.
3. Agenda: Agenda items include reviewing, correcting or approving minutes of the previous progress meeting and reviewing other items of significance that could affect Project progress. Topics for discussions shall be established as appropriate to the current status of the Project such as:
 - a. The CMAR's Four-Week Look-Ahead Construction Schedule and Overall Construction Schedule status.
 - b. Review the current and future needs of each entity present, including such items as:
 - 1) Safety
 - 2) Security
 - 3) 4 week look ahead Schedule
 - 4) Project Logs
 - a) Submittals
 - b) RFI's
 - c) Work Change Directives
 - d) Non-Conformances
 - 5) Quality Control and Work standards
 - 6) Traffic Control
 - 7) Site utilization
 - 8) Hours of Work
 - 9) Temporary facilities and services
 - 10) Temporary Erosion Control

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- 11) Deliveries
- 12) Status of off-site fabrications
- c. Project Costs: budget, commitment and progress payments.
- d. Project Record File additions (Change Orders, meeting minutes, etc.)
- e. Applications for Payment
- f. Project Risks including:
 - 1) Hazardous conditions
 - 2) Hazardous materials
 - 3) Unforeseen conditions and potential impacts and mitigation measures.
 - 4) Major coordination or construction challenges that affect project's budget, schedule, or its environment (logistics, sequencing, traffic).
4. Minutes: The CMAR will record and distribute meeting minutes, regardless of whether someone else is also doing the same to facilitate verification of a complete and accurate understanding of the meeting. The minutes shall be issued to the PMT for review and comment within two (2) days of the meeting.

E. Pre-Installation Meetings

1. The CMAR will conduct pre-installation meetings before each major construction activity or activity that requires coordination with others. The CMAR will develop a list and schedule for the PMT of all required meetings and scheduled dates. Dates of pre-installation meetings shall be identified on the Project schedule.
2. Attendees: The PMT, Consultants, CMAR management team and Subcontractors, Installer and representatives of manufacturers and fabricators involved in or affected by installation, and its coordination or integration with other materials and installations that have preceded or will follow the installation.
3. The CMAR will review progress of construction activities affected by the installation and preparations for the particular activity under consideration at each pre-installation meeting. The review shall include, but not be limited to, requirements for the following, as applicable:
 - a. Applicable Construction Documents/Specifications
 - b. Manufacturer's recommendations
 - c. Governing regulations
 - d. Installation means and methods
 - e. Deliveries/site logistics
 - f. Space and access requirements/limitations

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- g. Existing facilities and Work protection
 - h. Possible conflicts
 - i. Temporary facilities
 - j. Time schedules
 - k. Weather limitations
 - l. Submittals and RFI's
 - m. Shop Drawings, product data and quality-control sample
 - n. Review of mockups, as applicable
 - o. Compatibility of materials
 - p. Warranty requirements
 - q. Safety
 - r. Inspecting and testing requirements
 - s. Required performance results
 - t. Project records requirements
4. Minutes: The CMAR will record and distribute meeting minutes, regardless of whether someone else is also doing the same to facilitate verification of a complete and accurate understanding of the meeting. The minutes shall be issued to the PMT for review and comment within two (2) days of the meeting.
 5. The CMAR shall not proceed with installation if the pre-installation conference cannot be successfully concluded. The CMAR shall initiate whatever actions are necessary to resolve impediments to performance of Work and reconvene the pre-installation conference at earliest feasible date.

F. Monthly Progress Reviews

1. In addition to the requirements of the Contract Documents, the CMAR will conduct project status review meetings on a monthly basis, or as otherwise needed to effectively and efficiently deliver the Project in accordance with the Contract Documents.
2. The Monthly Progress Review meetings will be held in lieu of the Weekly Progress Meeting once each month and shall include the following agenda items in addition to the weekly meeting agenda topics, as required. Weekly meeting attendees shall be adjusted to reflect the Monthly meeting agendas.
3. Attendees: The PMT, the CMAR's senior construction scheduler, project manager, general superintendent plus relevant subcontractors and Consultants.
4. Purpose: Review of the Project progress since the last meeting. Determine whether each activity is on time, ahead of schedule, or behind schedule, in

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relation to the CMAR's published and updated construction schedule. Determine how construction that is behind schedule will be expedited (including review of recovery schedules, as appropriate) and secure commitments from parties involved to do so. Discuss whether schedule revisions are required to ensure that current and subsequent activities will be completed within the Contract Time.

5. **Agenda:** The intent of the meeting is to expand the weekly progress meeting agenda to include any proposed schedule revisions including, but not limited to, the following:
 - a. Delays to critical path and near critical path activities and actions taken or to be taken by the CMAR to mitigate the delays.
 - b. An analysis of any Project progress problem areas, current and anticipated delaying factors (causes) and their impacts, explanations of corrective action taken or to be taken, and any proposed schedule revisions to facilitate a recovery plan.
 - c. Revisions of any assumed activity durations including those due to conditions the CMAR deems to be outside their control.
 - d. Proposed Change Orders issued during the update period including any time impacts.
 - e. The resolution of conflicts between actual Work progress and schedule logic when out-of-sequence activities develop due to actual construction progress. CMAR shall submit revisions to schedule logic to conform to current job status and directions, without changing original activity identification.
6. **Schedule Updating:**
 - a. The CMAR will revise the actualized construction schedule after each monthly progress review meeting, where revisions to the schedule have been made or recognized. The CMAR will issue revised schedule concurrently with the minutes of each meeting. Upon acceptance by the PMT, schedule revisions submitted by the CMAR shall be incorporated into the Project Schedule in the next monthly update.
7. **Minutes:** The CMAR will record and distribute meeting minutes, regardless of whether someone else is also doing the same to facilitate verification of a complete and accurate understanding of the meeting. The minutes shall be issued to the PMT for review and comment within two (2) days of the meeting.

G. Safety Meetings

1. Within thirty (30) days after the Phase 2 NTP but prior to commencement of field work activities, the CMAR will arrange a Safety Meeting with the PMT Program Safety Manager to review Project safety requirements.

H. Pre-Demolition Meetings

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1. The CMAR shall schedule and administer meetings through the PMT for stakeholders affected by the Work prior to any demolition activities. Demolition work shall not start unless authorized by the PMT. In addition to addressing specific requirements of the proposed demolition Work to be undertaken, the CMAR shall include requirements of the "Project Coordination and Logistics Meetings" defined earlier in this section.
- I. Project Closeout Conference
 1. The CMAR shall request a Project Closeout Meeting at a time convenient to the PMT, but no later than 90 days prior to the scheduled date of Substantial Completion. Refer to the defined requirements on Project Closeout for specific policy and procedure details. The PMT will conduct the meeting to review requirements and responsibilities related to Project closeout, in accordance with the provision of Specification Section 01 77 00 Closeout.
 2. Attendees: The PMT, Consultants, the CMAR Management Team, including QC Manager, Senior Superintendent and Construction Manager, major Subcontractors, suppliers, and other concerned parties. Participants at the meeting shall be familiar with the Project and authorized to conclude matters relating to the Work.
 3. Agenda: Discuss items of significance that could affect or delay Project closeout including, as applicable, the following:
 - a. Preparation of as-built documents
 - b. Procedures required prior to inspection for Substantial Completion
 - c. Submittal of written warranties
 - d. Requirements for preparing sustainable design documentation, as applicable
 - e. Requirements for preparing operations and maintenance data and manuals
 - f. Requirements for demonstration and training
 - g. Preparation of CMAR's punch list
 - h. Procedures for processing Applications for Payment at Substantial Completion and for final payment
 - i. Final Submittals procedures
 - j. Beneficial use requirements
 - k. Installation of HAS's equipment
 - l. Tenant space built-outs
 - m. Responsibility for removing temporary facilities and controls

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- n. Site cleanup and restoration
- 4. Minutes: The CMAR will record and distribute meeting minutes, regardless of whether someone else is also doing the same to facilitate verification of a complete and accurate understanding of the meeting. The minutes shall be issued to the PMT for review and comment within two (2) days of the meeting.

SECTION 6 - COMMISSIONING AND ACTIVATION

6.01 GENERAL

- A. Commissioning refers to a systematic process confirming that building systems have been installed, properly started, and consistently operated according to criteria set forth in the Contract Documents, that all systems are complete and functioning in accordance with the Design Consultant's Basis of Design document at Substantial Completion, and that the CMAR has provided HAS operations and maintenance staff, plus other identified users of the facilities with required system documentation and training.
- B. HAS will contract directly with an independent Commissioning Authority (CxA) to perform technical reviews of project design documents focused on energy efficiency design and documentation of maintainability, building system control sequences, and operational strategies; and prepare technical commissioning specifications. During construction, the CxA will verify equipment and system testing by the CMAR, observe system tests against Contract Document requirements, track deficiencies, and recommend solutions.

6.02 CMAR RESPONSIBILITIES

- A. Submit a Commissioning Plan that describes the commissioning and training processes for all self-performed and sub-contractor performed Work.
- B. Submit phased Commissioning/Training schedules and update prior to Commissioning Meetings.
- C. Submit system/equipment specific technical Commissioning Plans 30 days prior to start of any commissioning activities.
- D. Submit Test and Balance (TAB) Plan 30 days prior to performance of systems testing and balancing. Submit field test and balancing results for review prior to final reports being submitted for approval.
- E. Submit Operation and Maintenance Manuals 30 days prior to training.
- F. Submit Training Plans 30 days prior to training.
- G. Provide management oversight for commissioning, training and closeout processes.
- H. Support the HAS Commissioning Authority.
- I. Provide a plan and process to capture, address and close issues discovered during and related to commissioning, training and closeout.

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- J. The CMAR will record and distribute minutes of all meetings conducted during the commissioning and activation period.
- K. Refer to Specification Section 01 91 13 General Commissioning Requirements for additional requirements.

SECTION 7 - OTHER REQUIREMENTS

- A. The CMAR will complete the Work and close out the physical and financial aspects of each subcontract/trade package.
 1. Prepare and submit all final as-built and record documents as required.
 2. Prepare any and all certificates and warranties, as required.
 3. Prepare release bonds and any associated bond release documents, as required.
 4. Prepare Final Certificate of Occupancy permit application, as required.
 5. Complete all work as required by the punch list.
 6. Schedule for completion of the punch list work.
 7. Deliver any final Operation and Maintenance Manuals (O&M) and other submissions as required per the Contract Documents.
 8. Close out the safety and security program.
 9. Clean out staging areas and lay-down areas, restoring them to their original condition.
 10. Issue final environmental, sustainability or documentation, as needed.
 11. Final cleaning, including but not limited to, full and complete cleaning Project site; removing trash and surplus materials from Project site.
- B. Prior to final GMP negotiation, the CMAR may be asked to prepare a proposal for the following work:
 1. Provide a maintenance program for the building systems to begin after Final Completion of the Project. This maintenance program will encompass all systems that the CMAR installed during construction that have "moveable" or other serviceable elements that are generally known to require routine maintenance or inspection to remain in operable condition.
 - a. This program does not include regular housekeeping and cleaning services.
 - b. The CMAR may be asked to provide 5-year and 10-year building system and component maintenance programs that commence after the Project has achieved final completion status.

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- c. The CMAR may be asked to provide all management, personnel, materials, supplies, and equipment needed to manage, operate, and provide building maintenance services for the Project.
 - 1) The program will include all parts and labor necessary for maintaining the building systems and components in optimal operating conditions per HAS-defined service levels.
 - d. The maintenance services may include preventive maintenance, defined as performing scheduled preventive maintenance services to include lubrication, adjustments, inspecting, testing, and operating equipment to verify any probable failures or to verify working conditions.
 - 1) Records and logs will be kept on all inspected and tested equipment.
 - 2) Records and logs will be kept on all maintenance actions and parts management.
 - e. Electrical and safety inspections as required on systems that are part of this Project.
2. ORAT
- a. The CMAR will provide input into ORAT planning and will be required to support ORAT activities as requested by PMT.

SECTION 8 - DESIGN SUBMITTAL PRODUCTION STANDARDS

8.01 DEFINITIONS

- 1. PMT BIM (Building Information Modeling) Manager leads BIM implementation and oversees the BIM application to the Project.
- 2. Design Consultant BIM Manager leads BIM implementation and oversight for the Design Consultant.
- 3. Construction Manager at Risk BIM Manager (CMAR BIM Manager) leads BIM implementation and oversight for the CMAR.
- 4. Design Model(s): created and developed by the Design Consultant in order to develop the Project design.
- 5. Construction Model(s): created by the CMAR from the Design Model in order to develop and fulfill construction requirements.
- 6. As-Built Model(s): prepared by the CMAR to show on-site changes to the original Construction Models.
- 7. Record Model: prepared by the Design Consultant from the Design Model to reflect on-site changes that the CMAR noted in the As-Built Models.
- 8. The BPxP defines BIM requirements which shall be performed during Project execution. The BPxP at a minimum shall include:

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- a. Project information
- b. Key Project contacts
- c. Project goals / BIM uses
- d. BIM process design
- e. BIM information exchanges
- f. BIM and facility data requirements
- g. Modeling requirements
- h. Construction sequencing and cost loading (4D and 5D) requirements
- i. Collaboration procedures
- j. Coordination procedures
- k. Quality control
- l. Technological infrastructure needs
- m. Model structure
- n. Project BIM deliverables
- o. Delivery strategy / contract

8.02 BIM INTENT

A. The PMT requires that project documentation be created using Building Information Modeling (BIM) processes and software. The intent is to leverage technology to create spatial and data accurate models of the architectural, structural, civil and building system elements that provide value through design, construction and into operation and maintenance of the airport facilities and infrastructure. The Construction Manager at Risk (CMAR) and Design Consultant shall be expected to freely and openly exchange models and data within a collaborative environment. Development of the models will include collaborative efforts between the CMAR and Design Consultant teams with oversight from the PMT. It is the intent of this section to provide an overview of the use of BIM on this Project and overall Program. A detailed BIM Project Execution Plan (BPxP) will be developed through a series of workshops with stakeholders and will be appended to this scope once complete. The fundamental use and purpose of BIM for this Project will be to accomplish the following objectives:

1. Deliver an integrated, coordinated, and constructible design.
2. Generate Construction Documentation (CD) from Design Models.
3. Share Models and Model data with extended team to leverage information across disciplines.

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4. Maintain and update all Models throughout design and construction incorporating all addenda, bulletins, and documented modifications during construction.
 5. Deliver a data-rich Record Model at Project close-out for use with the HAS FM/Asset Management System.
- B. Model(s) developed for the Project may be utilized for multiple purposes including, but not limited to: design, documentation, building systems spatial coordination, interference checking, record drawings, cost estimation, schedule analysis, project controls, commissioning, and operations and maintenance. The extent to which each model can be utilized will be decided and documented during BIM Project Execution Plan workshops with HAS, the PMT, Design Consultant, and CMAR.

8.03 DRAWING CONVENTIONS FOR DOCUMENTATION

- A. All files are specific to the Project and must be organized and delivered in a manner that facilitates the production of Construction Documents, record documents, as-built documents and other project submittals. Project files including building and site models, details, sheets, schedules, text, database, symbols, borders, title blocks, and other files used in the creation of project deliverables shall comply with HAS documentation standards.

8.04 DESIGN SUBMITTAL FILE FORMATS

- A. Design Consultant shall submit drawings electronically at each deliverable milestone in the following formats:
1. All files and documents used to create design submittals shall be submitted in both native authoring format, PDF format as well as any prescribed deliverable format.
 2. All Models and CAD files shall be delivered in the airport specific NAD83 State Plane Coordinate System as defined in the HAS CAD/Geospatial Data Standards and Procedures.
 3. All electronic deliverables shall include a description of content, required links, references, etc. required for use.
- B. BIM Model and design drawings shall be delivered in the following formats:
1. Autodesk Revit native Model(s) used to generate documentation with approved HAS version.
 2. Autodesk Civil3D native Model(s) used to generate documentation with approved HAS version.
 3. An Autodesk Navisworks .NWC containing each model's specific scope with approved HAS version.
 4. Autodesk AutoCAD 2D files for each sheet compliant to HAS BIM standards.
 5. PDF of each Drawing.

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SECTION 9 - ASIS/BIM REQUIREMENTS

9.01 GENERAL

- A. HAS maintains CADD/Geospatial Data Standards and Procedures, available on the HAS Fly2Houston website to address Airport Spatial Information System (ASIS) general requirements and CAD drawing standards. This includes an AutoCAD drawing-layering standard for consistency on HAS projects. For this Project, HAS, the PMT along with the Design Consultant and CMAR will jointly develop standards and procedures within a BIM Project Execution Plan for delivering the Project using BIM processes and tools.
- B. HAS maintains HAS BIM Standards and Procedures, available on the HAS Fly2Houston website to address Airport Building Information Modeling general requirements.
- C. A key factor in the creation and maintenance of the BIM is to enable direct access to Record and As-Built Models that will be readily available to HAS operations and maintenance staff for preventive and predictive maintenance and for planning future facility modifications. The Record and As-Built Models must contain information required by HAS operations and maintenance as defined through the BPxP workshops.

9.02 ORGANIZATIONAL ROLES

9.02.1 PMT BIM MANAGER

- A. The PMT BIM Manager will be the primary point of contact for BIM related issues, overseeing application of BIM technologies and ensuring that all the Models adhere to all internal and HAS-specific goals. The PMT BIM Manager will lead the BIM Project Execution Plan (BPxP) workshops and other BIM related meetings as determined in the BPxP and will oversee the application of BPxP. The PMT BIM Manager will also be responsible for archiving models and conducting reviews/audits of model deliverables.

9.02.2 DESIGN CONSULTANT BIM MANAGER

- A. The Design Consultant BIM Manager will lead the efforts for creating and managing the Design Models for the extended Design Team. The Design Consultant BIM Manager will be the primary point of contact for the Design Team including all subconsultants and will represent the Design Team in development and application of BIM Project Execution Plan. The Design Consultant BIM Manager will direct, and coordinate the work of subconsultants to ensure that subconsultants' BIM-based work products are seamlessly integrated into the Project and result in accurate Construction Documents meeting HAS BIM Standards. The Design Consultant BIM Manager will work closely with the CMAR and PMT to incorporate design phase feedback, transition the model to construction phase integration, and represent the Design Team in all BIM related meetings and workshops, as well as developing accurate Record Models.

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9.02.3 CONSTRUCTION MANAGER AT RISK (CMAR) BIM MANAGER

- A. The CMAR BIM Manager will work closely with the PMT and Design Consultant to add value to the Design Models by providing feedback during the design phase. The CMAR BIM Manager will be the primary point of contact for the extended Construction Team including all subcontractors/trades and will represent the Construction Team in all BIM related meetings and workshops. The CMAR BIM Manager will use the Design Models as the basis for developing Construction Models, As-Built Models and shop drawings for fabrication and will be responsible for the assembly and coordination of the subcontractor (trade) models.

9.03 BIM EXECUTION PLAN

- A. The PMT jointly with the Design Consultant and CMAR will develop a BIM Project Execution Plan (BPxP) to provide a framework for deploying BIM technology on the Project that will also integrate with HAS facility management software systems. The BPxP will document detailed BIM use on the Project, including roles and responsibilities of each party, relevant business processes, as well as software and hardware requirements and recommendations. The BPxP will at a minimum include the following:
1. Approved BIM uses
 2. Roles and Responsibilities
 3. General BIM Procedures for the Project
 4. Model Progression Specification (LoD Matrix)
 5. Facility Data Requirements
 6. Collaboration Procedures
 7. Change Management process for the BPxP
 8. Future and recurring BIM related meetings including but not limited to:
 - a. Design Model Reviews
 - b. BIM Coordination
 - c. Spatial Coordination / Clash Detection
 - d. Design Review
 - e. Construction Model Reviews

9.04 INTERFERENCE CHECKS

- A. Design Consultant in collaboration with the CMAR shall coordinate the Design Models to eliminate or mitigate conflicts between design elements. Prior to every transmittal of design files, Design Consultant shall coordinate the Design Models and check for clashes between model elements. Design Consultant will be responsible for

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presentation and documentation of interference checks/clashes and resolutions during the design phase. The CMAR will be responsible for presentation and documentation of interference checks/clashes and resolutions during the construction phase. The PMT, CMAR and Design Consultant will collaborate in the resolution of interferences and clashes through all phases of the Project to enable identification of the best solution that addresses both design and construction considerations. Specific processes, meetings and reports will be defined in the BPxP workshops.

9.05 CONSTRUCTION PHASE DELIVERABLES

- A. The CMAR BIM Manager will keep the Design Consultant current with any construction coordination or field changes affecting the Design Model throughout the construction phase. The Design Consultant shall support this effort with updates provided in response to RFI's, HAS requested changes, and other design modifications affecting the Construction Models. The CMAR will provide the final coordinated trade Construction, As-Built and/or Fabrication Models in native file format, as well as a federated Navisworks model to HAS at the end of construction.
- B. After receiving the CMAR's As-Built drawings and As-Built Models, the Design Consultant shall revise the BIM Design Model to within tolerances and scope as defined in the BPxP, to incorporate all addenda, all change orders, and modifications and deliver the final Record Model to HAS as part of project close-out documents. The deliverables at the minimum shall contain:
 1. Autodesk Revit native Model used to generate documentation with approved HAS version.
 2. Autodesk Civil3D native model used to generate documentation with approved HAS version.
 3. An Autodesk Navisworks .NWC containing each model's specific scope with approved HAS version.
 4. Autodesk AutoCAD 2D files for each sheet compliant to HAS BIM standards.
 5. PDF of each drawing.

SECTION 10 - ENERGY AND SUSTAINABILITY

10.01 INTRODUCTION

- A. While sustainability and energy conservation are critical factors in the determination of system design concepts and in the selection of building materials, the City will not seek the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED™) certification for the Project. The Design Consultant; however, will be required to design the Project to include energy and sustainability measures as appropriate to the Project for the City's review, using the LEED™ certification rating system for new building design and construction as a guide. The City has defined an aspiration that the initiatives equivalent to LEED Gold be considered during design and construction, as well as including the consideration of all sustainable measures, defined as cost effective in consideration of total cost of ownership of the completed Project.

EXHIBIT B

- B. The Project shall be designed with energy efficient technologies to achieve a "net zero energy building" such that the new MLIT will consume no additional utilities than the existing Terminal D facility. Energy efficiency improvements associated with the planned enabling utilities project will contribute to this objective.
- C. The Design Consultant will be expected and required to consider the facility design to qualify for energy program incentives and then document and request such incentive payments. The incentive payments received, if any, shall be credited to the City. The CMAR is responsible for construction of the Project and delivery of appropriate documentation so as to comply with the requirements for the City to obtain the energy program incentives.

10.02 SUSTAINABLE MANAGEMENT PLAN

- A. HAS is in the process of developing a Sustainable Management Plan for IAH and William P. Hobby airports to be prepared in two phases with final completion targeted June 2016.
 1. Phase 1 will focus on energy and waste reduction/ recycling
 2. Phase 2 will focus on water efficiency/ reuse
- B. The Phase 1 and 2 Reports will be issued to the selected Proposer, when available.

10.03 LIFE CYCLE ANALYSIS

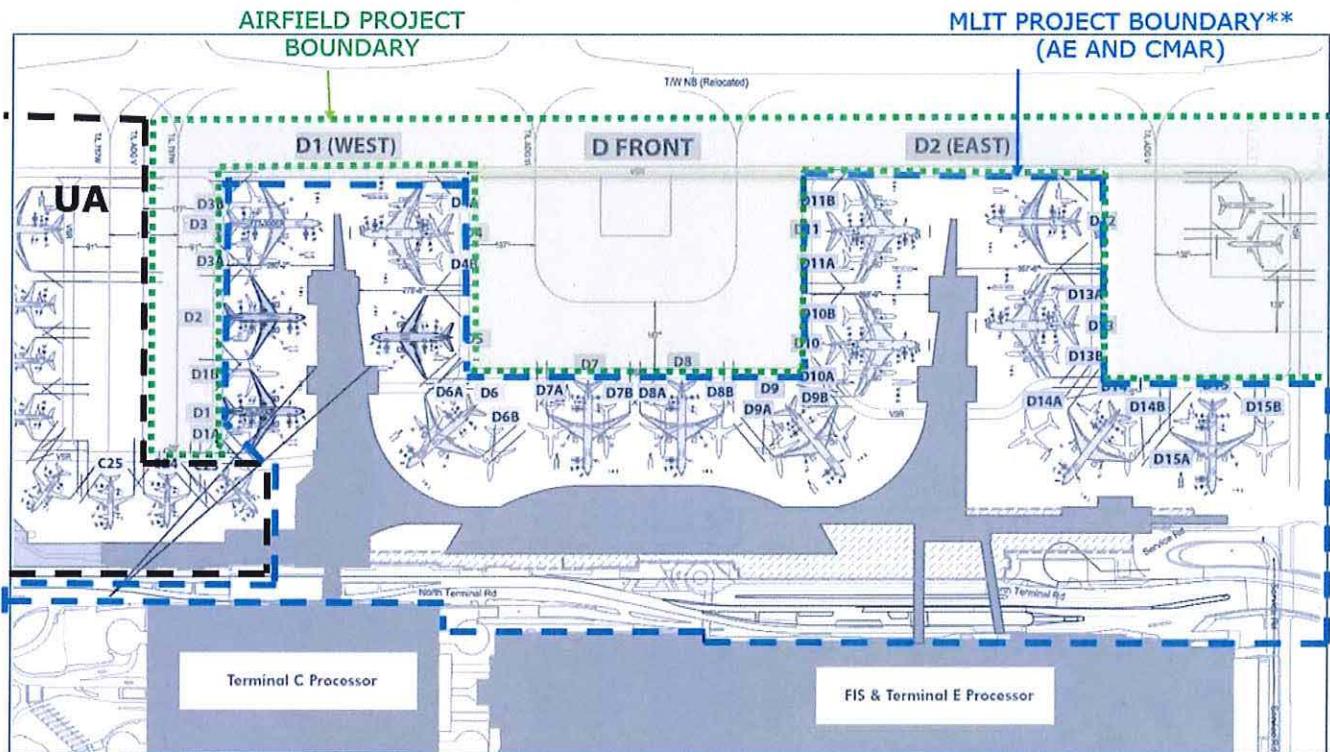
- A. The Design Consultant, with input from the CMAR, shall perform Life Cycle Analysis (LCA) for the Project lifetime period as defined by the PMT (minimum 20-year service life) to select design alternatives related to all energy and water consuming devices and to select materials and finishes for total cost of ownership that reflects overall building operation and maintenance parameters that are the most cost effective and sustainable.
- B. The Design Consultant is to specify systems that present the best value (in net present value terms) and that demonstrate simple payback of five (5) years or less. Consideration is to be given to the life-cycle cost (total cost of ownership) of implementing technologies, including, but not limited to, the use of renewable energy sources, in the Project. The technologies to be considered for LCCA include, but are not limited to: systems such as HVAC, heat recovery, renewable energy, and variable air volume; motors and drives; building envelope; lighting; controls; and sustainable building materials, where feasible.

The Design Consultant and CMAR are expected to be familiar with economic analyses required to perform LCCA. All LCCA for design alternatives are to be completed no later than conclusion of Design Development.

EXHIBIT B

ATTACHMENT A -
Project Boundary Graphic

EXHIBIT B



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EXHIBIT "C"

GENERAL CONDITIONS (CMAR)

ITRP EDITION

TABLE OF ARTICLES

1. GENERAL PROVISIONS
2. THE CITY
3. CMAR
4. ADMINISTRATION OF THE CONTRACT
5. SUBCONTRACTORS AND SUPPLIERS
6. CONSTRUCTION BY THE CITY OR BY SEPARATE CONTRACTORS
7. CHANGES IN THE WORK
8. TIME
9. PAYMENTS AND COMPLETION
10. SAFETY PRECAUTIONS
11. INSURANCE AND BONDS
12. UNCOVERING AND CORRECTION OF THE WORK
13. MISCELLANEOUS PROVISIONS
14. TERMINATION OR SUSPENSION OF THE CONTRACT

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ARTICLE 1 - GENERAL PROVISIONS

1.1 *DEFINITIONS*

1.1.1 Capitalized terms have the meanings set forth in **Exhibit “A”**.

1.2 *EXECUTION, CORRELATION, AND INTENT*

1.2.1 Execution of the Contract by CMAR is conclusive that CMAR has visited the Work site, become familiar with local conditions under which the Work will be performed, and fully informed itself as to conditions and matters which can affect the Work or costs. CMAR further agrees that it has carefully correlated personal observations with requirements of the Contract.

1.2.2 The Contract Documents and Modifications have been read and carefully considered by CMAR, who understands and agrees to their sufficiency for the Work. The Contract may not be more strongly construed against the City than against CMAR and Surety.

1.2.3 CMAR shall include all items necessary for proper execution and completion of the Work in strict accordance with the Contract Documents and reasonably inferable therefrom.

1.2.4 Reference to standard specifications, manuals, or codes of a technical society, organization, or association, or to laws or regulations of a governmental authority, whether specific or implied, mean the latest edition in effect as of date of written agreement as to a CGMP or the GMP), except as may be otherwise specifically stated in the Contract Documents.

1.2.5 No provision of any referenced standard, specification, or manual changes the duties and responsibilities of the City, Director, CMAR, or Design Consultant from those set forth in the Contract. Nor do these provisions assign to Design Consultant any duty or authority to supervise or direct performance of the Work or any duty or authority to undertake any actions contrary to provisions of the Contract.

1.2.6 Organization of Specifications into divisions, sections, and articles and arrangement of Drawings does not control CMAR in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.7 Unless otherwise defined in the Contract, words which have well-known construction industry technical meanings are used in the Contract in accordance with these recognized meanings.

1.2.8 Where the words “directed,” “required,” “permitted,” “ordered,” “designated,” “prescribed,” or words of like import are used, it shall mean the direction, requirement, permission, order, designation, or prescription of Director unless explicitly stated otherwise. The words “approved,” “acceptable,” “satisfactory,” or words of like import, shall mean approved by, or acceptable to, or satisfactory to Director, unless explicitly stated otherwise.

1.2.9 Reference to a specific requirement of a cited standard shall include all general requirements of the entire cited standard pertinent to the specific reference.

1.3 *OWNERSHIP AND USE OF DOCUMENTS*

1.3.1 Drawings, Specifications, and other documents prepared by the City or by Design Consultant are instruments of service through which the Work to be executed by CMAR is described. CMAR may retain one Contract record set.

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1.3.2 Neither CMAR, Subcontractor, nor Supplier will own or claim a copyright to documents contained in the Contract or any part of the Contract.

1.3.3 Documents contained in the Contract Documents, prepared by the City or by Design Consultant, and copies furnished to CMAR, are for use solely with respect to the Work. They may not be used by CMAR, Subcontractor or Supplier on other projects or for additions to the Work, outside the scope of the Work, without the specific written consent of Director, and Design Consultant, when applicable.

1.3.4 CMAR, Subcontractors, and Suppliers are granted a limited license to use and reproduce applicable portions of the Contract appropriate to and for use in execution of their Work under the Contract.

1.3.5 Any documents created by CMAR or its subcontractors for the Work shall become the property of the City upon their creation. In the event this transfer of ownership is ineffective for any reason, the City is hereby granted an irrevocable, non-exclusive, perpetual, royalty-free license to use said documents in conjunction with the Project. This provision shall be in all contracts awarded by CMAR and CMAR shall require the provision in all contracts of lower tiers.

1.4 *INTERPRETATION*

1.4.1 Specifications are written in an imperative streamlined form and are directed to CMAR, unless noted otherwise. When written in this form, words "shall be" are included by inference where a colon (:) is used within sentences or phrases.

1.4.2 In the interest of brevity, the Contract frequently omits modifying words such as "all" and "any" and articles such as "the" and "an", but an absent modifier or article is not intended to affect interpretation of a statement.

ARTICLE 2 - THE CITY

2.1 *LIMITATIONS OF THE CITY'S OFFICERS AND EMPLOYEES*

2.1.1 No officer or employee of the City may authorize CMAR to perform an act or work contrary to the Contract Documents, except as otherwise provided in the Contract.

2.2 *DUTIES OF THE CITY*

2.2.1 If a building permit is required, the City will process an application for, and CMAR shall purchase the building permit before Date of Commencement of the Work or applicable portion of the Work.

2.2.2 The City will make available to CMAR a reproducible set of Drawings. Additional copies will be furnished, on CMAR's request, at the cost of reproduction.

2.2.3 When necessary for performance of the Work, the City will provide surveys describing physical characteristics, legal limitations, legal description of site, and horizontal and vertical control adequate to lay out the Work.

2.2.4 Information or services that the City is required to provide under the Contract will be provided by the City with reasonable promptness to avoid delay in orderly progress of the Work.

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2.2.5 The Contract imposes no implied duty on the City. The City does not warrant any plans or specifications associated with the Contract. This paragraph does not expand the obligations of the CMAR under Article 3.3 of the CMAR Contract.

2.2.6 Except as expressly stated in this Contract and the General Conditions, the City owes no duty to the CMAR or any Subcontractor or Supplier.

2.3 AVAILABILITY OF LAND AND USE OF SITE

2.3.1 The City will furnish, as indicated in the Contract, rights-of-way, land on which the Work is to be performed, and other land designated in the Contract Documents for use by CMAR unless otherwise provided in the Contract.

2.3.2 CMAR shall confine operations at site to those areas permitted by law, ordinances, permits, and the Contract Documents.

2.3.3 In addition to land provided by the City under Paragraph 2.3, CMAR shall provide all land and access to land that may be required for use by CMAR for temporary construction facilities or for storage of materials and equipment, and shall indemnify the City during its use of the land as stated in Paragraph 3.25.

2.4 THE CITY'S RIGHT TO STOP THE WORK

2.4.1 If CMAR fails to carry out the Work in accordance with the Contract, or fails to correct work which is not in accordance with requirements of the Contract as required in Paragraphs 12.1 and 12.2, the City may, by Notice of Noncompliance, order CMAR to stop the Work or any portion of the Work until the cause for the order has been eliminated. However, the right of the City to stop the Work will not give rise to a Claim for delay or an increase in compensation or to a duty on the part of the City to exercise this right for the benefit of CMAR or any other person or entity, except to the extent required by Paragraph 6.2. If CMAR corrects the defective or nonconforming work within the time established in Notice of Noncompliance, Director will give written notice to CMAR to resume performance of the Work.

2.5 THE CITY'S RIGHT TO CARRY OUT WORK

2.5.1 If CMAR fails to carry out work in accordance with the Contract, and fails within the period established in a Notice of Noncompliance to correct the nonconforming work, the City may, after expiration of the required period, correct the deficiencies without prejudice to other remedies the City may have, including rights of the City under Paragraph 14.1.

2.5.1.1 When the City corrects deficiencies, Director will issue an appropriate Change Order and deduct from payments then or thereafter due CMAR the cost of correcting the deficiencies, including compensation for Design Consultant's and CMAR's additional services and expenses made necessary by such default, neglect, or failure. This action by the City and amounts charged to CMAR are both subject to prior approval of Director. If payments, then or thereafter due CMAR are not sufficient to cover these amounts, CMAR shall pay the difference to the City. Costs of correcting deficiencies which would have otherwise been reimbursable to CMAR, as determined by the Director in his sole discretion, shall not be deducted from sums otherwise due CMAR, but shall be considered a Cost of the Work, as determined by the Director in his sole discretion, in determining a CGMP or the GMP and any savings shall revert to the City

2.5.2 Notwithstanding the City's right to carry out work, maintenance and protection of the Work (but excluding such work as carried out by the City) remains CMAR's responsibility, as provided in the Contract.

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2.6 *THE CITY'S RIGHT TO REJECT WORK*

2.6.1 The Director shall have the right to reject Work that does not conform to the Contract Documents. City shall also have the right to require special inspection or testing of the Work, whether or not such Work is then fabricated, installed, or completed. Neither City's right to act under this Section nor any decision by City either to exercise or not to exercise such right shall give rise to any duty or responsibility of City to CMAR or to any other person or entity, or result in a waiver of any of City's rights or relieve CMAR of its obligations.

ARTICLE 3 - CMAR

3.1 *RESPONSIBILITIES*

3.1.1 CMAR shall maintain an office with an agent in the greater City of Houston area during the CMAR's performance under the Contract. CMAR shall file its street address with Director. CMAR may use the job site office of CMAR to meet this requirement.

3.1.2 CMAR and CMAR's employees shall not give or lend money or anything of value to an officer or employee of the City. Should this Paragraph 3.1.2 be violated, Director may terminate the Contract under Paragraph 14.1.

3.2 *REVIEW OF CONTRACT AND FIELD CONDITIONS BY CMAR*

3.2.1 CMAR shall carefully study and compare documents contained in the Contract with each other and with information furnished by the City pursuant to Paragraph 2.2 and consistent with the CMAR's obligations in Article 3.3 of the CMAR Contract, shall immediately report, in writing, any errors, inconsistencies, or omissions to Director. If Work is affected, CMAR shall obtain a written interpretation or clarification from Director before proceeding with the affected Work.

3.2.2 CMAR shall take field measurements and verify field conditions, and shall carefully compare the conditions and other information known to CMAR with the Contract, before commencing activities. CMAR shall immediately report, in writing, to Director for interpretation or clarification of discrepancies, inconsistencies, or omissions discovered during this process.

3.3 *SUPERVISION AND CONSTRUCTION PROCEDURES*

3.3.1 CMAR shall supervise, direct, and inspect the Work competently and efficiently, devoting the attention and applying the skills and expertise as necessary to perform the Work in accordance with the Contract Documents. CMAR is solely responsible for and has control over construction means, methods, techniques, sequences, and procedures of construction; for safety precautions and programs in connection with the Work; and for coordinating all Work under the Contract.

3.3.2 Regardless of observations or inspections by the City or City's consultants, CMAR shall perform and complete the Work in accordance with the Contract and submittals approved pursuant to Paragraph 3.18. The City is not liable or responsible to CMAR or Surety for Work performed by CMAR that is not in accordance with the Contract regardless of whether such nonconformities are discovered during construction or after acceptance of the Work.

3.4 *SUPERINTENDENT*

3.4.1 CMAR shall employ a competent Superintendent and necessary assistants who shall be present at the Project site during performance of the Work. Communications given to Superintendent are binding on the CMAR.

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3.4.2 CMAR shall notify Director in writing of its intent to replace the Superintendent. CMAR shall not replace the Superintendent if Director makes a reasonable objection in writing.

3.5 **LABOR**

3.5.1 CMAR shall provide competent, qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The City may, by written notice, require CMAR to remove from the Work any employee of CMAR or Subcontractors to whom Director makes reasonable objection.

3.5.2 CMAR shall comply with the applicable Business Enterprise Policy set out in this Contract and as set out in Chapter 15, Article V of the City of Houston Code of Ordinances.

3.5.3 When original CGMP and/or GMP is greater than \$1,000,000, CMAR shall make Good Faith Efforts to award subcontracts or supply agreements in at least the percentages set out in Article 10 of the Contract. CMAR acknowledges that it has reviewed the requirements for Good Faith Efforts on file with the City's Office of Business Opportunity and shall comply with them.

3.5.3.1 CMAR shall require written subcontracts with Business Enterprises and shall submit all disputes with Business Enterprises to voluntary mediation. Business Enterprise subcontracts complying with City Code of Ordinances Chapter 15, Article V must contain the terms set out in Subparagraph 3.5.3.2. If CMAR 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 subcontract must also be signed by the attorneys of the respective parties.

3.5.3.2 CMAR shall ensure that subcontracts with Business Enterprise firms are clearly labeled "**THIS CONTRACT MAY BE SUBJECT TO MEDIATION ACCORDING TO THE TEXAS ALTERNATIVE DISPUTE RESOLUTION ACT**" and contain the following terms:

3.5.3.2.1 (Business Enterprise) may not delegate or subcontract more than 50 percent (50%) of work under this subcontract to any other subcontractor without the express written consent of the City's OBO Director (the "OBO Director").

3.5.3.2.2 (Business Enterprise) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the Subcontractors and Suppliers, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. (Business Enterprise) shall keep the books and records available for this purpose for at least four years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

3.5.3.2.3 Within five (5) business days of execution of this subcontract, CMAR and (Business Enterprise) shall designate in writing to the OBO 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 the agent.

3.5.4 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 the Contract for all purposes. CMAR has reviewed Executive Order 1-7 and shall comply with its terms and conditions. IF CMAR DOES NOT PAY IN ACCORDANCE WITH THE PAY OR PLAY PROGRAM WITHIN THIRTY (30) DAYS OF THE DATE DIRECTOR SENDS CMAR WRITTEN NOTIFICATION, CITY CONTROLLER MAY DEDUCT FUNDS UP TO THE AMOUNT OWED FROM ANY PAYMENTS OWED TO CMAR UNDER THIS CONTRACT, AND CMAR WAIVES ANY RE COURSE.

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3.6 *PREVAILING WAGE RATES*

3.6.1 CMAR shall comply with governing statutes providing for labor classification of wage scales for each craft or type of laborer, worker, or mechanic.

3.6.2 Prevailing wage rates applicable to the Work may be one or a combination of the following wage rates identified in Exhibit H of the Contract:

3.6.2.1 Federal Wage Rate General Decisions

- 3.6.2.1.1 Highway Rates
- 3.6.2.1.2 Building Rates
- 3.6.2.1.3 Heavy Construction Rates
- 3.6.2.1.4 Residential Rates

3.6.2.2 City Prevailing Wage Rates

- 3.6.2.2.1 Building Construction Rates
- 3.6.2.2.2 Engineering Construction Rates
- 3.6.2.2.3 Asbestos Worker Rates

3.6.3 Each week CMAR shall submit to the City's Office of Business Opportunity certified copies of payrolls showing classifications and wages paid by CMAR, Subcontractors, and Suppliers for each employee under the Contract, for any day included in the Contract.

3.7 *LABOR CONDITIONS*

3.7.1 In the event of labor disputes affecting CMAR or CMAR's employees, CMAR shall utilize all possible means to resolve disputes in order that the Work not be delayed to any extent. These means include seeking injunctive relief and filing unfair labor practice charges, and any other action available to CMAR.

3.7.2 When CMAR has knowledge that any actual or potential labor dispute is delaying or is threatening to delay timely performance of the Work, CMAR shall immediately notify Director in writing. No Claims will be accepted by Director for costs incurred as a result of jurisdictional or labor disputes.

3.8 *DRUG DETECTION AND DETERRENCE*

3.8.1 It is the policy of the City to achieve a drug-free work force and to provide a workplace that is free from the use of illegal drugs and alcohol. It is also the policy of the City that manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on the City's premises is prohibited. By executing the Contract, CMAR represents and certifies that it meets and will comply with all requirements and procedures set forth in the Mayor's Policy on Drug Detection and Deterrence, City Council Motion No. 92-1971 ("Mayor's Policy") and the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31, (Revised) ("Executive Order"). Copies of the Mayor's Policy and Executive Order are on file in the office of the City Secretary.

3.8.1.1 The Executive Order applies to the City's contracts for labor or services except the following:

- 3.8.1.1.1 contracts authorized by Emergency Purchase Orders,
- 3.8.1.1.2 contracts in which imposition of requirements of the Executive Order would exclude all potential bidders or proposers, or would eliminate meaningful competition for the Contract,

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- 3.8.1.1.3 contracts with companies that have fewer than fifteen (15) employees during any 20-week period during a calendar year and no safety impact positions,
 - 3.8.1.1.4 contracts with non-profit organizations providing services at no cost or reduced cost to the public, and
 - 3.8.1.1.5 contracts with federal, state, or local governmental entities.
- 3.8.1.2 Prior to execution of the Contract, CMAR shall have filed with the City:
- 3.8.1.2.1 a Drug Policy Compliance Contract form (Attachment "A" to the Executive Order),
 - 3.8.1.2.2 a copy of CMAR's drug free workplace policy, and
 - 3.8.1.2.3 a written designation of all safety impact positions, if applicable, or a CMAR's Certification of a No Safety Impact Positions form (Attachment "C" to the Executive Order).
- 3.8.1.3 Every six (6) months during performance of the Contract and upon completion of the Contract, CMAR shall file a Drug Policy Compliance Declaration form (Attachment "B" to the Executive Order). The CMAR shall submit the Drug Policy Compliance Declaration within thirty (30) days of expiration of each six-month period of performance and within thirty (30) days of Final Completion. The first six-month period shall begin on Date of Commencement of the Work.
- 3.8.1.4 CMAR shall have a continuing obligation to file updated designation of safety impact positions when additional safety impact positions are added to CMAR's employee workforce during performance of the Work.
- 3.8.1.5 CMAR shall require its Subcontractors and Suppliers to comply with the Mayor's Policy and Executive Order. CMAR is responsible for securing and maintaining required documents from Subcontractors and Suppliers for the City inspection throughout the term of the Contract.
- 3.8.1.6 Failure of CMAR to comply with requirements will be a material breach of the Contract entitling the City to terminate in accordance with Paragraph 14.1.

3.9 *MATERIALS & EQUIPMENT*

3.9.1 Unless otherwise provided in the Contract, CMAR shall provide and assume full responsibility for Products, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, transportation, temporary facilities, supplies, and other facilities and incidentals necessary for Furnishing, performing, testing, starting-up, and completing the Work.

3.9.1.1 CMAR, Subcontractors, and Suppliers shall use Ultra Low Sulfur Diesel Fuel in all diesel operating vehicles and motorized equipment utilized in performing the Work. Ultra Low Sulfur Diesel Fuel is defined as diesel fuel having 15 ppm or the applicable standard set by state or federal law or rules and regulations of the Texas Commission on Environmental Quality, or the Environmental Protection Agency, whichever is less in sulfur content. Off-road Ultra Low Sulfur Diesel Fuel may be used in lieu of on-road Ultra Low Sulfur Diesel Fuel. CMAR shall provide, upon request by Director, proof that CMAR, Subcontractors, and Suppliers are using Ultra Low Sulfur Diesel Fuel.

3.9.2 CMAR shall provide Products that are:

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new, unless otherwise required or permitted by the Contract, and of specified quality. If required by Director, CMAR shall furnish satisfactory evidence, including reports of required tests, as to kind and quality of Products.

3.9.3 CMAR shall store Products in a safe, neat, compact, and protected manner. CMAR shall also store Products delivered during the Work, along the right-of-way:

- 3.9.3.1 so as to cause the least inconvenience to property owners, tenants, and general public;
- 3.9.3.2 so as not to block access to, or be closer than, three feet to any fire hydrant; and
- 3.9.3.3 so as not to put an unsafe load or distribution of weight on a particular area that causes damage.

CMAR shall protect trees, lawns, walks, drives, streets, and other improvements that are to remain, from damage. If private or public property is damaged by CMAR, CMAR shall, at its sole expense, restore the damaged property to at least its original condition.

3.9.4 CMAR shall obtain Director's approval for storage areas used for Products for which payment has been requested under Paragraph 9.2.2. CMAR shall provide the City access to the storage areas for inspection purposes. Products, once paid for by the City, become the property of the City and may not be removed from place of storage, without Director's written permission except for a movement to the Project site. CMAR's Installation Floater, required under Paragraph 11.2, shall cover all perils, including loss or damage to Products during storage, loading, unloading, and transit to the Project site. Payment for materials and transfer of ownership shall not alleviate CMAR's responsibility for corrective action should the material become defective or be determined by the Director to not be in compliance with the Contract Documents.

3.10 **PRODUCT OPTIONS AND SUBSTITUTIONS**

3.10.1 For Products specified by reference standards or by description only, CMAR may provide any Product meeting those standards or description.

3.10.2 For Products specified by naming one or more manufacturers with provision for substitutions or equal, CMAR may submit a request for substitution for any manufacturer not named.

3.10.3 Director will consider requests for substitutions only within the first 15 percent (15%) of Contract Time, or first ninety (90) days after date of Notice to Proceed, whichever is less.

3.10.4 CMAR shall document each request for substitution with complete data substantiating compliance of proposed substitution with the Contract.

3.10.5 A request for substitution constitutes a representation that CMAR:

- 3.10.5.1 has investigated the proposed Product and determined that it meets or exceeds the quality standard of the specified Product;
- 3.10.5.2 shall provide the same warranty for the substitution as for the specified Product;
- 3.10.5.3 shall coordinate installation of the proposed substitution and make changes to other work which may be required for the Work to be completed, with no additional cost or increase in time to the City;

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- 3.10.5.4 confirms that cost data is complete and includes all related costs under the Contract Documents;
 - 3.10.5.5 waives related Claim for additional costs or time extensions that may subsequently become apparent; and
 - 3.10.5.6 shall provide review or redesign services by a design consultant with appropriate professional license and shall obtain re-approval and permits from authorities.
- 3.10.6 Director will not consider and will not approve substitutions when:
- 3.10.6.1 they are indicated or implied on Shop Drawing or Product Data submittals without separate written request; or
 - 3.10.6.2 acceptance will require revision to the Contract Documents.

3.10.7 Director may reject requests for substitution, and his decision will be final and binding on the Parties.

3.11 **CASH ALLOWANCES**

3.11.1 A CGMP and the GMP includes Cash Allowances as identified in the Contract Documents.

3.11.2 The City will pay the actual costs of Allowance items and they will be considered a Cost of the Work. If actual costs exceed the Cash Allowance, Director must approve a Change Order for the additional costs.

3.12 **WARRANTY**

3.12.1 CMAR warrants to the City that Products furnished under the Contract are:

- 3.12.1.1 free of defects in title;
- 3.12.1.2 of good quality;
- 3.12.1.3 new, unless otherwise required or permitted by the Contract; and
- 3.12.1.4 free from defects and in strict conformance with the requirements of the Contract Documents.

If required by the Director, CMAR shall furnish satisfactory evidence as to kind, quality, and title of Products, and that Products conform to requirements of the Contract Documents.

3.12.2 In the event of a defect in a Product, either during construction or Correction Period, CMAR shall take appropriate action with manufacturer of Product to assure correction or replacement of defective Product with minimum delay.

3.12.3 CMAR warrants that the Work is free of defects not inherent in the quality required or permitted, and that the Work does conform with the requirements of the Contract. CMAR further warrants that the Work has been performed in a good, thorough and workmanlike manner.

- 3.12.3.1 If required in writing by the Director, CMAR shall furnish satisfactory evidence, including reports or required tests, as to kind, quality and title of Products, and that Products conform to requirements of the Contract Documents.

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3.12.3.2 In the event of a defect in a Product, either during construction or Correction Period, CMAR shall take action with the manufacturer of the Product to assure correction or replacement of the defective Product with minimum delay, to the satisfaction of the Director.

3.12.4 CMAR warrants that the Work is free of concentrations on polychlorinated biphenyl (PCB) and other substances defined as hazardous by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or any other applicable law or regulation. CMAR's warranty does not extend beyond CMAR's Work.

3.12.5 Work not conforming to requirements of Paragraph 3.12, including substitutions not properly approved and authorized, may be considered nonconforming work.

3.12.6 CMAR's warranty excludes remedy for damage or defect caused by:

3.12.6.1 improper or insufficient maintenance by the City;

3.12.6.2 normal wear and tear under normal usage; or

3.12.6.3 claim that hazardous material was incorporated into the Work, if that material was specified in the Contract.

3.12.7 CMAR warrants that title to all work covered by CMAR's request for payment passes to the City upon incorporation into the Work or upon CMAR's receipt of payment, whichever occurs first. The CMAR further warrants that the title is free of all liens, claims, security interests or other interests ("Encumbrances"). If not, upon written demand from Director, CMAR shall immediately take legal action necessary to remove Encumbrances.

3.13 TAXES

3.13.1 CMAR shall pay all applicable sales, consumer, use, and similar taxes, which are related to work provided by CMAR.

3.13.2 CMAR shall obtain, and require Subcontractors and Suppliers to obtain, necessary permits from applicable state and local taxing authorities to perform contractual obligations under the Contract, including sales tax permits (to the extent any sales or use tax exemption is not applicable).

3.13.3 The City is exempt from the Federal Transportation and Excise Tax. CMAR shall comply with federal regulations governing the exemptions.

3.13.4 Products incorporated into the Work are exempt from state sales tax according to provisions of the TEX. TAX CODE ANN. CH. 151, Subsection H.

3.14 PERMITS, FEES, AND NOTICES

3.14.1 Unless otherwise provided in the Contract, CMAR shall secure and pay for all construction permits, licenses, and inspections:

3.14.1.1 necessary for proper execution and completion of the Work; and

3.14.1.2 legally required at time the Director approves a CGMP or the GMP.

3.14.2 The CMAR shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work, including CMAR's

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or Subcontractor's licenses; neither City nor its agents, shall be responsible for monitoring CMAR's compliance with this requirement.

3.15 CONSTRUCTION SCHEDULES

3.15.1 Upon receipt of a Notice to Proceed, CMAR shall promptly prepare and submit a construction schedule for the Work for Director's review. The schedule must reflect the minimum time required to complete the Work not to exceed Contract Time. The Director will define what project management/scheduling software systems will be employed for execution of the Work. CMAR shall make its own arrangements to produce his schedule using the same or approved compatible software. CMAR shall be responsible for assuring that all work, including all subcontractor work, is included in the schedule. CMAR shall be responsible for assuring that all work sequences are logical and that the schedule indicates a coordinated plan. At a minimum, the schedule shall provide information on the sequence of work activities, interdependence of activities, milestone dates and activity duration. CMAR shall maintain the work schedule and provide an update and analysis of the progress on a monthly basis, with the monthly billing. Submission of the work schedule shall not relieve CMAR of overall responsibility for scheduling sequencing and coordinating all work to comply with the requirements of the contract.

3.15.2 CMAR shall give 24-hour written notice to Director before commencing work or resuming work where work has been stopped. CMAR shall also give the same notice to inspectors.

3.15.3 CMAR shall incorporate milestones specified in Summary of Work Specification into the construction schedule. CMAR's failure to meet a milestone, as determined by Director, may be considered a material breach of the Contract.

3.15.4 Each month, CMAR shall submit to Director a copy of an updated construction schedule indicating actual progress, incorporating applicable changes, and indicating courses of action required to assure completion of the Work within Contract Time.

3.15.5 CMAR shall keep a current schedule of all submittals that correlates with the construction schedules, and shall submit the initial schedule of submittals and any subsequent changes to Director for approval.

3.16 DOCUMENTS AND SAMPLES AT THE SITE

3.16.1 CMAR shall maintain at the site, and make available to Director, one record copy of Drawings, Specifications, and Modifications. CMAR shall maintain the documents in good order and marked currently to record changes and selections made during construction. In addition, CMAR shall maintain at the site, approved Shop Drawings, Product Data, Samples, and similar submittals, which will be delivered to Director prior to final inspection as required in Paragraph 9.11.4.

3.16.2 CMAR shall provide to City Attorney all documents and records that City Attorney deems necessary to assist in determining CMAR's compliance with the Contract, with the exception of those documents made confidential by federal or state law or regulation.

3.17 MANUFACTURER'S SPECIFICATIONS

3.17.1 CMAR shall handle, store, protect, and install Products and perform all work in the manner required by Product manufacturer. Should the Contract and manufacturer's instructions conflict, CMAR shall report conflict to Director for resolution prior to proceeding with the affected portions of the Work.

3.17.2 References in the Contract to the manufacturer's specifications, directions, or recommendations, mean manufacturer's current published documents in effect as of a CGMP or the GMP proposal, or in the case of a Modification, as of date of Modification.

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3.18 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.18.1 Shop Drawings, Product Data, and Samples are not part of the Contract. The purpose of CMAR submittals is to demonstrate, for those portions of the Work for which submittals are required, the way CMAR proposes to conform to information given and design concept expressed in the Contract. CMAR shall submit required submittals and requests for information (RFIs) into the HAS project management system. Access to the project management system portal and required training will be coordinated through the Director.

3.18.2 CMAR shall submit to Director for review the Shop Drawings, Product Data, and Samples, which are required by the Contract Documents. Review by Director is subject to limitations of Paragraph 4.1.4. CMAR shall transmit the submittals to the Director with reasonable promptness and in a sequence, so as to cause no delay in the Work or in activities of the City or of separate Contractors. CMAR shall transmit submittals in time to allow a minimum of fourteen (14) days for Director's review prior to date CMAR needs reviewed submittals returned. This time may be shortened for a particular job requirement if approved by Director in advance of submittal.

3.18.3 CMAR shall certify that the content of submittals conforms to the Contract without exception by affixing CMAR's approval stamp and signature. By certifying and submitting Shop Drawings, Product Data, and Samples, CMAR represents, and CMAR's stamp of approval shall state, that CMAR has determined and verified materials, quantities, field measurements, and field construction criteria related to the submittal, and has checked and coordinated information contained within the submittals with requirements of the Contract and for compatibility with other submittals.

3.18.4 CMAR may not perform any work requiring submittal and review of Shop Drawings, Product Data, or Samples until the submittal has been returned with appropriate review decision by the Director. CMAR shall perform Work in accordance with the review.

3.18.5 If CMAR performs any Work requiring submittals prior to review and acceptance of the submittals by Director, such Work is at CMAR's risk and the City is not obligated to accept Work if the submittals are later found to be unacceptable.

3.18.6 If, in the opinion of Director, the submittals are incomplete, or demonstrate an inadequate understanding of the Work or lack of review by the CMAR, then submittals may be returned to the CMAR for correction and resubmittal.

3.18.7 CMAR shall direct specific attention in writing and on the resubmitted Shop Drawings, Product Data, or Samples to any additional proposed revisions, other than those revisions requested by Director on previous submittals.

3.18.8 CMAR is not relieved of responsibility for deviations from requirements of the Contract by Director's review or approval of Shop Drawings, Product Data, or Samples unless CMAR has specifically informed Director in writing of the deviation at the time of the submittal, and Director has given written approval of the deviation.

3.18.9 When professional certification of performance criteria of Products is required by the Contract, the City may rely upon accuracy and completeness of the calculations and certifications.

3.18.10 For Product colors or textures to be selected by the City, CMAR shall submit all samples together to allow preparation of a complete selection schedule.

3.18.11 CMAR shall submit informational submittals, on which Director is not expected to take responsive action, as required by the Contract.

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3.18.12 Submittals made by CMAR which are not required by the Contract may be returned to CMAR without action.

3.19 *CULTURAL RESOURCES AND ENDANGERED SPECIES*

3.19.1 CMAR may not remove or disturb, or cause to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, vestiges, remains, or objects of antiquity. If CMAR discovers one of these items, CMAR shall immediately notify Director and further comply with the requirements of 13 Tex. Admin. Code Chs. 25 and 26 (2002), or successor regulation. CMAR shall protect site and cultural resources from further disturbance until professional examination can be made or until clearance to proceed is authorized in writing by Director.

3.19.2 Should either threatened or endangered plant or animal species be encountered, CMAR shall cease work immediately in the area of encounter and notify Director.

3.20 *CUTTING AND PATCHING*

3.20.1 CMAR is responsible for necessary cutting, fitting, and patching to accomplish the Work and shall suitably support, anchor, attach, match, and trim or seal materials to work of other Contractors. CMAR shall coordinate the Work with work of other Contractors to minimize conflicts, as provided in Article 6.

3.20.2 CMAR may not endanger work by cutting, digging, or other action, and may not cut or alter work of other Contractors except by written consent of Director.

3.20.3 If authorized by Director, cutting shall be accurately located and neatly done. Unnecessary cutting shall be avoided. Patching shall be done by skilled mechanics experienced in the particular type of work involved. Patching work shall conform to the standards of the Drawings and Specifications where applicable, and where not specified, such work shall conform to the highest standards of the trade. Finished patching in the work of a separate Contractor shall be acceptable to the Contractor whose work has been patched.

3.20.4 CMAR shall leave all holes, chases, and other openings in its construction required by other Contractors for the installation of their work, provided such openings are accurately located by the party requiring them before the execution of the construction. CMAR shall afford other Contractors a reasonable opportunity to locate such openings.

3.21 *CLEANING*

3.21.1 CMAR shall perform daily cleanup of all dirt, debris, scrap materials and other disposable items resulting from CMAR's operations, whether on-site or off-site. Unless otherwise authorized in writing by Director, CMAR shall keep all streets, access streets, driveways, areas of public access, walkways, and other designated areas clean and open at all times.

3.21.2 Failure of CMAR to maintain a clean site, including access streets, is the basis for Director to issue a Notice of Noncompliance. Should compliance not be attained within the time period in the Notice of Noncompliance, Director may authorize necessary cleanup to be performed by others and the cost of the cleanup will be deducted from monies due CMAR.

3.21.3 CMAR shall legally dispose off-site, all waste materials and other excess materials resulting from CMAR's on site and off site operations.

3.22 *SANITATION*

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3.22.1 CMAR shall provide and maintain sanitary facilities at site for use of all construction forces under the Contract. Newly-constructed or existing sanitary facilities may not be used by CMAR.

3.23 **ACCESS TO WORK AND TO INFORMATION**

3.23.1 CMAR shall provide the City, Design Consultant, Inspectors, testing laboratories, and governmental agencies which have jurisdictional interests, access to the Work in preparation and in progress wherever located. CMAR shall provide proper and safe conditions for the access.

3.23.2 If required by Director, CMAR shall furnish information concerning character of Products and progress and manner of the Work, including information necessary to determine cost of the Work, such as number of employees, pay of employees, and time employees worked on various classes of the Work.

3.24 **TRADE SECRETS**

3.24.1 CMAR will not make any claim of ownership of trade secrets as to Products used in the Work, or preparation of any mixture for the Work. The Director will at all times have the right to demand and CMAR shall furnish information concerning materials or samples of ingredients of any materials used, or proposed to be used, in preparation of concrete placed or other work to be done. Mixtures, once agreed on, shall not be changed in any manner without knowledge and consent of Director. The City will make its best efforts to protect confidentiality of proprietary information.

3.25 **RELEASE AND INDEMNIFICATION**

3.25.1 CMAR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS CONTRACT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCT'S LIABILITY OR STRICT STATUTORY LIABILITY.

3.25.2 CMAR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THE CONTRACT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

3.25.2.1 CMAR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CMARS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED SUBPARAGRAPHS 3.25.1.1 through 3.25.1.3, "CMAR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

3.25.2.2 THE CITY'S AND CMAR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT;

3.25.2.3 THE CITY'S AND CMAR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

CMAR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY DURING THE TERM OF

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THIS CONTRACT AND FOR FOUR YEARS AFTER THE CONTRACT TERMINATES. CMAR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

3.25.3 THE INDEMNIFICATION OBLIGATIONS HEREUNDER SHALL NOT BE LIMITED IN ANY WAY BY THE LIMITS OF ANY INSURANCE COVERAGE OR ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY, FOR, OR TO CMAR OR ANY SUBCONTRACTOR, SUPPLIER, OR ANY OTHER INDIVIDUAL OR ENTITY UNDER ANY INSURANCE POLICY, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFITS ACTS.

3.26 RELEASE AND INDEMNIFICATION – PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT

3.26.1 UNLESS OTHERWISE SPECIFICALLY REQUIRED BY THE CONTRACT, CMAR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CMAR, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CMAR FURNISHES DURING THE TERM OF THE CONTRACT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CMAR SHALL PAY SUBJECT TO REIMBURSEMENT IF ALLOWED UNDER THE CONTRACT, ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

3.26.2 CMAR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, OR PRODUCT WITHOUT THE DIRECTOR'S PRIOR WRITTEN CONSENT.

3.26.3 UNLESS OTHERWISE SPECIFICALLY REQUIRED BY THE CONTRACT, WITHIN SIXTY (60) DAYS AFTER BEING NOTIFIED OF THE CLAIM, CMAR SHALL, AT ITS OWN EXPENSE, EITHER:

3.26.3.1 OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, OR PRODUCT, OR

3.26.3.2 IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS.

IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR PRODUCT, OR DISCONTINUE THE PROCESS, AND CMAR SHALL REFUND THE PURCHASE PRICE.

3.27 INDEMNIFICATION PROCEDURES

3.27.1 *Notice of Indemnification Claims:* If the City or CMAR receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other Party within ten (10) days. The notice must include the following:

3.27.1.1 a description of the indemnification event in reasonable detail,

3.27.1.2 the basis on which indemnification may be due, and

3.27.1.3 the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide

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this notice within the 10-day period, it does not waive any right to indemnification except to the extent that CMAR is prejudiced, suffers loss, or incurs expense because of the delay.

3.27.2 *Defense of Indemnification Claims:*

3.27.2.1 *Assumption of Defense:* CMAR may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. CMAR shall then control the defense and any negotiations to settle the claim. Within ten (10) days after receiving written notice of the indemnification request, CMAR must advise the City as to whether or not it will defend the claim. If CMAR does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnified loss.

3.27.2.2 *Continued Participation:* If CMAR elects to defend the claim, the City may retain separate counsel to participate in, but not control, the defense and to participate in, but not control, any settlement negotiations. CMAR may settle the claim without the consent or agreement of the City, unless it:

3.27.2.2.1 would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City;

3.27.2.2.2 would require the City to pay amounts that CMAR does not fund in full; or

3.27.2.2.3 would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

ARTICLE 4 - ADMINISTRATION OF THE CONTRACT

4.1 ***CONTRACT ADMINISTRATION***

4.1.1 Director will provide administration of the Contract and, subject to Paragraph 7.1.2, Director is authorized to issue Change Orders, Work Change Directives, and Minor Changes in the Work.

4.1.2 The City does not have control over or charge of, and is not responsible for, supervision, construction, and safety procedures enumerated in Paragraph 3.3. The City does not have control over or charge of and is not responsible for acts or omissions of CMAR, Subcontractors, or Suppliers.

4.1.3 The City and Design Consultant may attend project meetings and visit the Project site to observe progress and quality of the Work. The City and Design Consultant are not required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work.

4.1.4 Director will review and approve or take other appropriate action on CMAR's submittals, but only for limited purpose of checking for conformance with information given and design concept expressed in the Contract.

4.1.4.1 Director's review of the submittals is not conducted for purpose of determining accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of Products, all of which remain the responsibility of CMAR.

4.1.4.2 Director's review and/or acceptance of submittals does not relieve CMAR of its obligations to perform the Work in strict conformance with the Contract Documents, including without limitation CMAR's obligations under Sections 3.3, 3.10, 3.12, 3.16, and 3.18 of these General Conditions and shall not constitute approval of safety precautions or, unless otherwise specifically stated by Director in writing, of construction means, methods,

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techniques, sequences, or procedures. Director's review and/or acceptance of a specific item does not indicate approval of an assembly of which the item is a component.

4.1.4.3 The Director's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

4.1.5 Based on field observations and evaluations, Director will process CMAR's progress payments, certify amounts due CMAR, and issue Certificates for Payment in the amount certified.

4.1.6 CMAR shall deliver to Director for his review and records, written warranties and related documents required by the Contract Documents and assembled by CMAR.

4.1.7 Upon written request by CMAR or Director, Director will resolve matters of interpretation of or performance of the Contract, which are not Claims. Director's decisions are final and binding on the Parties.

4.1.8 Director may reject work which does not conform to the Contract.

4.1.9 When Director considers it necessary to implement the intent of the Contract, Director may require additional inspection or testing of work in accordance with Paragraphs 13.6.3 and 13.6.4, whether such work is fabricated, Installed, or completed.

4.1.10 Except as expressly stated in this Article or other provisions of the Contract or these General Conditions, the City owes no duty to the CMAR or any subcontractor.

4.2 COMMUNICATIONS IN ADMINISTRATION OF THE CONTRACT

4.2.1 Except as otherwise provided in the Contract or when authorized by Director in writing, CMAR shall communicate with and through the Director. CMAR shall communicate with separate Contractors and Design Consultant (and its subconsultants) through Director. The Director will communicate with Subcontractors and Suppliers through CMAR, but Director is entitled to communicate directly with Subcontractors and Suppliers at any time to obtain information.

4.2.2 Inspectors employed by the City shall be authorized to inspect all work done and materials furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication or manufacture of the materials to be used. Inspectors are not authorized to revoke, alter or waive any provision of the contract. Inspectors are not authorized to issue instructions contrary to the plans and specifications or to act as foreman for the CMAR or its subcontractors.

4.3 CLAIMS AND DISPUTES

4.3.1 *Documentation by Director:* CMAR shall submit Claims to Director for documentation and recommendation to Director.

4.3.2 *Decision of Director:* Upon submission of Claim by Director or CMAR, Director will resolve Claims in accordance with Paragraph 4.4.

4.3.3 *Time Limits on Claims:* Claims by CMAR must be made within ninety-one (91) days after the occurrence of the event giving rise to the Claim. Claims by CMAR not made within the time required in the required manner shall be deemed waived by CMAR. CMAR must give initial notice to the Director of an event that CMAR views as one that might give rise to a Claim within seven (7) days of the event

4.3.4 *Continuing the Contract Performance:* Pending final resolution of a Claim including referral to non-binding mediation, unless otherwise agreed in writing, CMAR shall proceed diligently with the

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performance of the Contract and the City will continue to make payments in accordance with the Contract.

4.3.4.1 Pending final resolution of a Claim including referral to non-binding mediation, CMAR is responsible for safety and protection of physical properties and conditions at the Project site.

4.3.5 *Claims for Concealed or Unknown Conditions:* Concealed or unknown physical conditions may include utility lines, other man-made structures, storage facilities, Pollutants and Pollutant Facilities, and the like, but do not include conditions discovered or that reasonably should have been discovered through reasonable visual site inspection, geotechnical testing, geotechnical information available to CMAR, or to the extent otherwise reasonably discoverable by a reasonably prudent CMAR, or that do not materially differ from those indicated in the Contract Documents, or information provided by City or those that should reasonably be anticipated, arising from CMAR's operations, or failure of CMAR to properly protect and safeguard subsurface facilities, or that do not materially differ from those indicated in the Contract Documents, or information provided by City or those that should reasonably be anticipated. Subject to the foregoing, concealed conditions also include naturally-occurring soil conditions outside the range of soil conditions identified through geotechnical investigations, but do not include conditions arising from groundwater, rain, or flood.

4.3.5.1 If conditions are encountered at the site which are Underground Facilities or otherwise concealed or unknown conditions which differ materially from:

- 4.3.5.1.1 those indicated by the Contract Documents; or
- 4.3.5.1.2 conditions which CMAR reasonably could have discovered through site inspection, geotechnical testing, or to the extent otherwise reasonably discoverable by a reasonably prudent CMAR;

then CMAR will give written notice to Director no later than seven (7) days after CMAR's first observation of the condition and before condition is disturbed. CMAR's failure to provide notice constitutes a waiver of a Claim.

4.3.5.2 Director will promptly investigate concealed or unknown conditions. If Director determines that conditions at the site are not materially different from those indicated in the Contract and that no change in a CGMP, the GMP, or Contract Time is justified, Director will notify CMAR in writing, stating reasons. If Director determines the conditions differ materially from those indicated by the Contract and cause increase or decrease in CMAR's cost or time required for performance of part of the Work, Director will recommend an adjustment in a CGMP, the GMP, or Contract Time, or both (CGMP/GMP, as applicable, and Contract Time), as provided in Article 7. Opposition by a Party to the Director's determination must be made within twenty-one (21) days after Director has given notice of the decision. If the Parties cannot agree on adjustment to the CGMP, GMP or Contract Time, adjustment is subject to further proceedings pursuant to Paragraph 4.4.

4.3.6 *Claims for Additional Cost:* If CMAR wishes to make a Claim for increase in CGMP and/or GMP, CMAR shall give written notice before proceeding with work for which CMAR intends to submit a Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.4.

4.3.6.1 CMAR may file a Claim in accordance with Paragraph 4.4 if CMAR believes it has incurred additional costs, for the following reasons:

- 4.3.6.1.1 written interpretation of Director contrary to the terms of the Contract Documents;
- 4.3.6.1.2 order by Director to stop the Work when CMAR is not at fault, except when the direction is given to coordinate the Work;

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- 4.3.6.1.3 suspension of the Work by Director;
- 4.3.6.1.4 termination of the Contract by Director; or
- 4.3.6.1.5 The City's non-compliance with another provision of the Contract Documents.

4.3.6.2 No increase in a CGMP or the GMP is allowed for delays or hindrances to the Work provided in Paragraph 8.2.1.

4.3.6.3 The City is not liable for Claims for delay when Date of Substantial Completion of a phase of Construction occurs prior to expiration of Contract Time.

4.3.7 *Claims for Additional Time:* If CMAR wishes to make a Claim for an increase in Contract Time, CMAR shall give written notice as provided in Paragraph 8.2. In case of continuing delay, only one Claim is necessary.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 Director will review Claims and take one or more of the following preliminary actions within thirty (30) days of receipt of Claim:

- 4.4.1.1 submit a suggested time to meet and discuss the Claim with CMAR;
- 4.4.1.2 reject Claim, in whole or in part, stating reasons for rejection;
- 4.4.1.3 recommend approval of the Claim;
- 4.4.1.4 suggest a compromise; or
- 4.4.1.5 take other actions as Director deems appropriate to resolve the Claim.

4.4.2 Director may request additional supporting data from claimant. Party making Claim shall, within ten (10) days after receipt of Director's request, submit additional supporting data requested by Director.

4.4.3 At any time prior to rendering a written decision regarding a Claim, Director may refer Claim to the Dispute Avoidance and Resolution Board. If the Claim is resolved, Director will prepare and obtain all appropriate documentation. If the Claim is not resolved, Director will take receipt of Claim and begin a new review under Paragraph 4.4.

4.4.4 If Claim is not referred to or settled in the Dispute Avoidance and Resolution Process, Director may conduct a hearing and will render a written decision, including findings of fact, within seventy-five (75) days of receipt of the Claim, or a time mutually agreed upon by the Parties in writing. Director may notify Surety and request Surety's assistance in resolving a Claim. Director's decision is final and binding on the Parties.

4.5 CONDITION PRECEDENT TO SUIT; WAIVER OF ATTORNEY FEES AND INTEREST

4.5.1 Compliance with the Dispute Avoidance and Resolution Process is an absolute condition precedent to the filing of any dispute in any judicial or administrative tribunal.

4.5.1 Except as allowed by Texas Government Code Chapter 2251, neither the City nor CMAR may recover attorney fees for any claim brought in connection with this Contract.

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4.5.2 Neither the City nor the CMAR may recover interest for any damages claim brought in connection with this Contract except as allowed by Texas Local Government Code Chapter 2251.

4.6 NOTICE, WAIVER & RELEASE

4.6.1 In accordance with Paragraph 4.3, the CMAR shall use due diligence in the discovery and submission of any Claim against the City related to the CMAR's work.

4.6.2 The CMAR shall submit any Claim to the City not later than the ninety-first (91st) day after the occurrence of the event giving rise to the Claim.

4.6.3 Any failure to timely comply with the requirements of Paragraph 4.6.2 waives and releases any Claim when the CMAR submits an application for payment after the ninety-first (91st) day.

4.6.4 This waiver does not cover any retainage. In case of any conflict of law, this language shall be revised to the minimum extent necessary to avoid legal conflict. This waiver is made specifically for the benefit of the City.

ARTICLE 5 - SUBCONTRACTORS AND SUPPLIERS

5.1 AWARD OF SUBCONTRACTS OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.1.1 CMAR may not contract with a Subcontractor, Supplier, person, or entity that Director has made a reasonable and timely objection to.

5.1.2 If Director has a reasonable objection to person or entity proposed by CMAR, CMAR shall propose another with whom Director has no reasonable objection.

5.1.3 CMAR shall execute contracts with approved Subcontractors, Suppliers, persons, or entities before the Subcontractors or Suppliers begin work under the Contract. All such contracts must be executed and sent to the OBO Director and HAS within thirty (30) days after the date of the Notice to Proceed and must include provisions set forth in Articles 3 and 5 of this Document.

5.1.4 CMAR shall notify Director in writing of any proposed change of Subcontractor, Supplier, person, or entity previously accepted by the City.

5.1.5 CMAR shall make timely payments to Subcontractors and Suppliers for performance of the Contract Documents. CMAR SHALL PROTECT, DEFEND, AND INDEMNIFY THE CITY FROM ANY CLAIM OR LIABILITY ARISING OUT OF CMAR'S FAILURE TO MAKE THE PAYMENTS. Disputes relating to payment of Business Enterprise Subcontractors or Suppliers will be submitted to mediation in the same manner as other disputes under Business Enterprise subcontracts. Failure of CMAR to comply with decisions of mediator may be determined by Director a material breach leading to termination of the Contract.

5.2 CMAR RESPONSIBILITY FOR SUBCONTRACTORS

5.2.1 CMAR is responsible to the City, as may be required by laws and regulations, for all acts and omissions of Subcontractors, Suppliers, and other persons and organizations performing or furnishing any of the Work under direct or indirect contract with CMAR.

5.2.2 CMAR shall make available to each proposed Subcontractor, prior to execution of subcontract, copies of the Contract to which Subcontractor is bound by this Paragraph 5.2. CMAR shall notify Subcontractor of any terms of proposed subcontract which may be at variance with the Contract.

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5.2.3 The Director's approval of Subcontractor or Suppliers does not relieve CMAR of its obligation to perform, or to have performed to the full satisfaction of the City, the Work required by the Contract.

5.2.4 Unless there is a contractual relationship between CMAR and a Subcontractor or Supplier to the contrary, CMAR shall withhold no more retainage from Subcontractors or Suppliers than City withholds from CMAR under this Contract. However, once a Subcontractor or Supplier completes performance, CMAR shall release all retainage to that Subcontractor or Supplier promptly upon the City's early payment of said retainage, in the discretion of the Director.

5.2.5 Prior to a Subcontractor or Supplier commencing performance for CMAR, CMAR shall meet with that Subcontractor or Supplier to provide instructions on invoicing procedures, dispute resolution procedures and statutory rights, such as Section 2253 of the Texas Government Code. Subcontractors and Suppliers must certify to the Director that CMAR has fulfilled the requirements of this Paragraph.

ARTICLE 6 - CONSTRUCTION BY THE CITY OR BY SEPARATE CONTRACTORS

6.1 *THE CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS*

6.1.1 The City shall have the right to perform on-site construction operations related to the Work and as part of the Project with its own forces or with separate Contractors.

6.2 *COORDINATION*

6.2.1 The CMAR will coordinate its activities with those of the City's workforce and of each separate Contractor and CMAR shall cooperate with the City and separate Contractors.

6.2.1.1 CMAR shall participate with other separate Contractors and the City in reviewing their construction schedules when directed to do so by the Director. CMAR shall make revisions to the construction schedule deemed necessary after joint review and mutual agreement. Construction schedules shall then constitute schedules to be used by CMAR, separate Contractors, and the City, until subsequently revised.

6.2.2 CMAR shall afford to the City and to separate Contractors reasonable opportunity for introduction and storage of their materials and equipment, and for performance of their activities.

6.2.3 If part of CMAR's work depends on proper execution of construction or operations by the City or a separate Contractor, CMAR shall, prior to proceeding with that portion of the Work, inspect the other work and promptly report to Director apparent discrepancies or defects in the other construction that would render it unsuitable for the proper execution of the Work. Failure of CMAR to report apparent discrepancies or defects in the other construction shall constitute acknowledgment that the City's or separate Contractor's completed or partially completed construction is fit and proper to receive CMAR's work, except as to discrepancies or defects not then reasonably discoverable.

6.3 *MUTUAL RESPONSIBILITY*

6.3.1 CMAR shall prosecute its Work in a prompt and diligent manner in accordance with the Project schedule, in cooperation with and without hindering the work of any other separate Contractor of the City. CMAR shall promptly remedy damage caused by CMAR to completed or partially completed construction or to property of City, or its separate Contractor or others, and shall defend, hold harmless

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and indemnify the City for all claims or liability, if any, arising out of any hindrance, delay or damage by CMAR to the work or property of others.

6.4 *THE CITY'S RIGHT TO CLEAN UP*

6.4.1 If a dispute arises among CMAR, separate Contractors, and the City as to responsibility under their respective contracts for maintaining premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.21, the City may clean up and allocate cost among those responsible, as determined by Director.

ARTICLE 7 - CHANGES IN THE WORK

7.1 *CHANGES*

7.1.1 Changes in scope of the Work, subject to limitations in Article 7 and elsewhere in the Contract, may be accomplished without invalidating the Contract, or without notifying Surety by:

- 7.1.1.1 Change Order;
- 7.1.1.2 Work Change Directive; or
- 7.1.1.3 Minor Change in the Work.

7.1.2 The following types of Change Orders require City Council approval:

- 7.1.2.1 a single Change Order that exceeds ten percent (10%) of the GMP,
- 7.1.2.2 a Change Order which, when added to previous Change Orders, exceeds ten percent (10%) of the GMP,
- 7.1.2.3 a Change Order, in which the total value of increases outside of the general scope of work approved by City Council, when added to increases outside the general scope of work approved by City Council in previous Change Orders, exceeds forty percent (40%) of the GMP, even if the net increase to the Original GMP is ten percent (10%) or less. In this context, "increase" means an increase in quantity resulting from the addition of locations not within the scope of work approved by City Council, or the addition of types of goods or services not bid as unit price items.

7.1.3 CMAR shall proceed promptly to perform changes in the Work provided in Modifications, unless otherwise stated in the Modification.

7.2 *WORK CHANGE DIRECTIVES*

7.2.1 A Work Change Directive cannot change GMP or Contract Time, but is evidence that the Parties agree that a change, ordered by directive, will be incorporated in a subsequently issued Change Order as to its effect, if any, on a CGMP, the GMP, or Contract Time.

7.2.2 Failure by CMAR to commence work identified in a Work Change Directive within the time specified by Director, or to complete the work in a reasonable period of time, may be determined by Director to be a material breach of this Contract.

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7.2.3 A Work Change Directive is used in the absence of total agreement of the terms of a Change Order. Interim payments are made in accordance with Article 9. CMAR may include a request for payment for undisputed Work under a Work Change Directive with Applications for Payment submitted in accordance with the Contract Documents.

7.2.4 If CMAR signs a Work Change Directive, then CMAR agrees to its terms including adjustment in a CGMP or the GMP (as applicable) and Contract Time or method for determining them. Contract by the Parties to adjustments in a CGMP or the GMP (as applicable) and Contract Time shall be recorded as a Change Order.

7.2.5 Director, by Work Change Directive, may direct CMAR to take measures as necessary to expedite construction to achieve Date of Substantial Completion on or before expiration of Contract Time. When the Work is expedited solely for convenience of the City and not due to CMAR's failure to prosecute timely completion of the Work, then CMAR is entitled to an adjustment in the CGMP and/or GMP equal to actual costs determined in accordance with Article 7.

7.3 *ADJUSTMENTS IN A CGMP OR THE GMP*

7.3.1 Adjustments in a CGMP or the GMP shall be accomplished only by Change Order and are based on one of the following methods:

- 7.3.1.1 mutual acceptance of pricing, properly itemized and supported by sufficient data to permit evaluation in which to determine an adjustment to a CGMP or the GMP;
- 7.3.1.2 unit prices stated in the Contract or subsequently agreed upon;
- 7.3.1.3 cost to be determined in a manner agreed upon by the Parties and mutually acceptable fixed or percentage fee; or
- 7.3.1.4 as provided in Paragraph 7.3.2.

7.3.2 If CMAR does not agree with a change in CGMP, GMP or Contract Time or the method for adjusting the same, as specified in connection with a Work Change Directive within twenty-one (21) days from date of the Work Change Directive's issuance, CMAR may file a Claim in accordance with Paragraph 4.4. Otherwise, the Director's determination shall be deemed accepted by CMAR.

7.3.2.1 If Director determines a method and adjustment in a CGMP or the GMP under Paragraph 7.3.2, CMAR shall provide, in a form as Director may prescribe, appropriate supporting data for items submitted under Paragraph 7.3.2. Failure to submit the data within twenty-one (21) days of request for the data by Director shall constitute waiver of a Claim.

7.3.2.2 Unless otherwise provided in the Contract, costs for the purposes of this Paragraph 7.3.2 are limited to the following:

- 7.3.2.2.1 costs of labor, including labor burden as stated below for social security, unemployment insurance, customary and usual fringe benefits required by agreement or custom, and Workers' Compensation insurance;
- 7.3.2.2.1.1 the maximum labor burden applied to costs of labor for changes in the Work is specified in the Contract;
- 7.3.2.2.1.2 Labor rates included in CMAR's and its subcontractors' proposals shall be substantiated with backup information showing the complete makeup of the rates.

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- 7.3.2.2.2 costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- 7.3.2.2.3 reasonable rental costs of machinery and equipment, exclusive of hand tools, whether rented from CMAR or others, with prior approval of Director;
- 7.3.2.2.4 costs of premiums for Bonds and insurance and permit fees related to the change in the Work;
- 7.3.2.2.5 additional costs of field supervision of the Work, to the extent that the supervision is a direct addition to the Cost of the Work; and
- 7.3.2.2.6 allowances for overhead and profit as stated below.
- 7.3.2.2.6.1 the maximum allowances for overhead and profit on increases due to Change Orders set out in the table in this Paragraph.
- 7.3.2.2.6.2 Overhead and Profit: The CMAR's and Subcontractors' overhead and profit percentages shall be considered to include, among other costs; change order processing costs including without limitation project management, estimating, clerical and drafting costs performed by field operations or in the home office, relating to change in the Work; field supervision not directly added to the cost of change in the Work; incidental job burdens; cost of idle equipment; home office overhead and consequential damages; general home office expenses; profit; and loss of profit.
- 7.3.2.2.6.3 for changes in the Work performed by CMAR and its Subcontractors, allowance for overhead is applied to an amount equal to all increases in the Cost of the Work. Allowance for profit is applied to the net Cost of the Work whether the cost is an increase or decrease. Allowance for overhead to CMAR and first tier Subcontractors on changes performed by lower tier Subcontractors are applied to all increases in the Cost of the Work by applicable Subcontractors.

	Overhead	Profit
to CMAR for change in the Work performed by Subcontractors:	CMAR's Stipulated Fee Percentage	
to first tier Subcontractors for change in the Work performed by its Subcontractors:	10 percent	0 percent
to CMAR for self-performed work and Subcontractor for change in the Work performed by their respective firms:	10 percent	5 percent

7.3.3 If the City deletes or makes a change, which results in a net decrease in GMP, the City is entitled to a credit calculated in accordance with Paragraphs 7.3.1 and 7.3.2 and Subparagraphs 7.3.2.1, and 7.3.2.2.1 through 7.3.2.2.5.

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7.3.4 When CMAR agrees with the determination made by Director concerning adjustments in GMP and Contract Time, or the Parties otherwise reach agreement upon the adjustments, the agreement will be recorded by Change Order.

7.3.5 Adjustments in a CGMP, the GMP, or Contract Time shall be accomplished only by Change Order after the Parties have agreed to amending the approved CGMP or GMP Submittal, as applicable.

7.3.6 If the Director deletes or makes a change which results in a net decrease in a CGMP or the GMP, City is entitled to a credit by CMAR in a CGMP or the GMP (as applicable) and the Cost of the Work.

7.4 MINOR CHANGES IN THE WORK

7.4.1 A Minor Change in Work is binding on the Parties. CMAR shall acknowledge, in a written form acceptable to Director, that there is no change in a CGMP, the GMP, or Contract Time and shall carry out the written orders promptly.

7.5 CHANGES IN APPLICABLE LAW

7.5.1 To the extent that a change in Applicable Law enacted after a CGMP or the GMP for an affected Phase is agreed upon affects to a material extent CMAR's time or cost of performing the Work for the affected phase of Construction, CMAR shall give Director written notice within ninety-one (91) Days of the effective date of such a change in Applicable Law, setting forth the details of the change in Applicable Law and CMAR's good faith determination of its impact on CMAR's performance obligations under the Contract Documents. The Director will investigate such change in Applicable Law and, if the Director determines that it causes an increase or decrease in CMAR's cost of, or time required for, performance of the Work for the affected phase of Construction and that the notice was given timely, City and CMAR shall enter into a Change Order in accordance with the provisions of Article 7 herein.

ARTICLE 8 - TIME

8.1 PROGRESS AND COMPLETION

8.1.1 Time is of the essence in the Contract. By executing a CGMP or the GMP Submittal and any CGMP/GMP contract amendment or change order, as determined by the City, CMAR agrees that Contract Time is a reasonable period for performing the Work.

8.1.2 *Computation of Time:* In computing any period of time prescribed or allowed by the General Conditions, the day of the act, event, or default after which designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or Legal Holiday, in which event the period runs until end of the next day that is not a Sunday or Legal Holiday. Sundays and Legal Holidays are considered to be days and are to be included in all other time computations relative to Contract Time.

8.1.2.1 CMAR shall provide Director an accounting of inclement weather delay days within thirty (30) days of their occurrences.

8.1.2.2 Director may grant an extension of Contract Time due to inclement weather where the CMAR establishes an actual delay impacting the critical path of the construction schedule and otherwise complies with the requirements of Article 8 when the inclement weather is the sole cause of the delay.

8.1.3 CMAR may not commence the Work prior to the effective date of insurance and Bonds required by Article 11.

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8.1.4 CMAR shall proceed expeditiously and without interruption, with adequate forces, and shall achieve Date of Substantial Completion within the Contract Time without additional cost to the City.

8.1.5 Should progress of the Work fall behind construction schedule, except for reasons stated in Paragraph 8.2.1, CMAR shall promptly submit at the request of Director, updated construction schedule to Director for approval. CMAR's failure to submit updated schedule may, at Director's discretion, constitute a material breach of the Contract. CMAR shall take action necessary to restore progress by working the hours, including night shifts and lawful overtime operations as necessary, to achieve Date of Substantial Completion within the Contract Time without additional cost to the City.

8.1.6 CMAR must have an approved work-hours plan prior to commencing work on the Project site. Changes to the approved work-hours plan shall require 48-hour written notice and subsequent written approval by the Director.

8.2 *DELAYS AND EXTENSIONS OF TIME*

8.2.1 CMAR may request extension of Contract Time for a delay in performance of work that arises from causes beyond CMAR's control and without fault or negligence of CMAR. Examples of these causes are:

- 8.2.1.1 acts of God or of the public enemy;
- 8.2.1.2 acts of government in its sovereign capacity, except for acts of the City;
- 8.2.1.3 fires;
- 8.2.1.4 floods;
- 8.2.1.5 epidemics;
- 8.2.1.6 quarantine restrictions;
- 8.2.1.7 strikes;
- 8.2.1.8 freight embargoes;
- 8.2.1.9 unusually severe weather (subject to Paragraph 8.1.2.2); and
- 8.2.1.10 discovery of Pollutants or Pollutant Facilities at the site.

8.2.2 For any reason other than (1) those listed in Paragraph 4.3.6.1; or (2) where the City deliberately and wrongfully interferes with the CMAR's performance under this Contract; or (3) the damage producing delay resulted from fraud, misrepresentation, or bad faith on the part of the City, if the CMAR's work is delayed in any manner or respect, the CMAR shall have no claim for damages and shall have no right of additional compensation from the City by reason of any delay or increased expense to the CMAR's work, except for an extension of time as provided in this provision.

8.2.3 CMAR may request and may be entitled to an extension of Contract Time for delay only if:

- 8.2.3.1 delay is not caused by failure of CMAR or any of its Subcontractor or Supplier to perform (or cause to be performed) or make progress for a cause not within its control; and
- 8.2.3.2 cause of the delay was not reasonably anticipated and is beyond control of CMAR; and
- 8.2.3.3 the delay has been mitigated by all reasonably available efforts; and
- 8.2.3.4 CMAR can fully document and prove the impact of the event on CMAR's critical path of planned Work in the Project Schedule.

8.2.4 Claims relating to Contract Time must be made in accordance with Paragraph 4.3.7.

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8.2.5 Claims for extending or shortening Contract Time are based on written notice promptly delivered by CMAR to Director. A Claim must accurately describe occurrence generating the Claim, and a statement of probable effect on progress of the Work.

8.2.6. Claims for extension of Contract Time are considered only when a Claim is filed within the time limits stated in Paragraph 4.3.3.

8.2.6.1 Notwithstanding Paragraph 4.3.3, an extension of time for delays under this paragraph may be granted only upon prompt written notification by the CMAR, not to exceed seven (7) days from the claimed delay.

8.2.7 Written notice of Claim must be accompanied by claimant's written statement that adjustment claimed is entire adjustment to which claimant is entitled as a result of the occurrence of the event. When the Parties cannot agree, Claims for adjustment in Contract Time are determined by Director in accordance with Paragraph 4.4.

8.2.8 Adjustments to Contract Time shall be accomplished only by Change Order.

ARTICLE 9 - PAYMENTS AND COMPLETION

9.1 APPLICATION FOR PAYMENT

9.1.1 Ten (10) days before submittal of the first Application for Payment for a phase of Construction, CMAR shall submit to Director a Schedule of Values accurately allocating a CGMP or the GMP to the various portions of the Work, prepared in the form and supported by the data as Director may require to substantiate its accuracy. The Schedule of Values shall contain, at a minimum, separate line items for the close out of the Work for such Construction Phase, the delivery of record "as-built" drawings, delivery of operation and maintenance manuals, delivery of warranty documents, and final cleanup. The Schedule of Values shall be balanced and not contain any "front end loading." The Schedule of Values, as approved by Director, shall be used as a basis for approval of CMAR's Applications for Payment. In addition, CMAR shall submit the process and basis for calculating the earned value measurement for each schedule of value, including quantities and rules of credit, as applicable. At the direction of the Director, the Schedule of Values shall be grouped along the lines of specific equipment, asset or deliverable produced as a result of the work performed. In addition to the required hard copies of the Application for Payment and supporting documentation, CMAR shall, as directed by the Director, submit Applications for Payment electronically into the HAS's project management system including electronic uploading of supporting documentation. Access to the project management system and required training will be coordinated through the Director.

9.1.2 CMAR shall submit Applications for Payment to Director each month on a form acceptable to Director in accordance with Schedule of Values. Each Application for Payment shall indicate percentages of completion of each portion of the Work listed in Schedule of Values as of the end of the period covered by the Application for Payment. Each Application for Payment shall include calculations to support the reported percentage complete. The period covered by each Application for Payment shall be one calendar month ending on the last Friday of the month. The value for any line item in the approved Schedule of Values shall not be modified without prior written approval of the Director.

9.1.3 Each Schedule of Values submitted with an Application for Payment shall include the originally established value for each Work classification line item or subcontract and shall identify, by the addition of new data rows immediately below the previously accepted data rows, any revisions to the costs or cost estimates for each Work classification or subcontract. The format and tracking method of the original Schedule of Values and of all updates shall be subject to approval by Director. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work, including CMAR's Fee, shall not

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exceed the unpaid balance of a CGMP or the GMP (as applicable), less retainage on Work previously completed.

9.1.4 If previously unpaid, the Preconstruction Services costs shall be identified separately in each Application for Payment.

9.1.5 CMAR shall deliver to Director three (3) copies of each itemized Application for Payment in such detail as is required by Director. Applications for Payment must be supported by such substantiating data as Director may require and shall reflect retainages as provided in the Contract Documents. The Application for Payment must be sworn to and notarized. In addition to the required hard copies of the Application for Payment and supporting documentation, CMAR shall, as directed by the Director, submit Applications for Payment electronically into the City's web-based collaboration tool, including electronic uploading of supporting documentation. Submit electronic version in Microsoft Excel native format of preliminary Schedule of Values within twenty-one (21) days of Notice to Proceed for Preconstruction Services. Submit electronic copy with each Application for Payment. Obtain approval before making first application for payment.

9.1.6 Before submitting the next Application for Payment (and with the Application for Final Payment), CMAR shall submit any evidence required by Director to verify the Cost of the Work and to demonstrate that the cash disbursements already made by CMAR on account of the Cost of the Work are equal to or exceed (1) progress payments already received by CMAR; less (2) that portion of those payments attributable to CMAR's Fee; plus (3) payrolls for the period covered by the most recent Application for Payment; less (4) retainage provided for in the Contract Documents applicable to prior progress payments. This documentation of the most recent Application for Payment, if required by Director, shall have a summary sheet (in two copies) that descriptively itemizes all expenses and individuals. No payment is required to be made for Work for which CMAR fails to provide required documentation.

9.1.7 Each Application for Payment shall be based upon the Cost of the Work and the most recent Schedule of Values submitted by CMAR in accordance with the Contract Documents and accepted by Director.

9.1.8 Applications for Payment shall show the Cost of the Work actually incurred by CMAR through the end of the period covered by the Application for Payment and for which CMAR has made or intends to make actual payment prior to the next Application for Payment and the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work that has actually been completed or (2) the percentage obtained by dividing (a) the Cost of the Work that has actually been incurred by CMAR on account of that portion of the Work for which CMAR has made or intends to make actual payment prior to the next Application for Payment by (b) the share of a CGMP or the GMP allocated to that portion of the Work in the Schedule of Values.

9.1.8.1 The Director, at his sole discretion, may authorize payment of stored materials up to a value of eighty five percent (85%), subject to applicable retainage, of the actual invoice amount properly substantiated by certified copies of invoices and freight bills of non-perishable material and equipment delivered and properly stored. CMAR must obtain approval from Director for authorization to bill for stored materials in advance of the request for payment. Properly stored materials shall be only those materials suitably stored at the Project site unless otherwise agreed to by the Director in writing.

9.1.9 Each Application for Payment, including the Application for Final Payment shall constitute a certification by CMAR to City that the Work has progressed to the point indicated and the Work represented has actually been performed; the quality of the Work covered in the Application for Payment is in accordance with the Contract Documents; CMAR is entitled to payment in the amount requested; CMAR remains capable of performing the Contract to completion; and CMAR is current in payment with Subcontractors and Suppliers.

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9.1.10 CMAR shall promptly and in all events before interest charges accrue to the Subcontractor pay each of its Subcontractors, upon receipt of payment from City, out of the amount paid to CMAR on account of such Subcontractor's work, the amount to which such Subcontractor is entitled in accordance with the terms of CMAR's Subcontract with such Subcontractor. CMAR shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its sub-subcontractors in similar manner. City shall have no obligation to pay or to be responsible in any way for payment to any Subcontractor or Supplier.

9.1.11 With each Application for Payment, CMAR shall submit a certified "waiver and release." The waiver and release shall state: "In consideration for the payment received, CMAR waives all claims of every sort against City arising out of the Work performed through the effective date of the Application for Payment, except for retainage and such claims as have been properly submitted in accordance with the provisions of the Contract Documents or claims that can be made timely within the requirements of the Contract Documents."

9.1.12 Retainage shall be five percent (5%) of the Cost of the Work and the CMAR's Fee for each Phase of the Work. There shall be no retainage on the CMAR's building permit cost, bond and insurance cost. Otherwise, the City shall be entitled to withhold retainage from all Applications for Payment by CMAR. Retainage is not held by City for the benefit of any others and shall be deemed amounts not yet earned by or owed to CMAR.

9.1.13 In addition to other rights under the Contract Documents and Applicable Law, Director, in its discretion, may retain amounts owing to CMAR as City deems appropriate to protect City's interest. CMAR shall not receive payments from City for any amounts CMAR retains from its Subcontractors, and CMAR shall immediately return to City any amounts paid to CMAR on behalf of any Subcontractor or Supplier or other which CMAR does not pass on as payment before the next Application for Payment. In the event City withholds all or any portion of the CMAR's payments under this paragraph or under 9.4 hereof, City shall provide specific written accounting for same and shall allocate specific amounts for each reason justifying withholding. Such explanation shall be provided at the time payments would otherwise be due and sums withheld shall be paid when each such reason for withholding same has been cured to the reasonable satisfaction of the City.

9.1.14 Materials and services utilized in the construction of the Project may be exempted from state and local taxes. CMAR is responsible for taking full advantage of all tax exemptions applicable to the Project. City will deduct from the Applications for Payment and from the Request for Final Payment any taxes paid for materials or services that were entitled to tax exemption.

9.1.15 The CMAR is subject to the assessment of liquidated damages as provided in the Contract Documents. Amounts assessed as liquidated damages, and other amounts to which City is entitled by way of setoff or recovery, may be deducted from any monies otherwise due CMAR.

9.1.16 CMAR's records shall be kept on the basis of generally accepted accounting principles in accordance with cost accounting standards issued by the Federal Office of Management and Budget Cost Accounting Standards Board consistently applied and organized by each Application for Payment period.

9.1.17 Applications for Payment must be supported by substantiating back-up data as required by the Director and must reflect retainages as required herein. Evidence satisfactory to the Director of payments made to Subcontractors and Suppliers for the month preceding the month for which the Application for Payment is submitted must accompany each Application for Payment on a form approved by the Director of the City's Office of Business Opportunity. The Application must be sworn and notarized.

9.2 **CERTIFICATES FOR PAYMENT**

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9.2.1 Prior to issuing each Application for Payment under Paragraph 9.1, CMAR shall submit a "Draft" Application for Payment that is valid and has all required documentation no later than the 25th of the same month with Work projected through the end of the month. Within five (5) days of receipt of the Draft, the Director shall review the Draft and provide the CMAR with any adjustments to the progress of the Work or amount requested, within reason. The CMAR shall make agreed to corrections to the Draft and submit to the City a "Final" Application for Payment that is valid and has all required documentation within five (5) days from receipt of the Director's adjustments. Upon receipt of the Final Application for Payment, the City shall make payment to the CMAR not later than thirty (30) days from receipt. If, and in the event, the Director holds all or part of a Final Application for Payment for one or more reasons, the Director will issue a written explanation apportioning the amount withheld to each such cause.

9.2.1.1 With its draft Application for Payment, CMAR shall submit to Director on a form approved by the Director of Mayor's Office of Business Opportunity, evidence satisfactory to the Director of payments made to Subcontractors and Suppliers for the month preceding the month for which the Application for Payment is prepared.

9.2.2 Unless otherwise provided in the Contract Documents, payment for completed Work and for properly stored Products is conditioned upon compliance with procedures satisfactory to and agreed to by Director to protect City's interests. Procedures will include applicable insurance, storage, and transportation to the site (with suitable on site storage and protection) for Products stored off site and proper documentation for such delivered Products, including certified copies of invoices and freight bills. CMAR is responsible for maintaining materials and equipment until the Date of Substantial Completion.

9.2.3 CMAR shall document its use of Low Sulfur Diesel Fuel by providing invoices and receipts evidencing CMAR's use.

9.3 COMPUTATIONS OF CERTIFICATES FOR PAYMENT

9.3.1 Subject to the provisions of the Contract Documents, the amount of each Certificate for Payment is calculated as follows:

9.3.1.1 Take that portion of a CGMP or the GMP properly allocated to completed Work for such Construction Phase based upon the percentage completion of each portion of the Work as set forth above. Pending final determination of cost to City of changes in the Work, amounts not in dispute may be included after increases and decreases have been netted out against each other, even though a CGMP or the GMP (as applicable) has not yet been adjusted by Change Order.

9.3.1.2 Add the CMAR's Fee.

9.3.1.3 Subtract the amount of retainage and such other amounts as City is entitled to withhold.

9.3.1.4 Subtract the aggregate of the previous payments made by City.

9.3.1.5 Subtract the shortfall, if any, indicated by CMAR in the documentation required to substantiate prior Applications for Payment or CMAR's payment of Costs of the Work covered by previous payments, or resulting from errors subsequently discovered by Director in such documentation.

9.3.1.6 Subtract amounts, if any, for which City has withheld or nullified an Application for Payment.

9.4 DECISIONS TO WITHHOLD CERTIFICATION

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9.4.1 Director may decline to issue a Certificate for Payment and may withhold payment in whole or in part to the extent reasonably necessary to protect City if, in Director's opinion, there is reason to believe that:

- 9.4.1.1 nonconforming work has not been remedied;
- 9.4.1.2 the Work cannot be completed for unpaid balance of a CGMP or the GMP;
- 9.4.1.3 there is damage to City or another Contractor;
- 9.4.1.4 CMAR has persistently failed to complete the Work in accordance with the Project Schedule or the Work will not be completed within Contract Time and that unpaid balance will not be adequate to cover actual and liquidated damages;
- 9.4.1.5 evidence that third party claims will probably be filed in court, in arbitration, or otherwise;
- 9.4.1.6 CMAR has failed to make payments to Subcontractors or Suppliers or other third parties related to the Work;
- 9.4.1.7 CMAR has failed to carry out the Work in accordance with the Contract Documents;
- 9.4.1.8 The payment request has insufficient documentation to support the amount of payment requested;
- 9.4.1.9 CMAR fails to obtain, maintain or renew insurance coverage as required by the Contract Documents;
- 9.4.1.10 CMAR is in breach or default under the Contract Documents or any loss or damage may result from negligence by CMAR or any Subcontractor or failure of CMAR or any Subcontractor to perform their obligations under the Contract Documents;
- 9.4.1.11 CMAR has not paid Subcontractors or Suppliers because of a payment dispute;
- 9.4.1.12 CMAR has failed to provide satisfactory evidence described in Paragraphs 9.1.16 and 9.2.1.1; or
- 9.4.1.13 A determination that any amounts previously paid were the proper subject of a withholding hereunder.

9.4.2 When the above reasons for withholding a Certificate for Payment are removed, certification will be made for amounts previously withheld.

9.4.3 Director may decline to issue a Certificate for Payment and may withhold request for payment in whole or in part upon failure of CMAR to submit initial construction schedule or monthly schedule updates, as required in Paragraph 3.15 or elsewhere in the Contract Documents.

9.4.4 City shall at any time during regular business hours have the right to inspect and copy the books and records (however kept) of CMAR for verification of Work done, costs, bids, estimates, markups, payments due, amounts claimed, obligations owed Subcontractors or Suppliers, or any other aspect of CMAR's obligations as they relate to the Project. At Director's request, CMAR, shall promptly provide evidence satisfactory to City of CMAR's compliance with the Contract Documents. CMAR shall require its Subcontractors and Suppliers to comply with this Paragraph, and similarly require their sub-subcontractors and Suppliers of any tier, to comply with this Paragraph.

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9.5 [OMITTED.]

9.6 [OMITTED.]

9.7 [OMITTED.]

9.8 **PROGRESS PAYMENTS**

9.8.1 The City will make payment, in an amount certified by Director, within thirty (30) days after Director has issued a Certificate for Payment.

9.8.2 The City has no obligation to pay or to facilitate the payment to a Subcontractor or Supplier, except as may otherwise be required by law. CMAR shall comply with the prompt payment requirements of Chapter 2251 of the Government Code. However, CMAR shall pay Subcontractors and Suppliers within seven (7) calendar days of CMAR's receipt of payment from the City, unless there is a payment dispute between CMAR and a Subcontractor or Supplier evidenced on a form approved by the Director of the City's Office of Business Opportunity and submitted to the Director each month with its Application for Payment or Estimate for Payment. **CMAR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CMAR'S FAILURE TO MAKE THESE PAYMENTS.**

9.8.2.1 The City may, upon request and at the discretion of Director, furnish to Subcontractor information regarding percentages of completion or the amounts applied for by CMAR, and action taken thereon by the City because of Work done by the Subcontractor.

9.8.2.2 CMAR shall prepare and submit to Director a Certification of Payment to Subcontractors, Suppliers, persons, and entities form to be attached to each monthly Application for Payment.

9.8.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Work by City, does not constitute acceptance of work that is not in accordance with the Contract.

9.9 **DATE OF SUBSTANTIAL COMPLETION**

9.9.1 The stage in the progress of the Work or designated portion thereof where the Work is sufficiently and suitably complete in accordance with the Contract Documents, as determined by the Director, which shall not be unreasonably withheld, so that the City can take Beneficial Occupancy, and the balance of the Work, including all Punch List work can reasonably be expected to be completed within 30 Calendar Days, unless otherwise agreed by the Director.

9.9.1.1 When CMAR considers the Work, or a portion thereof designated by Director, to be substantially complete, CMAR shall prepare and submit to Director a comprehensive Punch List of items to be completed or corrected. Failure to include an item on the Punch List does not alter the responsibility of CMAR to comply with the Contract Documents.

9.9.1.2 By submitting the Punch List to Director, CMAR represents that work on the Punch List will be completed within the time provided for in Subparagraph 9.9.4.3.

9.9.2 Upon receipt of CMAR's Punch List, Director will inspect the Work, or designated portion thereof, to verify that the Punch List contains all items needing completion or correction. If Director's inspection discloses items not on CMAR's Punch List, the items must be added to the Punch List of items to be completed or corrected. If Director's inspection reveals that CMAR is not yet substantially complete, CMAR shall complete or correct the deficiencies and request another inspection by Director. The City may recover the costs of re-inspection from CMAR. The Director will use reasonable efforts to inspect the phase of Construction within a reasonable time following receipt of CMAR's Punch List, and if the Director disagrees that Substantial Completion has been achieved, the Director will provide written notice as to

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what remains before Substantial Completion is achieved (but the Director shall not be prohibited from identifying other deficiencies later).

9.9.3 Prior to Director's issuing a Certificate of Substantial Completion for the Work or portion of the Work designated by the Director, CMAR shall also provide the Director:

9.9.3.1 Certificate of Occupancy (a temporary Certificate of Occupancy is acceptable provided CMAR promptly and diligently proceeds to obtain a permanent Certificate of Occupancy without conditions) for new construction, or Certificate of Compliance for remodeled work, as applicable, and

9.9.3.2 compliance with Texas Accessibility Standards through state inspection of the Work, if required. If CMAR calls for inspection in a timely manner and the inspection is delayed through no fault of CMAR, and Director so confirms, Director may, upon request by CMAR, add the inspection to the Punch List in Paragraph 9.9.2 and issue a Certificate of Substantial Completion.

9.9.4 On the date of Substantial Completion, the Director will prepare a Certificate of Substantial Completion that incorporates the Punch List in Paragraph 9.9.2 and establishes:

9.9.4.1 Date of Substantial Completion;

9.9.4.2 responsibilities of the Parties for security, maintenance, heating, ventilating and air conditioning, utilities, damage to the Work, and insurance; and

9.9.4.3 fixed time within which CMAR shall complete all items on Punch List to be corrected or completed accompanying the certificate.

9.9.5 After the Date of Substantial Completion of a phase of Construction and upon application by CMAR and approval by Director, City may make payment, reflecting adjustment in retainage, if any, as follows: with the consent of Surety, the City, in the sole discretion of the Director, may increase payment to CMAR up to ninety-seven and one-half percent (97.5%) of a CGMP or the GMP (as applicable), less the value of items to be completed and accrued liquidated damages. In addition, before Substantial Completion, with the consent of Surety and in the sole discretion of the Director, the City may release retainage attributable to early performing Subcontractors or small businesses, to the extent and provided the CMAR submits proof such sums have been actually paid to such Subcontractors and small businesses.

9.9.6 CMAR shall complete or correct the items in the Punch List in Paragraph 9.9.2 within the time period set out in the Certificate of Substantial Completion. If CMAR fails to do so, the City may issue a Notice of Non-Compliance and proceed in accordance with Paragraph 2.5.

9.9.7 CMAR shall keep the premises free from accumulation of waste materials or rubbish caused by CMAR's operations. At the completion of the Work, CMAR shall remove from and about the CMAR's tools, construction equipment, machinery, surplus materials, waste materials and rubbish.

9.9.8 Immediately prior to the review of a portion of the Work for Substantial Completion, CMAR shall remove all waste materials, rubbish, CMAR's tools, construction equipment, machinery and surplus materials from the area to be inspected. CMAR shall also remove all protective coatings, temporary work, barriers and other protective devices.

9.9.8.1 Finished spaces that are to be inspected shall be cleaned as required to remove all stains, dirt and dust. Glass shall be cleaned on both faces, and carpet shall be vacuumed.

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9.9.8.2 Unfinished spaces such as mechanical and electrical equipment rooms that are to be inspected shall be "broom clean."

9.9.8.3 Mechanical work such as duct work, unit heaters, finned tube radiation and its covers, air conditioning units, grilles and registers shall be cleaned as required to remove all stains, dirt and dust.

9.9.8.4 Electrical work shall be cleaned as necessary to remove all stains, dirt and dust.

9.9.9 CMAR shall maintain the Work in a clean condition until City determines the Date of Substantial Completion for the phase of Construction. After the Date of Substantial Completion of the phase of Construction, CMAR is responsible for removing waste materials, rubbish, dirt and dust caused by its continued operations.

9.9.10 Prior to final acceptance, or prior to City's partial or complete occupancy of a portion of the Work, CMAR shall do the following: (1) clean all spaces of the Work so that they are ready for City's occupancy without additional cleaning; (2) remove from the Project site all temporary buildings or facilities for that Work unless needed for other portions of the Work; (3) replace filters in air handling equipment according to the Specifications; and (4) replace burned out lamps. This obligation is in addition to and not by way of limitation of CMAR's obligation to prove the Project is complete and ready to use in all respects by the time limits set forth in the Contract Documents.

9.10 **PARTIAL OCCUPANCY OR USE**

9.10.1 The City may occupy or use any completed or partially completed portion of the Work at any stage, provided the occupancy or use is consented to by CMAR and CMAR's insurer and authorized by public authorities having jurisdiction over the Work. Consent of CMAR to partial occupancy or use may not be unreasonably withheld.

9.10.2 Immediately prior to the partial occupancy or use, Director and CMAR shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record condition of the Work.

9.10.3 Partial occupancy or use of a portion of the Work does not constitute acceptance of work not in compliance with requirements of the Contract Documents.

9.11 **FINAL COMPLETION AND FINAL PAYMENT**

9.11.1 CMAR shall review the Contract and inspect the Work prior to CMAR notification to Director that the Work is complete and ready for final inspection. CMAR shall submit an affidavit that the Work has been inspected and that the Work is complete in accordance with the requirements of the Contract Documents.

9.11.2 Director will make final inspection within fifteen (15) days after receipt of CMAR's written notice that the Work is ready for final inspection and acceptance. If Director finds the Work has been completed in accordance with the Contract, CMAR shall submit items set out in Paragraph 9.11.4 and a final Application for Payment. Within thirty (30) days of receipt of the items set out in Paragraph 9.11.4, the Director may perform an audit to determine the accuracy of CMAR's accounting of the Costs of the Work and the Final Application for Payment. The Director will, within ten (10) days thereafter, either notify the CMAR that the CMAR has not achieved Final Completion of the phase of Construction as provided in Paragraph 9.11.3 or issue a Certificate of Final Completion stating that to the best of Director's knowledge, information, and belief, the Work has been completed in accordance with the Contract. If there is only one phase of Construction, the Director will recommend acceptance of the Work by City Council. If there is more than one phase of Construction, the Parties shall confer upon the issuance of each Certificate of Final Completion to determine whether it is appropriate to seek City Council

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acceptance of the Work and release of the remaining retainage held for the particular Construction Phase that is certified as complete. Failing mutual agreement of the Parties to seek City Council acceptance and release of the remaining retainage, City shall continue to hold the remaining retainage for the particular phase of Construction until such time as the Parties mutually agree to seek City Council acceptance and release of the remaining retainage for such phase of Construction.

9.11.3 Should Work be found not in compliance with requirements of the Contract Documents, Director will notify CMAR in writing of items of noncompliance. Upon inspection and acceptance of the corrections by Director, compliance with all procedures of Paragraph 9.11.2, and CMAR's submission of the items set out in Paragraph 9.11.4. The Director will issue Certificate of Final Completion to CMAR as provided in Paragraph 9.11.2.

9.11.4 CMAR shall submit the following items to the Director before the Director will issue a Certificate of Final Completion:

- 9.11.4.1 affidavit that payrolls, invoices for materials and equipment, and other indebtedness of CMAR connected with the Work, less amounts withheld by the City, have been paid or otherwise satisfied. If required by Director, CMAR shall submit further proof including waiver or release of lien or claims from Subcontractors or Suppliers of Products (which may be conditioned upon City making payment to CMAR);
- 9.11.4.2 certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, will not be canceled or materially changed until at least thirty (30) days written notice has been given to the City;
- 9.11.4.3 written statement that CMAR knows of no substantial reason that insurance will not be renewable to cover Correction Period required by the Contract Documents;
- 9.11.4.4 consent of Surety to final payment;
- 9.11.4.5 copies of record documents, maintenance manuals, tests, inspections, and approvals and deliver the required record documents that describe changes or deviations from the Contract Documents, which occurred during construction and that reflect the actual "as-built" conditions of the completed Work; and
- 9.11.4.6 compliance with Texas Accessibility Standards through state inspection of the Work, if required.

9.11.5 Upon Director's issuance of a Certificate of Final Completion, CMAR may request an increase in payment to ninety-nine percent (99%) of all amounts earned and payable under this Contract, less accrued liquidated damages.

9.11.6 If CMAR fails to submit required items in Paragraph 9.11.4 within ten (10) days of Director's inspection of the Work under Paragraph 9.11.2 or Paragraph 9.11.3, Director may, but is not obligated to:

- 9.11.6.1 deduct liquidated damages accrued from monies held;
- 9.11.6.2 proceed to City Council for acceptance of the Work, minus some or all of the items CMAR fails to submit under Paragraph 9.11.4; and,
- 9.11.6.3 upon acceptance by City Council of the portion of the Work completed, either make final payment as set out in Paragraph 9.11.8 or request that City Attorney interplead the balance due to CMAR under the Contract into the registry of a court of appropriate jurisdiction.

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9.11.7 If final completion is materially delayed through no fault of CMAR, or by issuance of Change Orders affecting Date of Final Completion, and Director so confirms, the City may, upon application by CMAR and certification by Director, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted.

9.11.8 If remaining balance due for Work not corrected is less than retainage stipulated in the Contract, CMAR shall submit to Director written consent of Surety to payment of balance due for that portion of the Work fully completed and accepted, prior to certification of the payment. The payment is made under terms governing final payment, except that it does not constitute waiver of Claims.

9.11.9 The City will make final payment to CMAR within thirty (30) days after acceptance of the Work by City Council, subject to limitations, if any, as stated in the Contract Documents. City is entitled to deduct from any payment any amounts owed by CMAR to City, including accrued liquidated damages.

9.11.10 Acceptance of final payment by CMAR shall constitute a waiver of all Claims, whether known or unknown, by CMAR, except those previously made in writing and identified by CMAR as unsettled at time of final Application for Payment.

9.11.11 Warranties required by the Contract shall commence on the Date of Substantial Completion unless otherwise provided by Director in Certificate of Substantial Completion. Warranties shall not commence on items not yet completed as of the date of Substantial Completion, until such items are actually completed and accepted.

9.12 *Liquidated Damages*

9.12.1 Liquidated damages for late completion of the Work shall be assessed as set forth in the Contract.

9.12.2 CMAR shall pay the City an amount equal to \$1,200.00 per diesel operating vehicle or piece of motorized equipment per incident of high sulfur diesel fuel usage.

9.13 *CMAR's Clean Air Incentive*

9.13.1 SPECIAL PROVISION: INCENTIVE FOR USING NONROAD DIESEL EQUIPMENT POWERED BY DIESEL ENGINES THAT MEET EPA TIER 1, 2, 3 STANDARDS, OR A TCEQ-APPROVED RETROFIT EQUIVALENT, IN HOUSTON NONATTAINMENT AREA.

9.13.1.2 PURPOSE, SCOPE AND DURATION. This special provision establishes the conditions for the incentive offered to persons performing construction under a City of Houston contract who use non-road equipment powered by diesel (compression-ignition) engines rated at 50 horsepower or above that meet certain exhaust emission standards. Incentive payments shall only be made for non-road equipment that is required and used on the Project site, as more fully described below. This special provision is intended to assist the Houston-Galveston-Brazoria region to attain compliance with the State Implementation Plan mandated under the Clean Air Act, 42 U.S.C. § 7401 et seq.

9.13.1.3 *Eligible Equipment.*

9.13.1.3.1 For purposes of this special provision, "Non-road Diesel Equipment" means equipment: (a) whose primary design is for operation in non-highway environments and as such, is not titled or licensed by the state of Texas for use on state roadways. (e.g., construction equipment); and (b) that is powered by or that utilizes one or more non-road diesel-fueled compression-ignition engines that meet the emission standards for oxides of nitrogen (NO_x) or non-methane hydrocarbon (NMHC)) + NO_x set forth at 40 CFR § 89.112(a) ("Tier 1, 2 or 3 standards") non-road engines. Each non-road engine on each

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piece of Non-road Diesel Equipment must meet the Tier 1, 2 or 3 emission standards to qualify for an incentive payment.

9.13.1.3.2 Each engine must be verified by the EPA or California Air Resources Board (CARB) or otherwise accepted by the Texas Commission on Environmental Quality (TCEQ) as meeting the EPA Tier 1, 2 or 3 emission standards, and must be rated as 50 horsepower or above. The engine must be new, rebuilt or remanufactured. A rebuilt or remanufactured engine shall contain only original equipment manufacturer (OEM) components and must have been purchased from the OEM or its authorized dealers/distributors. A rebuilt or remanufactured engine provided by another entity may be accepted, if it has been certified by the TCEQ as meeting the Tier 1, 2 or 3 standards. In addition, retrofitting an existing diesel engine or adding devices to existing non-road diesel engines will make the equipment eligible for the incentive payment if the retrofit or add-on devices result in air emissions that otherwise meet EPA Tier 1, 2, or 3 standards.

9.13.1.4 NONROAD DIESEL EQUIPMENT MUST BE USED ON THE PROJECT SITE. In order to qualify for incentive payments, all Non-road Diesel Equipment must be used in the performance of work on the Project as defined under this Contract or on a Project-specific location that supports only the Project and is within one (1) mile of the Project (hereinafter referred to as the "Project Site" for purposes of Paragraph 9.13).

9.13.1.5 DOCUMENTATION

9.13.1.5.1 CMAR shall furnish, prior to award of the Contract, a list of Non-road Diesel Equipment that CMAR proposes to qualify under Subparagraph (2) of this special provision for use in the performance of Project work. The list shall include the following information:

9.13.1.5.1.1 An assigned CMAR-unique identification number, which shall be prominently placed on the exterior of individual pieces of Equipment;

9.13.1.5.1.2 The dates each piece of Equipment is anticipated to arrive and depart the Project Site, and an indication of whether the Equipment will be used in performance of Project work;

9.13.1.5.1.3 For each piece of Equipment: the make, description, model number, identification number, and model year;

9.13.1.5.1.4 For each engine: the make, model, identification number, model year, horsepower rating, test group (family code); and

9.13.1.5.1.5 Certification by EPA, CARB or TCEQ, and the Tier 1, 2 or 3 emission standards claimed.

9.13.1.5.2 CMAR shall also submit to the Director a report with its monthly request or estimate for payment that identifies what Nonroad Diesel Equipment was used on the Project during that month. The monthly reports shall include, but not be limited to, the equipment and engine identification number, how often the equipment was used required on the Project Site; and such other documentation as the Director may require. The Director may also require that reports and other documentation be submitted in an electronic format acceptable to the Director.

9.13.1.5.3 CMAR shall provide to the Director, upon request, copies of any or all equipment or engine certifications that are the basis for a request for payment. CMAR shall provide the requested copies within fifteen (15) business days after receipt of the request.

9.13.1.5.4 Failure of CMAR to submit a report or other documentation as required in this Paragraph 9.13.1.5.4 shall waive the CMAR's right to receive any incentive payment under this special provision for the period in question. The City of Houston may inspect each item of Nonroad Diesel Equipment used by

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the CMAR on the Project to insure compliance with the terms of this special provision, and to confirm CMAR's reports. If the Director reasonably believes that CMAR has provided inaccurate or false information, the City at Director's sole option, may revoke CMAR's qualification for the incentive payment, may terminate incentive payments, may adjust incentive payments, and take such other action as s/he deems appropriate.

9.13.1.6 INCENTIVE PAYMENT

9.13.1.6.1 The City shall pay CMAR an incentive at the following rates for CMAR's compliance with the terms of this special provision. Except as otherwise provided, the payment rates shall be calculated by multiplying the units of horsepower that each engine is rated to produce, by the payment rate, which shall increase according to the emission standard as indicated below.

EPA Tier Or Equivalent	Incentive Payment Rate per Engine Horsepower Rating
1	\$0.50
2	\$0.75
3	\$1.00

9.13.1.6.2 The Director shall review the requests for payment to confirm that the Nonroad Diesel Equipment is eligible and was required to support the Project work. The Director shall adjust any request for payment for an incentive for use of Nonroad Diesel Equipment as provided in Paragraph 9.13.2.5.3. The Director may reject any request for an incentive payment if the Director deems the Equipment is ineligible. CMAR may protest in writing any adjustment within thirty (30) calendar days of receipt of the adjusted incentive payment. CMAR shall be deemed to have accepted the adjusted incentive payment if no protest is received by the Director within the 30-day period.

9.13.1.6.3 The Director shall adjust the calculation of any incentive payment for any Nonroad Diesel Equipment that was on the Project Site for less than thirty (30) calendar days. For example, adjustments shall be made for eligible equipment that arrives or was not used on the Project Site until after the 1st day of a month or leaves or is not used on the Project site before the last day of the month. The incentive payment shall be reduced as follows:

- a. When the total is seven (7) calendar days or less, the incentive payment rate shall be multiplied by 0.10.
- b. When the total is eight (8) calendar days or more but fifteen (15) calendar days or less, the incentive payment rate shall be multiplied by 0.25.
- c. When the total is sixteen (16) calendar days or more but twenty-two (22) calendar days or less, the incentive payment rate shall be multiplied by 0.50.
- d. When the total is twenty-three (23) calendar days or more but less than the entire month, the incentive payment rate shall be multiplied by 0.75.

(Example: A 125 h.p. front-end loader, rated at Tier 2, was used for twenty (20) calendar days on a project. The CMAR incentive would be ($\$0.75 \times 125\text{h.p.} = \93.75) X 0.50 adj. factor for days of use = \$46.88.)

9.13.1.6.4 The incentive payments under this special provision shall not exceed \$20,000.

ARTICLE 10 - SAFETY PRECAUTIONS

10.1 SAFETY PROGRAMS

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10.1.1 CMAR is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performance of the Contract. CMAR shall submit a safety program to Director prior to mobilizing for the Work, and is solely responsible for safety, efficiency, and adequacy of ways, means, and methods, and for damage which might result from failure or improper construction, maintenance, or operation performed by CMAR.

10.2 **POLLUTANTS AND POLLUTANT FACILITIES**

10.2.1 If CMAR encounters material on-site which it reasonably believes to be a Pollutant or facilities which it reasonably believes to be a Pollutant Facility, CMAR shall immediately stop work in affected area and immediately notify Director, confirming the notice thereafter in writing.

10.2.2 If Director determines that the material is a Pollutant or facility is a Pollutant Facility, work in affected area may not be resumed except by Modification, and only if the work would not violate applicable laws or regulations.

10.2.3 If Director determines that the material is not a Pollutant or a facility is not a Pollutant Facility, work in affected area will be resumed upon issuance of a Modification.

10.2.4 CMAR may be required to perform work relating to Pollutants or Pollutant Facilities, including but not limited to abatement, handling and disposal of Pollutants, as authorized within the CGMP and/or GMP or by Change Order. Title to the Pollutants shall remain with the City.

10.2.5 If any hazardous materials are moved to an offsite disposal facility:

10.2.5.1 The Director will select the facility;

10.2.5.2 The City will enter the contract with the facility;

10.2.5.3 The Director will sign the manifests; and

10.2.5.4 The CMAR will coordinate the transport, but the City will contract with the transporter.

If any hazardous materials are moved to an onsite disposal facility, then the CMAR will move the hazardous materials to an onsite location as designated by the Director.

10.3 **SAFETY OF THE ENVIRONMENT, PERSONS, AND PROPERTY**

10.3.1 CMAR shall take reasonable precautions for safety and shall provide reasonable protection to prevent damage, injury, or loss from all causes, to:

10.3.1.1 employees performing work on-site, and other persons who may be affected thereby;

10.3.1.2 work, including Products to be incorporated into the Work, whether in proper storage, under control of CMAR or Subcontractor; and

10.3.1.3 other property at or adjacent to the site, such as trees, shrubs, lawns, walks, pavements, roadways, structures, utilities; and Underground Facilities not designated for removal or replacement in course of construction.

10.3.2 CMAR shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons, property, or environment.

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10.3.2.1 CMAR shall comply with requirements of Underground Facility Damage Prevention and Safety Act TEX. UTIL. CODE ANN. Ch. 251 (Vernon Supp. 2002).

10.3.2.2 CMAR shall comply with all safety rules and regulations of the Federal Occupational Health and Safety Act of 1970 and subsequent amendments (OSHA).

10.3.3 CMAR shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection of persons and property, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

10.3.4 CMAR shall designate responsible member of CMAR's organization at site whose duty is prevention of accidents. This person will be CMAR's Superintendent unless otherwise designated by CMAR in writing to Director.

10.3.5 CMAR shall prevent windblown dust and shall not burn or bury trash debris or waste products on-site or use sewers for the disposal of trash or debris. CMAR shall prevent environmental pollution, including but not limited to particulates, gases and noise, as a result of the Work.

10.3.6 When use or storage of hazardous materials or equipment, or unusual methods are necessary for execution of the Work, CMAR shall exercise utmost care and carry on the activities under supervision of properly qualified personnel.

10.3.7 CMAR shall promptly remedy damage and loss to property referred to in Subparagraphs 10.3.1.2 and 10.3.1.3, caused in whole or in part by CMAR, or Subcontractors, which is not covered by insurance required by the Contract. CMAR is not required to remedy damage or loss attributable to the City, Design Consultant, or other contractors.

10.4 EMERGENCIES

10.4.1 In emergencies affecting safety of persons or property, CMAR shall act at CMAR's discretion to prevent imminent damage, injury, or loss. Additional compensation or extension of time claimed by CMAR because of emergencies are determined as provided in Article 7.

ARTICLE 11 - INSURANCE AND BONDS

11.1 GENERAL INSURANCE REQUIREMENTS

11.1.1 With no intent to limit CMAR's liability under indemnification and other provisions set forth in Paragraphs 3.25 and 3.26 and to the extent not covered by any owner-controlled insurance program provided by the City, CMAR shall provide and maintain in full force and effect during term of the Contract and all extensions and amendments thereto, at least the following insurance and available limits of liability.

11.1.2 If any of the following insurance is written as "claims made" coverage and the City is required to be carried as additional insured, then CMAR's insurance shall include a two-year extended discovery period after last date that CMAR provides any work under the Contract.

11.1.3 Aggregate amounts of coverage, for purposes of the Contract, are agreed to be amounts of coverage available during fixed 12-month policy period.

11.1.4 CMAR shall be liable to City for any required coverage that City does not have or costs, damage, losses, or liability incurred by City (including attorneys' fees) due to CMAR's failure to purchase and maintain required insurance.

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11.2 **INSURANCE TO BE PROVIDED BY CMAR**

11.2.1 *Risks and Limits of Liability:* CMAR shall provide at a minimum insurance coverage and limits of liability set out in Table 1 with no gaps in coverage between primary and excess coverage.

11.2.1.1 If Limit of Liability for Excess Coverage is \$2,000,000 or more, Limit of Liability for Employer's Liability may be reduced to \$500,000.

11.2.2 *Form of Policies:* Insurance may be in one or more policies of insurance, form of which is subject to approval by Director. It is agreed, however, that nothing Director does or fails to do with regard to insurance policies relieves CMAR from its duties to provide required coverage and Director's actions or inactions will never be construed as waiving the City's rights.

11.2.3 *Issuers of Policies:* Issuer of any policy shall have:

- .1 a Certificate of Authority to transact business in Texas, or
- .2 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, and the issuer must be an eligible non-admitted insurer in the State of Texas.

Each insurer is subject to approval by Director in Director's sole discretion as to conformance with these requirements, pursuant to Paragraph 11.2.2.

11.2.4 *Insured Parties:* The City shall be an Additional Insured under this Contract. Each policy, except those for Workers' Compensation and professional liability, must name the City, its officers, agents, and employees as Additional Insured parties on original policy and all renewals or replacements during term of the Contract. City's status as additional insured under CMAR's insurance does not extend to instances of sole negligence of City unmixed with any fault of CMAR.

11.2.5 *Deductibles:* CMAR assumes and bears any claims or losses to extent of deductible amounts and waives any claim it may ever have for same against the City, its officers, agents, or employees.

11.2.6 *Cancellation:* CMAR shall notify the Director in writing thirty (30) days prior to any cancellation or material change to CMAR's insurance coverage. Within the thirty (30) day period, CMAR shall provide other suitable policies in lieu of those about to be canceled or nonrenewed so as to maintain in effect the required coverage. If CMAR does not comply with this requirement, the Director, at his sole discretion, may immediately suspend CMAR from any further performance under this Contract and begin procedures to terminate for default.

11.2.7 *Subrogation:* CMAR waives any claim or right of in nature of subrogation to recover against the City, its officers, agents, or employees. Each policy, except professional liability, must contain an endorsement waiving such claim.

11.2.8 *Endorsement of Primary Insurance:* Each policy, except Workers' Compensation and professional liability policies, must contain an endorsement that the policy is primary insurance to any other insurance available to additional insured with respect to claims arising hereunder.

11.2.9 *Liability for Premium:* CMAR is solely responsible for payment of all insurance premium requirements hereunder and the City is not obligated to pay any premiums to insurers.

11.2.10 *Additional Requirements for Workers' Compensation Insurance Coverage:* CMAR shall, in addition to meeting the obligations set forth in Table 1, maintain throughout the term of the Contract Workers' Compensation coverage as required by statute, and CMAR shall specifically comply with

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requirements set forth in Paragraph 11.2.10. The definitions set out below shall apply only for this Paragraph 11.2.10.

11.2.10.1 Definitions:

- 11.2.10.1.1 *Certificate of Coverage:* A copy of certificate of insurance, or coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory Workers' Compensation insurance coverage for CMAR's, Subcontractor's, or Supplier's employees providing services for the duration of the Contract.
- 11.2.10.1.2 *Duration of the Work:* Includes the time from Date of Commencement of the Work until CMAR's work under the Contract has been completed and accepted by City Council.
- 11.2.10.1.3 *Persons providing services for the Work (Subcontractor in Texas Labor Code § 406.096):* includes all persons or entities performing all or part of services CMAR has undertaken to perform on the Work, regardless of whether that person contracted directly with CMAR and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of the entity, or employees of entity which furnishes persons to provide services on the Work. Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to the Work. Services do not include activities unrelated to the Work, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- 11.2.10.2 CMAR shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of coverage agreements, which meets the statutory requirements of TEX. LAB. CODE ANN., Section 401.011(44) for employees of CMAR providing services on the Work, for duration of the Work.
- 11.2.10.3 CMAR shall provide a Certificate of Coverage to the City prior to beginning performance.
- 11.2.10.4 If coverage period shown on CMAR's original Certificate of Coverage ends during duration of the Work, CMAR shall file new Certificate of Coverage with the City showing that coverage has been extended.
- 11.2.10.5 CMAR shall obtain from each person providing services on the Work, and provide to Director:
 - 11.2.10.5.1 Certificate of Coverage, prior to that person beginning work on the Work, so the City will have on file Certificates of Coverage showing coverage for all persons providing services on the Work; and
 - 11.2.10.5.2 no later than seven (7) days after receipt by CMAR, new Certificate of Coverage showing extension of coverage, if coverage period shown on current Certificate of Coverage ends during the duration of the Work.
- 11.2.10.6 CMAR shall retain all required Certificates of Coverage for the duration of the Work and for one year thereafter.
- 11.2.10.7 CMAR shall notify Director in writing by certified mail or personal delivery, within ten (10) days after CMAR knew or should have known, of any change that materially affects provision of coverage of any person providing services on the Work.

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11.2.10.8 CMAR shall post on-site a notice, in text, form and manner prescribed by Texas Workers' Compensation Commission, informing all persons providing services on the Work that they are required to be covered, and stating how person may verify coverage and report lack of coverage.

11.2.10.9 CMAR shall contractually require each person with whom it contracts to provide services on the Work to:

- 11.2.10.9.1 provide coverage, based on proper reporting of classification codes, payroll amounts and filing of any coverage agreements, which meets statutory requirements of TEX. LAB. CODE ANN., Section 401.011(44) for all its employees providing services on the Work, for the duration of the Work;
- 11.2.10.9.2 provide to CMAR, prior to that person's beginning work on the Work, a Certificate of Coverage showing that coverage is being provided for all employees of the person providing services on the Work, for the duration of the Work;
- 11.2.10.9.3 provide CMAR, prior to the end of the coverage period, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current Certificate of Coverage ends during the duration of the Work;
- 11.2.10.9.4 obtain from each other person with whom it contracts, and provide to CMAR: (1) Certificate of Coverage, prior to other person's beginning work on the Work; and (2) new Certificate of Coverage showing extension of coverage, prior to end of coverage period, if coverage period shown on the current Certificate of Coverage ends during duration of the Work;
- 11.2.10.9.5 retain all required Certificates of Coverage on file for the duration of the Work and for one year thereafter;
- 11.2.10.9.6 notify Director in writing by certified mail or personal delivery within ten (10) days after person knew, or should have known, of change that materially affects provision of coverage of any person providing services on the Work; and
- 11.2.10.9.7 contractually require each person with whom it contracts to perform as required by Paragraphs 11.2.10.1 through 11.2.10.7, with Certificates of Coverage to be provided to person for whom they are providing services.

11.2.10.10 By signing the Contract or providing or causing to be provided a Certificate of Coverage, CMAR is representing to the City that all employees of CMAR who will provide services on the Work will be covered by Workers' Compensation coverage for the duration of the Work, that coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with appropriate insurance carrier. CMAR is not allowed to self-insure Workers' Compensation. CMAR may be subject to administrative penalties, criminal penalties, civil penalties, or other civil actions for providing false or misleading information.

11.2.10.11 CMAR's failure to comply with Paragraph 11.2.10 is a breach of the Contract by CMAR, which entitles the City to declare the Contract void if CMAR does not remedy breach within ten (10) days after receipt of notice of breach from Director.

11.2.11 *Subcontractor Insurance Requirements:* CMAR shall require Subcontractors and Suppliers to obtain Commercial General Liability, Workers' Compensation, Employer's Liability and Automobile Liability coverage that meets all the coverage requirements of Paragraph 11.2. The limits of liability may be reduced in the discretion of the Director. CMAR shall require all Subcontractors with whom it contracts directly, whose subcontracts exceed \$100,000, to provide proof of insurance coverage meeting the above requirements. CMAR shall deliver such certificates of insurance to City. CMAR shall comply with all

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requirements set out under Paragraph 11.2.10 as to Workers' Compensation Insurance for all Subcontractors and Suppliers. Additionally, if any Subcontractor will be performing any Work that may involve environmental liabilities, CMAR shall ensure that Pollution Liability coverage in the amount of \$2,000,000 per occurrence and \$2,000,000 in the aggregate is obtained prior to commencement of the Work, and its shall include contractual liability, cleanup costs, abatement, transport, and non-owned disposal sites, including bodily injury and environmental damage arising from pollution conditions caused in performance of operations, including asbestos and lead if part of operations (MCS-90 endorsement; \$1,000,000 CSL to Auto Policy and removal of Pollution exclusion).

**TABLE 1
REQUIRED COVERAGE**

Coverage	Limit of Liability
.1 Workers' Compensation	<ul style="list-style-type: none"> • Statutory Limits for Workers' Compensation
.2 Employer's Liability	<ul style="list-style-type: none"> • Bodily Injury by Accident \$1,000,000 (each accident) • Bodily Injury by Disease \$1,000,000 (policy limit) • Bodily Injury by Disease \$1,000,000 (each employee)
.3 Commercial General Liability: Including Contractor's Protective, Broad Form Property Damage, Contractual Liability, Explosion, Underground and Collapse, Bodily Injury, Personal Injury, Products, and Completed Operations (for a period of one year following completion of the Work).	<ul style="list-style-type: none"> • Combined single limit of \$1,000,000 (each occurrence), subject to general per project aggregate of \$2,000,000; • Products and Completed Operations \$5,000,000 per project aggregate.
.4 Owner's and Contractor's Protective Liability	<ul style="list-style-type: none"> • \$1,000,000 combined single limit each occurrence/aggregate.
.5 Installation Floater (Unless alternative coverage approved by City Attorney)	<ul style="list-style-type: none"> • Value of stored material or equipment, listed on Certificates of Payments, but not yet incorporated into the Work.
.6 Automobile Liability Insurance: (For automobiles furnished by CMAR in course of its performance under the Contract, including Owned, Non-owned, and Hired Auto coverage)	<ul style="list-style-type: none"> • \$1,000,000 combined single limit each occurrence for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos. • \$10,000,000 for autos used on the Airfield.
.7 Excess Coverage	<ul style="list-style-type: none"> • \$1,000,000 each occurrence/combined per Project aggregate in excess of limits specified for Employer's Liability, Commercial General Liability, and Automobile Liability

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.8 Pollution Legal Liability, if approved by the Director as set forth in Section 11.7 of this Contract:	<ul style="list-style-type: none"> • \$50,000,000 per occurrence/aggregate
Including pollution coverage for Contractual Liability, Clean-up costs, Abatement, Transport, and Non-owned disposal sites. Including Bodily Injury, and environmental damage arising from pollution conditions caused in performance of operations. Including Asbestos and Lead if part of operations (MCS-90 endorsement: \$1,000,000.00 CSL to Auto Policy and removal of Pollution Exclusion).	
.9 Coverage for tools, equipment, etc., not included in the Cost of the Work.	<ul style="list-style-type: none"> • Value of items covered
.10 Equipment floater policy to cover equipment in transit, at warehouse, jobsite or elsewhere until Work is turned over to City.	<ul style="list-style-type: none"> • Value of equipment
.11 Property & Casualty Coverage: "All Causes of Loss" Builders Risk Form for direct physical damage to building or plant construction on Project site. [Including but not limited to earthquake, flood, boiler and Machinery -- including testing, damage to existing or adjoining property, time element coverage, collapse, soft costs (Management, architecture, financial costs, pre-opening costs, etc.), transit coverage, off-site storage]	<ul style="list-style-type: none"> • 100% CGMP and/or GMP, including all Change Orders
.12 Professional Liability Coverage:	<ul style="list-style-type: none"> • \$5,000,000 per claim/aggregate

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

11.3 PROOF OF INSURANCE

11.3.1 Prior to commencing services and at the request of the Director at any time during the term of the Contract, CMAR shall furnish Director with Certificates of Insurance, along with Affidavit from CMAR confirming that Certificate accurately reflects insurance coverage that is available during term of the Contract. Additionally, CMAR shall furnish the Director with endorsement forms CG24040509-Waiver of Transfer of Rights of Recovery against Others; CA04030604-Additional Insured Endorsement; CAT353-Business Auto Extension Endorsement; WC 42304A-Workers Compensation Waiver of Transfer of Rights of Recovery against Others, or others that may be approved by Director. If requested in writing by Director, CMAR shall furnish Director with certified copies of CMAR's actual insurance policies. Failure of CMAR to provide certified copies, as requested, may be deemed, at Director's or City Attorney's discretion, a material breach of the Contract.

11.3.2 Notwithstanding the proof of insurance requirements, CMAR shall continuously maintain in effect required insurance coverage set forth in Paragraph 11.2. Failure of CMAR to comply with this requirement does constitute a material breach by CMAR allowing the City, at its option, to immediately suspend or terminate CMAR from performing the Work, or exercise any other remedy allowed under the Contract. CMAR agrees that the City has not waived or is not estopped to assert a material breach of the Contract because of any acts or omissions by the City regarding its review or non-review of insurance documents provided by CMAR, its agents, employees, or assigns.

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11.3.3 CMAR shall provide updated certificates of insurance to the Director upon request. The CMAR shall be responsible for delivering a current certificate of insurance in the proper form to the Director as long as CMAR is required to furnish insurance coverage under Paragraph 11.2.

11.3.4 Every certificate of insurance CMAR delivers in connection with this Contract shall:

- 11.3.4.1 be less than 12 months old;
- 11.3.4.2 include all pertinent identification information for the Insurer, including the company name and address, policy number, NAIC number or AMB number, and authorized signature;
- 11.3.4.3 include in the Certificate Holder Box the Project name and reference numbers, and indicates the name and address of the Director;
- 11.3.4.4 include the CMAR's email address in the Certificate Holder Box;
- 11.3.4.5 include the Project reference numbers on the City address so the Project reference number is visible in the envelope window; and
- 11.3.4.6 be appropriately marked to accurately identify all coverages and limits of the policy, effective and expiration dates, and waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and Worker's Compensation/Employers' Liability.

11.4 **PERFORMANCE AND PAYMENT BONDS**

11.4.1 CMAR shall provide Bonds on the City's standard forms covering faithful performance of the Contract and payment of obligations arising thereunder as required in the Contract pursuant to Chapters 2253 and 2269 of the Texas Government Code, except for Preconstruction Phase services but including a CGMP occurring within the Preconstruction Phase. The Bonds must be for 100 percent (100%) of the CGMP or GMP (as applicable) as determined by the Director and in accordance with conditions stated on standard City Performance and Payment Bond and Statutory Payment Bond forms. Bonds may be obtained from CMAR's usual source if it meets the requirements of the Contract Documents and is acceptable to Director, and cost for the Bonds are included in the CGMP and GMP. If a CGMP is in progress when the GMP is established, the CMAR must provide Bonds for 100% of the GMP minus any outstanding CGMPs.

11.5 **MAINTENANCE BONDS**

11.5.1 *One-Year Maintenance Bond:* CMAR shall provide Bond on a standard City Maintenance Bond form, providing for CMAR's correction, replacement, or restoration of any portion of the Work which is found to be not in compliance with requirements of the Contract during the Correction Period required in Paragraph 12.2. The Maintenance Bond must be for twenty-five percent (25%) of the GMP or CGMP, as applicable.

11.5.2 *One-Year Surface Correction Bond.* CMAR shall provide, on the City standard form, an additional one (1) year Bond in an amount equal to four percent (4%) of the GMP or CGMP, as applicable, or cost of repair. Bond shall provide for CMAR's correction, replacement, or restoration of backfill or subsurface and surface work not in accordance with the Contract, within one (1) year from the date the One-Year Maintenance Bond has expired.

11.6 **SURETY**

11.6.1 A Bond that is given or tendered to the City pursuant to the Contract must be executed by a surety company that is authorized and admitted to write surety Bonds in the State of Texas.

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11.6.2 If a Bond is given or tendered to the City pursuant to the Contract in an amount greater than ten percent (10%) of Surety's capital and surplus, Surety shall provide certification that Surety has reinsured that portion of the risk that exceeds ten percent (10%) of Surety's capital and surplus. The reinsurance must be with one or more reinsurers who are duly authorized, accredited, or trusted to do business in the State of Texas. The amount reinsured by reinsurer may not exceed ten percent (10%) of reinsurer's capital and surplus. The amount of allowed capital and surplus must be based on information received from State Board of Insurance.

11.6.3 If the amount of a Bond is greater than \$100,000, Surety shall:

- 11.6.3.1 also hold certificate of authority from the United States Secretary of Treasury to qualify as surety on obligations permitted or required under federal law; or,
- 11.6.3.2 Surety may obtain reinsurance for any liability in excess of \$100,000 from reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States Secretary of the Treasury to qualify as surety or reinsurer on obligations permitted or required under federal law.

11.6.4 Determination of whether Surety on the Bond or the reinsurer holds a certificate of authority from the United States Secretary of the Treasury is based on information published in Federal Register covering the date on which Bond was executed.

11.6.5 Each Bond given or tendered to the City pursuant to the Contract must be on City forms with no changes made by CMAR or Surety, and must be dated, executed, and accompanied by power of attorney stating that the attorney in fact executing such the bond has requisite authority to execute such Bond. The Bonds must be dated and must be no more than thirty (30) days old.

11.6.6 Surety shall designate in its Bond, power of attorney, or written notice to the City, an agent resident in Harris County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.

11.6.7 CMAR shall furnish information to a payment bond beneficiary as required by TEX. GOV'T CODE ANN. CH. 2253.

11.6.8 In the event the Surety becomes unacceptable to the City during the course of the Project, CMAR shall furnish replacement Bonds from an acceptable Surety upon written notice.

11.7 *DELIVERY OF BONDS*

11.7.1 CMAR shall deliver required Bonds to the City within time limits stated in the Contract Documents or such earlier dates as required by Director and in any event prior to Date of Commencement of the Work.

ARTICLE 12 - UNCOVERING AND CORRECTION OF THE WORK

12.1 *UNCOVERING OF THE WORK*

2.1.1 If a portion of the Work has been covered which Director has not specifically requested to observe prior to it being covered, Director may request to see such work and it must be uncovered by CMAR. If such work is in accordance with the Contract Documents the costs of uncovering and covering such Work that qualifies as Cost of the Work are charged to the City by Change Order in accordance with Article 7. If such Work is not in accordance with the Contract, CMAR shall pay for uncovering and shall correct the nonconforming Work promptly after receipt of Notice of Noncompliance to do so.

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12.2 CORRECTION OF THE WORK

12.2.1 CMAR shall promptly correct or remove work rejected by Director or work failing to conform to requirements of the Contract, whether observed before or after the Date of Substantial Completion and whether fabricated, installed, or completed.

12.2.2 CMAR bears the costs of correcting the rejected or nonconforming work including additional testing and inspections, compensation for Design Consultant's services, and expenses made necessary thereby.

12.2.3 If within one (1) year after Date of Substantial Completion of a phase of Construction or after the date for commencement of warranties established under Paragraph 9.11.11 or by other applicable special warranty required by the Contract, whichever is later in time, if any of the Work is found not to be in accordance with the requirements of the Contract, CMAR shall correct such work promptly after receipt of Notice of Noncompliance to do so.

12.2.4 The Correction Period does not establish a duration for the CMAR's general warranty under Paragraph 3.12 and other obligations under the Contract. The City retains the right to recover damages from the CMAR as long as may be permitted by the applicable statute of limitations and repose.

12.2.5 If CMAR does not proceed with correction of the nonconforming work within the reasonable time fixed by Notice of Noncompliance, the City may correct nonconforming work or remove nonconforming work and store salvageable Products at CMAR's expense. CMAR shall pay the costs of correction of nonconforming work and removal and storage of salvageable Products to the City. If CMAR does not pay costs of the correction or removal and storage within ten (10) days after written notice, the City may sell the Products at auction or at private sale. The City will account for proceeds thereof after deducting costs and damages that would have been borne by CMAR, including compensation for services of Design Consultant and necessary expenses. If the proceeds of sale do not cover costs which CMAR should have borne, CMAR shall pay the value of the deficiency to the City.

12.2.6 CMAR bears the cost of correcting work originally installed by CMAR, the City, or by separate Contractors and damaged by CMAR's correction or removal of CMAR's work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 If Director prefers to accept work which is not in accordance with requirements of the Contract Documents, Director may do so only by issuance of Change Order, instead of requiring its removal and correction. CMAR and Director will mutually agree on the CGMP or GMP reduction, as applicable. The reduction will become effective even if final payment has been made.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAWS

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

13.1.2 Venue for any litigation relating to the Contract is Harris County, Texas.

13.2 SUCCESSORS

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13.2.1 The Contract binds and benefits the Parties and their legal successors and permitted assigns; however, this Paragraph 13.2.1 does not alter the restrictions on assignment and disposal of assets set out in Paragraph 13.3.1. The Contract does not create any personal liability on the part of any officer or agent of the City.

13.3 **BUSINESS STRUCTURE AND ASSIGNMENTS**

13.3.1 CMAR may not assign the Contract at law or otherwise, or dispose of all or substantially all of its assets without Director's prior written consent (nor shall any member of the joint venture if the CMAR is a joint venture). Nothing in this Paragraph, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, CMAR 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.

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

13.4 **WRITTEN NOTICE**

13.4.1 All notices required or permitted by the Contract 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 Contract for each Party ("Notice Address") or faxed to the facsimile number stated in the Contract for each Party. The notice is deemed delivered on the earlier of:

- 13.4.1.1 the date the Notice is actually received;
- 13.4.1.2 the third day following deposit in a United States Postal Service post office or receptacle; or
- 13.4.1.3 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.

Any Party may change its Notice Address or facsimile number at any time by giving written notice of the change to the other Party in the manner provided for in this Paragraph at least fifteen (15) days prior to the date the change becomes effective.

13.5 **RIGHTS AND REMEDIES**

13.5.1 Duties and obligations imposed by the Contract and rights and remedies available thereunder are in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

13.5.2 No act or failure to act by the City or CMAR is a waiver of rights or duties afforded them under the Contract, nor is the act or failure to act constitute approval of or acquiescence in a breach of the Contract. No waiver, approval or acquiescence is binding unless in writing and, in the case of the City, signed by Director.

13.6 **TESTS AND INSPECTIONS**

13.6.1 CMAR shall give Director and Design Consultant timely notice of the time and place where tests and inspections are to be made. CMAR shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

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13.6.2 The City will employ and pay for services of an independent testing laboratory to perform inspections or acceptance tests required by the Contract Documents except:

13.6.2.1 inspections or tests covered by Paragraph 13.6.3;

13.6.2.2 those otherwise specifically provided in the Contract Documents; or

13.6.2.3 costs incurred in connection with tests or inspections conducted pursuant to Paragraph 12.2.2.

13.6.3 CMAR is responsible for and shall pay all costs in connection with inspection or testing required in connection with Director's acceptance of a Product to be incorporated into the Work, or of materials, mix designs, or equipment submitted for approval prior to CMAR's purchase thereof for incorporation into the Work.

13.6.4 Neither observations by the City, or Design Consultant, nor inspections, tests, or approvals by others, relieves CMAR from CMAR's obligations to perform the Work in accordance with the Contract Documents.

13.6.5 If testing, inspection, or approvals reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, CMAR shall bear all costs made necessary by such failure, including those of repeated procedures and compensation for City's services and expenses.

13.7 *INTEREST*

13.7.1 No interest will accrue on late payments by the City except as provided under Chapter 2251 of the Government Code.

13.8 *PARTIES IN INTEREST*

13.8.1 The Contract does not bestow any rights upon any third party, but binds and benefits the Parties only.

13.9 *ENTIRE CONTRACT*

13.9.1 The Contract merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants, express or implied, or other terms of any kind, exist between the Parties regarding the Contract.

13.10 *WRITTEN AMENDMENT*

13.10.1 Changes to the Contract that cannot be effected by Modifications, must be made by written amendment, which will not be effective until approved by City Council.

13.11 *COMPLIANCE WITH LAWS*

13.11.1 CMAR shall comply with the Americans with Disabilities Act of 1990 as amended (ADA) and Texas Architectural Barriers Act and all regulations relating to either statute.

13.11.2 CMAR shall comply with all applicable federal, state, and city laws, rules, ordinances and regulations. Nothing herein shall be construed to require that CMAR ensures that the contract documents are prepared in accordance with applicable laws.

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13.12 ***ENFORCEMENT***

13.12.1 City Attorney or designee has the right to enforce all legal rights and obligations under the Contract without further authorization.

13.13 ***SEVERABILITY***

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

ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 ***TERMINATION BY THE CITY FOR CAUSE***

14.1.1 Each of the following acts or omissions of CMAR or occurrences shall constitute an "Event of Default" under the Contract:

- 14.1.1.1 CMAR refuses or fails to supply enough properly skilled workers or proper Products;
- 14.1.1.2 CMAR disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;
- 14.1.1.3 CMAR is guilty of material breach of any duty or obligation of CMAR under the Contract, including, but not limited to, failure to submit certified payrolls electronically;
- 14.1.1.4 CMAR has had any other contract with the City terminated for cause at any time subsequent to the effective date of the Contract as set out in the Contract; or
- 14.1.1.5 CMAR fails to utilize Ultra Low Sulfur Diesel Fuel, as required in Paragraph 3.9.1.1.

14.1.2 If an Event of Default occurs, Director may, at his option and without prejudice to any other rights or remedies which the City may have, deliver a written notice to CMAR and Surety describing the Event of Default and giving the CMAR ten (10) days to commence and diligently pursue the cure of the Event of Default. If after the ten (10) day cure period, CMAR has failed or refused to commence and diligently pursue the cure of the Event of Default, then Director may deliver a second written notice to CMAR giving notice of the termination of the Contract or of the termination of CMAR's performance under the Contract ("Notice of Termination"). If Director issues a Notice of Termination, then Director may, subject to any prior rights of Surety and any other rights of the City under the Contract Documents or at law:

- 14.1.2.1 request that Surety take over and restart the Work within thirty (30) days of termination and complete the Work within a reasonable period of time as established by the Director; or
- 14.1.2.2 take possession of the site and all materials, equipment, tools, and construction equipment and machinery on the site owned by CMAR; and
- 14.1.2.3 finish the Work by whatever reasonable method Director may deem expedient.

14.1.3 After CMAR's receipt of a Notice of Termination, and except as otherwise directed in writing by Director, CMAR shall:

- 14.1.3.1 stop the Work on the date and to the extent specified in the Notice of Termination;

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- 14.1.3.2 place no further orders or subcontracts for Products or services;
- 14.1.3.3 suspend all orders and subcontracts to the extent that they relate to performance of work terminated;
- 14.1.3.4 assign to the City, in the manner, at the times, and to the extent directed by Director, all rights, title, and interest of CMAR, under the terminated supply orders and subcontracts. The City may settle or pay claims arising out of termination of the orders and subcontracts;
- 14.1.3.5 settle all outstanding liabilities and all claims arising out of the termination of supply orders and subcontracts with approval of Director;
- 14.1.3.6 take action as may be necessary, or as Director may direct, for protection and preservation of property related to the Work that is in possession of CMAR, and in which the City has or may acquire an interest; and
- 14.1.3.7 secure the Work in a safe state before leaving the site, return all rented equipment, providing any necessary safety measures, shoring, or other devices.

14.1.4 If the City terminates the Contract or terminates CMAR's performance under the Contract for any one or more of the reasons stated in Paragraph 14.1.1, CMAR may not receive any further payment until the Work is complete, subject to Paragraph 14.1.5.

14.1.5 If the unpaid balance of the CGMP or GMP, as applicable, exceeds the costs of finishing the Work, including liquidated damages and other amounts due under the Contract, the balance will be paid to CMAR. If the costs of finishing the Work exceed the unpaid balance, CMAR shall, within ten (10) days of receipt of written notice setting out the amount of the excess costs, pay the difference to the City. The amount to be paid to CMAR or the City will be certified by Director in writing, and this obligation for payment shall survive termination of the Contract or termination of CMAR's performance under the Contract. Termination of the CMAR for cause shall not relieve the Surety from its obligation to complete the Project.

14.1.6 An adjudicated improper termination for cause by the City shall be converted to a termination for convenience and the CMAR's entitlement shall be as set forth in Paragraph 14.2.

14.2 TERMINATION BY THE CITY FOR CONVENIENCE

14.2.1 Director may, without cause and without prejudice to any other rights or remedies of the City, give CMAR and Surety a Notice of Termination with a seven (7) days written notice.

14.2.2 After receipt of the Director's Notice of Termination, and except as otherwise approved by Director, CMAR shall conform to requirements of Paragraph 14.1.3.

14.2.3 After receipt of the Notice of Termination, CMAR shall submit to the City its termination Claim, in forms required by Director. The Claim will be submitted to the City promptly, but no later than six months from the effective date of termination, unless one or more extensions are granted by Director in writing. If CMAR fails to submit its termination Claim within the time allowed, in accordance with Paragraph 14.2.4, Director will determine, on the basis of available information, the amount, if any, due to CMAR because of termination, and Director's determination is final and binding on the Parties. The City will then pay to CMAR the amount so determined.

14.2.4 Director will determine, on the basis of information available to Director, the amount due, if any, to CMAR for the termination as follows:

City of Houston – Houston Airport System

MLIT CMAR CONTRACT

Exhibit C – General Conditions

- 14.2.4.1 Payment for all Work performed in accordance with the Contract Documents up to the date of termination determined in the manner prescribed for monthly payments in Article 9 and other applicable Contract Documents, except no retainage is withheld by the City with respect to the terminated Work either for payment determined by percentage of completion or for materials and equipment delivered to the site, in storage or in transit.
- 14.2.4.2 Reasonable termination expenses that would qualify as Cost of the Work, including, to the extent they qualify as Costs of the Work, including costs for settling and paying Subcontractor and Supplier claims arising out of termination of the Work under their respective Subcontracts and purchase orders, reasonable cost of preservation and protection of the City's property after termination, if required, and the cost of Claim preparation. Termination expenses do not include field or central office overhead, salaries of employees of CMAR, or litigation costs (including but not limited to attorneys' fees).

No amount is allowed for anticipated profit or central office overhead on uncompleted work, or any cost or lost profit for other business of CMAR alleged to be damaged by the termination.

14.2.5 CMAR shall promptly remove from the site any construction equipment, tools, and temporary facilities, except the temporary facilities not needed for Work not terminated which Director may wish to purchase and retain.

14.2.6 CMAR shall cooperate with Director during the transition period.

14.2.7 The City will take possession of the Work and materials delivered to the site, in storage, or in transit, as of date or dates specified in the Notice of Termination, and is responsible for maintenance, utilities, security, and insurance, as stated in Notice of Termination.

14.3 *SUSPENSION BY THE CITY FOR CONVENIENCE*

14.3.1 Director may, without cause, after giving CMAR and Surety 24-hour prior written notice, order CMAR to suspend, delay, or interrupt the Work in whole or in part for a period of time as Director may determine.

14.3.2 An adjustment will be made in Contract Time equivalent to the time of suspension.

14.3.3 Adjustment will be made to CGMP and/or GMP for increases in the Cost of the Work, caused by such suspension, delay, or interruption of the Work plus a proportionate increase in the CMAR's Fee in accordance with Paragraph 7.3. No adjustment shall be made to the extent that:

- 14.3.3.1 performance was, or would have been, suspended, delayed, or interrupted by another cause for which CMAR is responsible; or
- 14.3.3.2 adjustment is made or denied under another provision of the Contract.

14.4 *TERMINATION BY CMAR*

14.4.1 CMAR may terminate the Contract if the Work is stopped for a period of thirty (30) days through no act or fault of CMAR, directly related to one of these events:

- 14.4.1.1 issuance of an order of a court or other public authority having jurisdiction, other than the City acting in its role as a project owner;
- 14.4.1.2 act of government, such as a declaration of national emergency that makes material unavailable; or

**City of Houston – Houston Airport System
MLIT CMAR CONTRACT
Exhibit C – General Conditions**

- 14.4.1.3 if repeated suspensions, delays, or interruptions by the City as described in Paragraph 14.3 constitute, in the aggregate, more than 100 percent (100%) of the total number of days scheduled for completion, or one hundred and twenty (120) days in any 365-day period, whichever is less.

No termination will be effective for the above reasons unless CMAR delivers written notice to Director describing the reason for termination, giving the proposed termination date, and granting the City a reasonable opportunity to respond and cure any City default before termination is effective.

14.4.2 If the Contract is terminated pursuant to this Paragraph 14.4, CMAR shall comply with the requirements of Paragraphs 14.2.2 through 14.2.7.

END OF GENERAL CONDITIONS (CMAR)

**City of Houston – Houston Airport System
MLIT CMAR CONTRACT
Exhibit D – Key Personnel Staff Classification and Rates**

EXHIBIT "D"

KEY PERSONNEL STAFF CLASSIFICATION AND RATES

DESIGNATED REPRESENTATIVE:

City of Houston – Houston Airport System
MLIT CMAR CONTRACT
Exhibit E – Preconstruction Services Schedule

EXHIBIT "E"

PRECONSTRUCTION SERVICES SCHEDULE

**PER EXHIBIT B TO BE PROVIDED FOLLOWING NOTICE TO PROCEED FOR
PRECONSTRUCTION SERVICES**

City of Houston – Houston Airport System
MLIT CMAR CONTRACT
Exhibit F – Guaranteed Maximum Price Proposal

EXHIBIT "F"

GUARANTEED MAXIMUM PRICE PROPOSAL*

_____ ("CMAR") hereby submits to the City of Houston Texas ("the City") pursuant to the provisions of the CMAR Contract by and between the City and CMAR dated _____, a Guaranteed Maximum Price ("GMP") for the Project (as defined in the Contract) based on the Contract Documents (as defined by the Contract), as follows:

1. Cost of the Work \$ _____
 - a. Included in the Cost of Work above is the General Conditions Work for the Project \$ _____
 - b. The following Cash Allowances are included in the Cost of Work above:
 1. _____
 2. _____
 - c. The following Alternates are included in the Cost of Work above:
 1. _____
 2. _____
 - d. The following Unit Priced Work is included in the Cost of Work above:
 1. _____
 2. _____
 - e. The following Contingency is included in the Cost of Work above:
\$ _____
 2. Construction Phase Fee (____ %) \$ _____
Percentage of (Cost of Work minus Pass-through items, Cash Allowances, insurance, and bonds)
=====
 3. Guaranteed Maximum Price (GMP) \$ _____
(GMP = 1 + 2)
- For GMP Submittal Cost Breakdown see Exhibit 1 attached hereto.
4. The GMP for the Project includes all Claims, Work, and Change Orders in existence before date of signing this GMP.
 5. The Contract Documents upon which the GMP is based are set forth in Exhibit 7 attached hereto.
 6. CMAR shall provide complete performance of the Work for the GMP. In the event of a conflict among the Contract Documents, the CMAR shall fulfill the greater of the requirements set forth in the in the Contract, the General Conditions, the Specifications, the Drawings, and needs of the City.
 7. The Clarifications & Assumptions made by the CMAR are set forth in Exhibit 4.

City of Houston – Houston Airport System
MLIT CMAR CONTRACT
Exhibit F – Guaranteed Maximum Price Proposal

8. CMAR shall achieve Substantial Completion of Phase 1 - Preconstruction Milestone within ____ Calendar Days from issuance of Notice to Proceed and Final Completion of Phase 2 - Construction Milestone within ____ Calendar Days from Notice to Proceed.
9. CMAR waives all rights to an extension of time or delay damages for any events or circumstances prior to the date of signing this GMP.

The following exhibits are incorporated into the GMP:

1. Exhibit 1 – Summary of Work, including a list of all Construction Documents
2. Exhibit 2 – GMP or CGMP Price Summary with line item Schedule of Values.
3. Exhibit 3 – Project Team and Burden Rates
4. Exhibit 4 – Scope Clarifications and Assumptions
5. Exhibit 5 – Procurement Plan
6. Exhibit 6 – GMP or CGMP Construction Schedule
7. Exhibit 7 – Analysis of Impact on the Total Construction Budget and Project Schedule
8. Exhibit 8 – MWBE/WBE/DBE/SBE participation level, including a total to date participation level status report
9. Exhibit 9 - Permitting Plan
10. Exhibit 10 – Risk Management Plan
11. Exhibit 11 – Construction Work Plan
12. Exhibit 12 – Commissioning and Activation Plans
13. Exhibit 13 – Project Manuals
14. Exhibit 14 – Bonds
15. Exhibit 15 – Insurance

The insurance and bonds for this Guaranteed Maximum Price form have been reviewed as to form by the undersigned legal assistant and have been found to meet established Legal Department criteria. Legal Department has not reviewed the content of this document or its exhibits, except for Exhibit 14 and Exhibit 15.

<hr/> <p>Legal Assistant</p> <p>DIRECTOR</p> <hr/> <p>Date of Signing: _____</p>	<hr/> <p>Date</p> <p>CMAR</p> <hr/> <p>[CMAR]</p> <p>Name: _____</p> <p>Signature: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date of Signing: _____</p>
---	--

*For purposes of this Exhibit, CMAR shall utilize this form to submit its CGMP or GMP proposal. References to GMP may be changed to CGMP for CGMP submission.

**CGMPs may be entered into without the need of a contract amendment and are effective upon the Director's approval. The GMP must be approved by City Council in order to be effective.

City of Houston – Houston Airport System
MLIT CMAR CONTRACT
Exhibit G – Form of Bonds

EXHIBIT "G"

FORM OF BONDS

The following documents are incorporated by reference:

- City of Houston Standard Document No. 00610 – Performance Bond
- City of Houston Standard Document No. 00611 – Statutory Payment Bond
- City of Houston Standard Document No. 00612 – One-Year Maintenance Bond
- City of Houston Standard Document No. 00613 – One-Year Surface Correction Bond

Document 00610

PERFORMANCE BOND

THAT WE, _____, as Principal,
(the "Contractor"), and the other subscriber hereto, _____,
as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of
Houston (the "City"), a municipal corporation, in the penal sum of \$ _____ for the
payment of which sum, well and truly to be made to the City, its successors and
assigns, Contractor and Surety do bind themselves, their heirs, executors,
administrators, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in
writing with the City for _____,
all of such work to be done as set out in full in said Contract documents therein referred
to and adopted by the City Council, all of which are made a part of this instrument as
fully and completely as if set out in full herein.

NOW THEREFORE, if the said Contractor shall faithfully and strictly perform the
Contract in all its terms, provisions, and stipulations in accordance with its true meaning
and effect, and in accordance with the Contract documents referred to therein and shall
comply strictly with each and every provision of the Contract and with this Bond, then
this obligation shall become null and void and shall have no further force and effect;
otherwise the same is to remain in full force and effect. Should the Contractor fail to
faithfully and strictly perform the Contract in all its terms, including but not limited to the
indemnifications thereunder, the Surety shall be liable for all damages, losses,
expenses and liabilities that the City may suffer in consequence thereof, as more fully
set forth herein.

It is further understood and agreed that the Surety does hereby relieve the City
or its representatives from the exercise of any diligence whatever in securing
compliance on the part of the Contractor with the terms of the Contract, and the Surety
agrees that it shall be bound to take notice of and shall be held to have knowledge of all
acts or omissions of the Contractor in all matters pertaining to the Contract. The Surety
understands and agrees that the provision in the Contract that the City will retain certain
amounts due the Contractor until the expiration of 30 days from the acceptance of the
Work is intended for the City's benefit, and the City will have the right to pay or withhold
such retained amounts or any other amount owing under the Contract without changing
or affecting the liability of the Surety hereon in any degree.

It is further expressly agreed by Surety that the City or its representatives are at
liberty at any time, without notice to the Surety, to make any change in the Contract
documents and in the Work to be done thereunder, as provided in the Contract, and in

the terms and conditions thereof, or to make any change in, addition to, or deduction from the Work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this Bond and undertaking or release the Surety therefrom.

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify and save harmless the City from any liability, loss, cost, expense, or damage arising out of Contractor's performance of the Contract.

If the City gives Surety notice of Contractor's default, Surety shall, within 45 days, take one of the following actions:

1. Arrange for Contractor, with consent of the City, to perform and complete the Contract; or
2. Take over and assume completion of the Contract itself, through its agents or through independent contractors, and become entitled to the payment of the balance of the Contract Price.

If the Surety fails to take either of the actions set out above, it shall be deemed to have waived its right to perform and complete the Contract and receive payment of the balance of the Contract Price and the City shall be entitled to enforce any remedies available at law, including but not limited to completing the Contract itself and recovering any cost in excess of the Original Contract Price from the Surety.

This Bond and all obligations created hereunder shall be performable in Harris County, Texas. This Bond is given in compliance with the provisions of Chapter 2253, Texas Government Code, as amended, which is incorporated herein by this reference.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered 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 respective other Party at the address prescribed in the Contract documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

Any party wishing to file a claim may call the Texas Department of Insurance at 1-800-252-3439 to obtain Surety's address for claims processing.

IN WITNESS THEREOF, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST, SEAL: (if a corporation)
WITNESS: (if not a corporation)

By: _____

Name:

Title:

Name of Contractor

By: _____

Name:

Title:

Date:

ATTEST/SURETY WITNESS:

(SEAL)

Full Name of Surety

Address of Surety for Notice

Telephone Number of Surety

By: _____

Name:

Title:

Date:

By: _____

Name:

Title: Attorney-in-Fact

Date:

This Ordinance or Contract has been reviewed as to form by the undersigned legal assistant and have been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

Legal Assistant

Date

END OF DOCUMENT

Document 00611

STATUTORY PAYMENT BOND

THAT WE, _____, as Principal,
hereinafter called Contractor and the other subscriber hereto, _____,
as Surety, do hereby acknowledge ourselves to be held and firmly bound unto the City of
Houston, a municipal corporation, in the sum of \$_____ for the payment of
which sum, well and truly to be made to the City of Houston, and its successors, the said
Contractor and Surety do bind themselves, their heirs, executors, administrators,
successors, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a contract in writing
with the City of Houston for _____

all of such work to be done as set out in full in said Contract documents therein referred to
and adopted by the City Council, all of which are made a part of this instrument as fully and
completely as if set out in full herein;

NOW, THEREFORE, if the said Contractor shall pay all claimants supplying labor
and materials to him or a Subcontractor in the prosecution of the Work provided for in the
Contract, then, this obligation shall be void; otherwise the same is to remain in full force
and effect;

PROVIDED HOWEVER, that this Bond is executed pursuant to the provisions of
Chapter 2253, Texas Government Code, as amended, and all liabilities on this Bond shall
be determined in accordance with the provisions of said Article to the same extent as if it
were copied at length herein.

IN WITNESS THEREOF, the said Contractor and Surety have signed and sealed
this instrument on the respective dates written below their signatures and have attached
current Power of Attorney.

Any party wishing to file a claim may obtain Surety's address for claims
processing on file with the Texas Department of Insurance by calling 1-800-252-3439.

ATTEST, SEAL: (if a corporation)
WITNESS: (if not a corporation)

By: _____

Name:

Title:

By: _____

Name:

Title:

Date:

ATTEST/SURETY WITNESS:

(SEAL)

Full Name of Surety

Address of Surety for Notice

Telephone Number of Surety

By: _____

Name:

Title:

Date:

By: _____

Name:

Title: Attorney-in-Fact

Date:

This Ordinance or Contract has been reviewed as to form by the undersigned legal assistant and have been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

Legal Assistant

Date

END OF DOCUMENT

Document 00612

ONE-YEAR MAINTENANCE BOND

THAT WE, _____, as Principal,
hereinafter called Contractor, and the other subscriber hereto, _____,
as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of
Houston, a municipal corporation, in the sum of \$ _____, for the payment of
which sum well and truly to be made to the City of Houston and its successors, the said
Contractor and Surety do bind themselves, their heirs, executors, administrators,
successors, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing
with the City of Houston for _____

all of such work to be done as set out in full in said Contract documents therein referred to
and adopted by the City Council, all of which are made a part of this instrument as fully and
completely as if set out in full herein.

NOW THEREFORE, if the said Contractor shall comply with the provisions of
Paragraph 11.5.1 of the General Conditions, and correct work not in accordance with the
Contract documents discovered within the established one-year period, then this obligation
shall become null and void, and shall be of no further force and effect; otherwise, the same
is to remain in full force and effect.

Notices required or permitted hereunder shall be in writing and shall be deemed
delivered 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 respective other party at the address
prescribed in the Contract documents, or at such other address as the receiving party may
hereafter prescribe by written notice to the sending party.

IN WITNESS THEREOF, the said Contractor and Surety have signed and sealed
this instrument on the respective dates written below their signatures and have attached
current Power of Attorney.

ATTEST, SEAL: (if a corporation)

WITNESS: (if not a corporation)

Name of Contractor

By: _____

Name:
Title:

By: _____

Name:
Title:
Date:

ATTEST/SURETY WITNESS:
(SEAL)

Full Name of Surety

Address of Surety for Notice

Telephone Number of Surety

By: _____
Name:
Title:
Date:

By: _____
Name:
Title: Attorney-in-Fact
Date:

This Ordinance or Contract has been reviewed as to form by the undersigned legal assistant and have been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

Legal Assistant

Date

END OF DOCUMENT

Document 00613

ONE-YEAR SURFACE CORRECTION BOND

THAT WE, _____, as Principal,
hereinafter called Contractor, and the other subscriber hereto, _____,
as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of
Houston, a municipal corporation, in the sum of \$ _____, such sum being equal
to four percent of the Original Contract Price, for the payment of which sum to be made
to the City of Houston and its successors, Contractor and Surety do bind themselves,
their successors, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has entered into a Contract in writing with the City of
Houston, Texas, dated of even date herewith, for _____
all of such work to be done in accordance with the Contract documents therein referred
to, and adopted by the City Council of the City of Houston.

NOW THEREFORE, if the Contractor shall comply with the provisions of
Paragraph 11.5.1 of the General Conditions, and repair, replace, restore, and correct
surface work associated with backfill operations of subsurface work not in accordance
with the Contract documents discovered within one year from the date that the One-
year Maintenance Bond has expired, then this obligation shall become null and void,
and shall be of no further force and effect; otherwise, the same is to remain in full force
and effect.

Notices required or permitted hereunder shall be in writing and shall be deemed
delivered 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 respective other party at the
address prescribed in the Contract documents, or at such other address as the
receiving party may hereafter prescribe by written notice to the sending party.

IN WITNESS THEREOF, the said Principal and Surety have signed and sealed
this instrument on the respective dates written below their signatures.

ATTEST, SEAL: (if a corporation)

WITNESS: (if not a corporation)

Name of Contractor

By: _____

Name:

Title:

By: _____

Name:

Title:

Date:

[Short Project Name]

Project No. [WBS/CIP/AIP/File No.]

ONE-YEAR SURFACE CORRECTION BOND

ATTEST/SURETY WITNESS:

(SEAL)

Full Name of Surety

Address of Surety for Notice

Telephone Number of Surety

By: _____

Name:

Title:

Date:

By: _____

Name:

Title: Attorney-in-Fact

Date:

This Ordinance or Contract has been reviewed as to form by the undersigned legal assistant and have been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

Legal Assistant

Date

END OF DOCUMENT

City of Houston – Houston Airport System
MLIT CMAR CONTRACT
Exhibit H – City's Wage Rates

EXHIBIT "H"

CITY'S WAGE RATES

DOCUMENT 00812

WAGE SCALE FOR HEAVY CONSTRUCTION

- 1.01 Following 29 CFR 5.5 (a) (1) (v), use the rates listed on the Wage Determination Attachment for minimum wage and benefits for the labor classifications applicable to the Work.
- 1.02 These rates do not prohibit payment of more than the rates stated.
- 1.03 Apply rates in this Document 00812 to site work greater than five (5) feet from exterior wall of new building under construction or from exterior wall of existing building.
- 1.04 The Contractor shall submit the "Certificate from Contractor Appointing Officer or Employee to Supervise Payment of Employees" (Exhibit "A") to the Monitoring Authority listed in Document 00495 prior to final execution of the contract.
- 1.05 During the course of the work, Subcontractors shall submit the "Certificate from Subcontractor Appointing Officer or Employee to Supervise Payment of Employees" (Exhibit "B") to the Monitoring Authority listed in Document 00495.
- 1.06 Contractor and all subcontractors will submit payrolls electronically to the Department through the online reporting system unless told otherwise by the Office of Business Opportunity.

EXHIBIT "A"

CERTIFICATE FROM CONTRACTOR APPOINTING OFFICER OR EMPLOYEE
TO SUPERVISE PAYMENT OF EMPLOYEES

Project Name _____

Project WBS#: _____ Date _____

(I) (We) hereby certify that (I am) (we are) the Prime Contractor for _____

(specify type of job)

in connection with construction of the above-mentioned Project, and that (I) (we) have appointed _____, whose signature appears below, to supervise the payment of (my) (our) employees beginning _____, 20____; that he/she is in a position to have full knowledge of the facts set forth in the payroll documents and in the statement of compliance required by the Copeland Act and the City of Houston, which he/she is to execute with (my) (our) full authority and approval until such time as (I) (we) submit to the City of Houston a new certificate appointing some other person for the purposes hereinabove stated.

(Identifying Signature of Appointee) Phone: _____

Witness/Attest: _____
(Name of Firm or Corporation)

By: _____
(Signature) By: _____
(Signature)

(Title)

(Title)

NOTE: This certificate must be executed by an authorized officer of a corporation or by a member of a partnership, and shall be executed prior to and be submitted with the first payroll. Should the appointee be changed, a new certificate must accompany the first payroll for which the new appointee executes a statement of compliance required by the Copeland Act and the City of Houston.

EXHIBIT "B"

**CERTIFICATE FROM SUBCONTRACTOR APPOINTING OFFICER OR EMPLOYEE
TO SUPERVISE PAYMENT OF EMPLOYEES**

Project Name _____

Project WBS#: _____ Date _____

(I) (We) hereby certify that (I am) (we are) the Subcontractor for _____

_____ (specify type of job)
in connection with construction of the above-mentioned Project, and that (I) (we) have appointed _____
_____, whose signature appears below, to supervise the payment of
(my) (our) employees beginning _____, 20_____; that he/she is in a position to have
full knowledge of the facts set forth in the payroll documents and in the statement of compliance
required by the Copeland Act and the City of Houston, which he/she is to execute with (my) (our) full
authority and approval until such time as (I) (we) submit to the City of Houston a new certificate
appointing some other person for the purposes hereinabove stated.

(Identifying Signature of Appointee) Phone: _____

Witness/Attest: _____
(Name of Firm or Corporation)

By: _____
(Signature) By: _____
(Signature)

(Title) _____
(Title)

NOTE: This certificate must be executed by an authorized officer of a corporation or by a member of a partnership, and shall be executed prior to and be submitted with the first payroll. Should the appointee be changed, a new certificate must accompany the first payroll for which the new appointee executes a statement of compliance required by the Copeland Act and the City of Houston.

Wage Determination Publication Date:

January 6, 2017

for

General Decision Number **TX170042 01/06/2017 TX42**

Superseded General Decision Number TX20160042

State: TEXAS

Construction Type: HEAVY

County (ies): Harris

HEAVY CONSTRUCTION PROJECTS including Water and Sewer lines. (Does not include flood control.)

Modification Number: Publication Date:
 01/06/2017

WAGE DETERMINATION ATTACHMENT:

END OF DOCUMENT

City of Houston – Houston Airport System
MLIT CMAR CONTRACT
Exhibit I – Project Schedule

EXHIBIT "I"

PROJECT SCHEDULE

PER EXHIBIT F TO BE PROVIDED WITH GMP SUBMITTAL

City of Houston – Houston Airport System
MLIT CMAR CONTRACT
Exhibit J – Dispute Avoidance and Resolution

EXHIBIT “J”

DISPUTE AVOIDANCE AND RESOLUTION

A. INFORMAL NEGOTIATIONS AND ELIGIBLE DISPUTES

1. The Parties will use reasonable best efforts to resolve Eligible Disputes (as defined below) arising in the normal course of business at the lowest organizational level of staff with appropriate authority to resolve such disputes on behalf of the City, CMAR and Design Consultant. In connection with such informal negotiations, the Party asserting the dispute shall provide the other(s) with a written description of the nature of the dispute, along with reasonable and sufficient supporting documentation. At the Director's request, CMAR or Design Consultant shall involve its senior representatives, including senior representatives of any of its subcontractors, in such negotiations. CMAR and Design Consultant shall specifically bind all of their respective subcontractors or subconsultants to the provisions of this Exhibit. The City may join CMAR or Design Consultant with respect to any Eligible Dispute involving the other. CMAR and Design Consultant may join their respective subcontractors or subconsultants as appropriate for resolution of Eligible Disputes.
2. For purposes of this Dispute Avoidance and Resolution Process only, "Parties" shall mean the City acting through the Director, CMAR and Design Consultant.
3. "Eligible Dispute" shall mean any dispute that satisfies the following criteria:
 - (a) Is between any one or more of the following: the City, CMAR, or Design Consultant;
 - (b) Involves any one or more of the following areas relating to either the City's agreement with CMAR or the City's agreement with Design Consultant: the day-to-day administration of the agreements, performance of the agreements, or statements of work related to the subject matter of the agreements;
 - (c) Does not involve a question of law;
 - (d) Arises during the performance of either the City's agreement with CMAR or the City's agreement with Design Consultant or any subsequent renewals thereof;
 - (e) Is not resolved among the City, CMAR, and Design Consultant in the ordinary course of business; and
4. Upon the expenditure of reasonable efforts towards resolution of a dispute through informal negotiations without reaching resolution, a Party may declare that the informal negotiations have been exhausted and such Party may request to convene the Dispute Avoidance and Resolution Board ("DARB") as described below. If the DARB is unable to resolve the dispute, a Party may elect to proceed with Non-Binding Mediation as described below. CMAR may elect to make a Claim to the Director as set out in Section 4.3 *et seq.* of the General Conditions.

B. DISPUTE AVOIDANCE AND RESOLUTION BOARD ("DARB")

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1. The DARB may consider Eligible Disputes and provide written recommendations to the Director, CMAR, or Design Consultant, or their respective subcontractors or subconsultants, as applicable.
2. The DARB shall consist of three (3) neutral members, and shall not have been previously employed or acted as consultant or as a subconsultant to a consultant in any capacity for any Party; one each chosen by the Director, CMAR and Design Consultant. The members shall elect among them a Chairperson ("Chair"). If any Party's appointed member terminates his or her involvement on the DARB, the affected Party may nominate a replacement, who shall be appointed to the DARB unless the other Parties reasonably object to such appointment. Unless the Parties agree otherwise, each DARB member shall have significant and relevant design or construction experience of large capital improvement projects using relevant project delivery methodologies. The members of the DARB shall be selected no later than 90 Calendar Days after CMAR/Design Consultant NTP, whichever is later.
3. The DARB will formulate its own rules of operation, which will be kept flexible to adapt to changing situations. The EPM, Director, CMAR and Design Consultant will keep the DARB informed of construction activity and progress by submitting to the DARB the monthly progress reports and other relevant data, as appropriate.
4. The DARB may meet as often as circumstances warrant. The DARB initially shall meet monthly, until the members become familiar with the Project. If conditions warrant, the DARB may increase or decrease the frequency of the meetings to better serve the Parties and as mutually agreed among the Director, CMAR, Design Consultant and EPM.
5. Each meeting will consist of an informal round table discussion and, if possible, a Project site walk. The round table discussion will be attended by representatives from the City, EPM, CMAR, and the Design Consultant, plus appropriate representatives of their respective Project Teams. The round table discussions shall include presentations from the Director, the EPM, CMAR, and Design Consultant to the DARB that may address the following items:
 - a. design and/or construction work accomplished since the last meeting,
 - b. current status of the work the current and future schedule,
 - c. payment status,
 - d. Eligible Disputes referred to the DARB,
 - e. potential future issues that may come before the DARB and their proposed solutions,
 - f. any Eligible Disputes not previously referred to the DARB, or otherwise addressed by the DARB, and
 - g. an update regarding previously handled or ongoing issues.
6. The DARB shall use its reasonable best efforts to resolve an Eligible Dispute within ten (10) Days of submission of the dispute. The DARB's decision shall be in writing and mailed or otherwise furnished to the Director, EPM, CMAR, and Design Consultant.

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7. Any Party may comply with the DAR's decision or appeal the decision to a mediator in accordance with the procedures described in this Exhibit. If a Party desires to appeal the DAR's decision, the Party must submit a written notice of intent to appeal to the DAR within seven (7) Days following receipt of the DAR's decision. If a Party does not appeal or provide timely notice of its intent to appeal, the DAR's decision is final and the Parties shall comply with it. CMAR's and Design Consultant's compliance with the DAR's final decision is a material duty under this Agreement, to the extent allowed by law.

C. NON-BINDING MEDIATION

1. For any Eligible Dispute that the DAR is unable to resolve, before initiating any litigation or seeking any remedies available at law or in equity, except in an emergency, the Parties shall mediate, in good faith, as described below.
2. The Parties shall initiate the mediation procedure for Eligible Disputes by providing written notice to the Director, City Attorney, CMAR, Design Consultant, and any other party to the Eligible Dispute as described below ("Mediation Request").
3. The Parties shall submit an Eligible Dispute to a neutral, third party mediator chosen by mutual consent of the Parties. If, within fourteen (14) Days of receipt of a Mediation Request, the Parties cannot agree on a mediator, the City shall choose an experienced, neutral, third party mediator, who shall be knowledgeable about design and construction of large capital improvement projects using relevant project delivery methodologies. Mediation shall occur within thirty (30) Days of choosing a mediator, unless the Parties otherwise agree to a later date. Mediation shall occur in Houston, Texas, and each Party shall bear its own costs incurred in connection with the mediation. The Parties shall equally share the costs of the mediator's fees; provided, however, that the Director shall be responsible for issuing to the mediator the full payment of the mediator's fee, subject to appropriation therefor by the City's governing body. CMAR's pro-rated share of the mediator's fee shall be deducted from CMAR's payment for performed Work. Design Consultant's pro-rated share of the mediator's fee shall be recovered as an offset to the Design Consultant's compensation. The resolution of any dispute disposed of by agreement between the Parties during mediation will be reduced to writing within ten (10) Days of resolution ("Mediated Resolution") by the mediator. Compliance with the Mediated Resolution will be a material duty under this Agreement, to the extent allowed by law.
4. Any Party may request Non-Binding Mediation of any Eligible Dispute, whether technical or otherwise. Non-Binding Mediation is voluntary and will not be a condition precedent to submitting a dispute to the Director. The non-requesting Party may decline the request in its sole discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply.
5. The mediator shall be a professional mutually acceptable to the Parties who has no current or on-going relationship to any Party in the mediation. The mediator shall have full discretion as to the conduct of the mediation. Each Party shall participate in the mediator's program to resolve the dispute until and unless the Parties reach agreement with respect to the disputed matter or one Party determines in its sole discretion that its interests are not being served by the mediation.

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6. Non-Binding Mediation is intended to assist the Parties in resolving disputes concerning this Agreement. No mediator shall be empowered to render a binding decision.
7. IF A MEDIATION PARTY RECEIVING A MEDIATION REQUEST REFUSES TO MEDIATE, PARTICIPATE IN SELECTING A MEDIATOR, TO ATTEND MEDIATION, OR FAILS TO ATTEND THE MEDIATION, THIS ALTERNATIVE DISPUTE PROVISION WILL BE DEEMED TO HAVE BEEN FULFILLED BY THE AGGRIEVED PARTY AND THE AGGRIEVED PARTY IS PERMITTED TO PURSUE ANY OTHER REMEDIES IT MAY HAVE.
8. If the Non-Binding Mediation does not result in settlement, any Party may file suit in a court of law to be conducted in Harris County, Texas. Exhaustion of all the processes above is a prerequisite to each Party before filing a lawsuit, unless waived by the Parties.
9. The Parties shall continue to comply with, perform, and observe all their obligations under their respective Agreements notwithstanding the pendency of a dispute.