

East End District
Request For Proposals
Solicitation Number - EIT-004

Project Title: Satellite Parking Use Agreement

Proposals Closing Date: 3:00 P.M. (CDT) Friday, February 28, 2020

Three (3) copies required and one (1) electronic medium.

No Proposals submitted after the above deadline will be accepted.

Contact: East End District

Rosyne Wimbish, Federal Contracts Administrator

3211 Harrisburg Blvd.

Houston, TX 77003

rosyne@eastenddistrict.com

713-928-9916

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CONTENT FORM SUBMISSION CHECKLIST

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EXHIBIT D – ACKNOWLEDGEMENT OF ADDENDA	YES
EXHIBIT E – RESPONDENT INFORMATION FORM	YES
EXHIBIT F – PRICE PROPOSAL FORM	YES
EXHIBIT G – BEST VALUE PROCUREMENT INFORMATION FORM	YES

PART I - GENERAL

- 1. PURPOSE:** The East End District (District) has received a proposal by a private party that is interested in leasing to the District, 250 vehicular parking spaces in a covered and structured parking facility that are directly adjacent to the Houston METRO light rail station along the Green Line in the East End community of Houston. The ultimate intent of this transaction is to aid in the creation of a “transit-oriented development” through the facilitation of transit-related satellite parking.

This Request for Proposals (RFP) is seeking proposals from all interested parties, including the original offeror, who are ready, willing, and able to participate in an agreement as it relates to the provision of 250 vehicular parking spaces within a reasonable walking distance (no more than ¼ mile) from a Houston METRO Green Line stop/station as it relates to the section east of Milby Street. The facility must be available for use no later than January 2021.

More information is included in the Scope of Work.

- 2. CURRENT PROPOSAL OVERVIEW:** The current proposal includes the leasing of 250 parking spaces during peak commute times, site improvements and other appurtenances to facilitate pedestrian connectivity to the adjacent transit station. In addition to the use of the 250 parking spaces, the lease proposal includes the provision of operations and management of the parking spaces by the current garage owner or their designee. The daily transit parking rate would be subsidized via this capital leasing arrangement at a daily rate which will initially be set at \$3 per day. Operations and maintenance (O&M) costs would be paid from the daily parking rate at the risk of the O&M provider or lessor. Net revenue, if any, defined as revenue less operations and management cost related to the transit spaces, from the transit-related parking is conveyed to the District for reinvestment into transit-related public improvements per Federal Transit Administration (FTA) requirements. Daily parking rates are to be adjusted dependent upon utilization, with the goal of covering O&M costs and subsidizing transit to the maximum extent possible. The objective is to subsidize parking at a degree at which the transit related spaces are fully occupied, and O&M costs are fully covered. Future rate adjustments must be concurred with by the District, the District Board of Directors, and other project partners.
- 3. INSURANCE:** The Respondent/Contractor shall meet or exceed ALL insurance requirements set forth in **EXHIBIT A**, Minimum Insurance Requirements.
- 4. EXHIBITS:** Exhibits A through G herein are made a part of this solicitation.
 - 4.1. EXHIBIT A:** Minimum Insurance Requirements
 - 4.2. EXHIBIT B:** Federally Required Contract Clauses

4.3. EXHIBIT C: Respondent/Contractor Pre-Award Certifications

4.4. EXHIBIT D: Acknowledgement of Addenda

4.5. EXHIBIT E: Respondent Information Form

4.6. EXHIBIT F: Price Proposal Form

4.7. EXHIBIT G: Best Value Procurement Information Form

- 5. QUESTIONS:** The RFP Coordinator is the sole point of contact for this procurement from advertisement through award. All communication between the Respondent and the District on release of this RFP shall be with the RFP Coordinator as follows:

Name	Rosyne Wimbish
E-Mail Address	rosyne@eastenddistrict.com
Mailing/Physical Address	3211 Harrisburg Boulevard, Houston TX 77003
Phone Number	713-928-9916

- 6. OTHER COMMUNICATION:** Any other communication will be considered unofficial and non-binding on the District. No authority is intended or implied that specifications may be amended, or alterations accepted prior to proposal opening, without written approval of the RFP Coordinator. The Respondents are to rely on written statements issued by the RFP Coordinator only.
- 7. UNSOLICITED COMMUNICATION:** To ensure the fair evaluation of a solicitation, the District prohibits unsolicited communication initiated by the Respondent to a District representative evaluating or considering the solicitations prior to the time a decision has been made. Communication between Respondent and the District will be initiated by the RFP Coordinator in order to obtain information or clarification needed to develop an accurate evaluation of the solicitation. Unsolicited communication may be grounds for disqualifying the offending Respondent from consideration for award.

PART II - LAWS, REGULATIONS, AND MANDATORY REQUIREMENTS

1. FUNDING:

1.1. The lease will be reimbursed by the U.S. DOT through FTA grants managed directly by the District.

1.2. Any contract awarded as a result of this procurement is contingent upon the availability of federal and local funding.

2. LAWS, PERMITS AND LICENSES: The successful Respondent/Contractor shall comply with all federal and municipal laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Contract, including, but not limited to, the laws referred to in the Contract and other Contract documents. Upon request, the successful Respondent/Contractor shall furnish to the District certificates of compliance with all such laws, ordinances, rules, regulations, and orders. The successful Respondent/Contractor shall be responsible for obtaining and keeping current all necessary federal, state, and local permits and licenses required for performance under Contract.

3. CODE OF CONDUCT: The District Code of Conduct establishes minimum standards of conduct that District Council, officers, employees, agents and contractors of the District are expected to follow in the performance of their duties specifically related to selection, award, and/or administration of any contract supported by FTA funds.

4. CONFLICT OF INTEREST: Effective January 1, 2006, Chapter 176 of the Texas Local Government Code (House Bill 914) requires that any vendor or person considering doing business with a local government entity disclose the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. The Conflict of Interest Questionnaire form is located in **EXHIBIT C**. Any attempt to intentionally or unintentionally conceal or obfuscate a conflict of interest may automatically result in the disqualification of the Respondent's proposal.

5. DISCLOSURE OF INTERESTED PARTIES: In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties (Form 1295), which is available at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm, to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The District requires the selected

Contractor to file Form 1295 electronically with the Commission at the time of Contract Award.

6. **FEDERALLY REQUIRED CONTRACT CLAUSES:** A part of the lease may be reimbursed by the U.S. DOT through FTA grants managed directly by the District. As a result, the successful Respondent/Contractor shall comply with all clauses in **EXHIBIT B**, Federally Required Contract Clauses, and complete the federally required contract certifications in **EXHIBIT C**, Respondent/Contractor Pre-Award Certifications.
7. **ASSIGNMENT:** The successful Respondent/Contractor shall not sell, assign, transfer, or convey any contract resulting from this RFP, in whole or in part, without the prior written consent of the District.
8. **DELINQUENT STATE BUSINESS TAX:** All Respondents shall certify that the Respondent/Contractor is not delinquent in a tax owed the state under Chapter 171, Tax Code, pursuant to the Texas Business Corporation Act, Texas Statutes, Article 2.45, by completing the Delinquent State Business Tax certification in **EXHIBIT C**, Respondent/Contractor Pre-Award Certifications.
9. **DISADVANTAGED BUSINESS ENTERPRISE (DBE):** The requirements of 49 CFR Part 26, Regulations of the U.S. DOT, apply to this contract as defined in **EXHIBIT B**, Federally Required Contract Clauses. It is the policy of the District to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this RFP. The Respondent/Contractor is also encouraged to utilize services of DBE Banks and Financial Institutions. The Respondents/Contractors are required to document all subcontractor participation including non-DBE subcontractors by completing the Respondent/Contractor Certification in **EXHIBIT C**, Respondent/Contractor Pre-Award Certifications.
10. **STATE SALES AND USE TAX:** District qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provisions of Chapter 151, Texas Tax Code. Contractor may claim exemption from payment of applicable State taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts.
11. **INDEMNIFICATION:** Contractor shall defend, indemnify, and hold harmless the District, its elected officials, officers, employees and agents from and against any and all claims, costs, losses, and damages asserted by any person for personal injury, sickness, death or property damage of any kind or character (including but not limited to fees and costs for attorneys, expert witnesses, professional consultants, mediation, arbitration, or court costs)

that is caused in whole or in part by the negligence of Contractor or any person, subcontractor or supplier directly employed or engaged by Contractor to provide work, goods or services under this contract, regardless of whether or not also caused in part by the negligence of the District or another party entitled to indemnification.

12. INDEPENDENT CONTRACTOR RELATIONSHIP: The Respondent is and shall perform the Service as an independent contractor, and as such, shall have and maintain complete control over all of its employees, agents, and operations. Neither the Respondent nor anyone employed by it shall be, represent, act, purport to act or be deemed to be the agent, representative, employee or servant of the District.

PART III - INSTRUCTIONS

1. SOLICITATION SCHEDULE:

Issue Request for Proposal	January 31, 2020
Deadline for Written Questions at 5:00 P.M. CDT	February 10, 2020
Issue Response to Questions/Final Addendum	February 12, 2020
Proposals Due by 3:00 P.M. CDT	February 28, 2020
Anticipated Proposer Interviews (if needed)	March 2020
Notify Successful Respondent	March 31, 2020
Negotiate Final Contract	Through June 2020
Execute Contract	September 2020

1.1. The District reserves the right to revise the above schedule. Notice of date changes will be posted to the District's webpage: <https://www.eastenddistrict.com/news/public-notices/>

1.1.1. The District reserves the right to delay the execution of a formal contract associated with this RFP until federal funding has been made available for the proposed transaction.

1.2. All questions regarding the RFP shall be submitted in writing by the due date and time noted above to the District's RFP Coordinator identified in Part I, General, of the RFP. A copy of all questions submitted, and the District's responses shall be posted on the District's webpage listed above on or before the Issue Response to Questions/Final Addendum date shown above.

2. PROPOSAL DUE DATE AND TIME:

2.1. Signed and sealed proposals are due to the District no later than the due date and time noted above. The envelope or package must show the return address, solicitation number, solicitation title, "Satellite Parking Use Agreement," due date and the following address:

Rosyne Wimbish
East End District
3211 Harrisburg Boulevard
Houston, Texas 77003

- 2.2. Any proposal received after the time and date established above is a late proposal. The District will not evaluate late proposals. All late proposals will be returned unopened to the Respondent via U.S. Mail. Envelopes received by the District, which do not contain adequate proposal identification information on the outside of the envelope, will be opened for the purpose of ascertaining proper proposal identification information and will be processed like any other proposal. If a proposal has incorrect information on the envelope, e.g., wrong due date, address, etc., and the incorrect information results in the proposal being late, the proposal will be returned unopened to the Respondent via U.S. Mail.
- 2.3. The Respondents mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposals by the RFP Coordinator. The Respondents assume the risk for the method of delivery chosen. The District assumes no responsibility for delays caused by any delivery service. Proposals may not be transmitted electronically or using facsimile transmission.

3. PROPOSALS:

- 3.1. **Acceptance/Rejection:** The District reserves the right to accept or reject any and/or all proposals for any or all services covered in this RFP. The District makes no warranty or guarantee that an award will be made as a result of this RFP.
- 3.2. **Addenda:** The District reserves the right to modify, waive any formalities or minor technical inconsistencies, and delete any requirement, excluding mandatory requirements, from this RFP prior to the date and time of the proposal deadline. The District shall make any modifications, waivers, interpretations, corrections, or changes to the RFP by written addenda. Sole issuing authority of addenda shall be vested in the RFP Coordinator. Addenda shall be sent to all who are known to have received a copy of the RFP. All such addenda become, upon issuance, an inseparable part of the RFP and must be met for the Respondent's proposal to be considered for contract award. All Respondents shall acknowledge receipt of all addenda by completing **EXHIBIT D**, Acknowledgement of Addenda, and submitting the acknowledgement with the Respondent's proposal. Material or cardinal changes to the RFP after the proposals are opened may result in cancellation of the solicitation without award.
- 3.3. **Content:** Representations made by the Respondent/Contractor within its proposal will be binding. The District may reject any proposal that fails to comply with the requirements contained herein. The Respondents/Contractors taking exception to the specifications, terms, and conditions in the RFP and/or offering substitutions shall submit these exceptions and/or substitutions.
- 3.4. **Preparation:** The District will not be liable for any costs incurred by any Respondent preparing and submitting a response to this RFP. The Respondents submit proposals at their own risk and expense. All proposals with supporting documentation will become the property of the District.

3.5. Respondent Changes to Proposals:

3.5.1. The Respondent may make corrections, deletions, or additions to their proposal in writing prior to the date and time of the proposal deadline. The Respondent shall submit a letter documenting the changes and include the appropriate number of copies of the specific pages for substitution. The signature on the letter must be original and of equal authority as the signature on the original proposal. The District will not accept oral, telephone, fax, e-mail, or other electronically transmitted corrections, deletions, or additions.

3.5.2. Respondents may not alter or amend proposals after the date and time of the proposal deadline. If desired by the District, the RFP Coordinator may request a best and final offer from the Respondents.

3.6. Clarification: The District reserves the right to request clarification or additional information specific to any proposal after all proposals have been received and the RFP deadline has passed.

3.7. Confidentiality of Content:

3.7.1. All documents submitted in response to a solicitation shall be subject to the Texas Public Information Act. Following an award, responses are subject to release as public information unless the response or specific parts of the response can be shown to be exempt from the Texas Public Information Act. Pricing is not considered to be confidential under any circumstances.

3.7.2. Information in a proposal that is legally protected as a trade secret or otherwise confidential must be clearly indicated with "CONFIDENTIAL" stamped in bold red letters on that section of the document. The District will not be responsible for any public disclosure of confidential information, if it is not clearly marked as confidential.

3.7.3. If a request is made under the Texas Public Information Act, to inspect information designated as confidential, the Respondent shall, upon request from the District, furnish sufficient written reasons and information as to why the information should be protected from disclosure. The matter will then be presented to the Attorney General of Texas for final determination.

3.8. Order of Precedence: Any inconsistency in this solicitation or subsequent contract shall be resolved by giving precedence in the following order.

3.8.1. Contract

3.8.2. Request for Proposal Instructions and Conditions

3.8.3. Proposal Guidelines, if any

3.8.4. Other documents, exhibits and attachments

3.8.5. Respondent's Proposal

4. PROPOSAL REVIEW AND EVALUATION CRITERIA:

4.1. All proposals shall be reviewed to determine which proposals are responsive to the submission requirements detailed herein. A responsive Proposal is one that follows the RFP requirements, includes all requested documentation, is submitted in the format outlined, is submitted by the Proposal deadline, and has the appropriate certifications and forms completed with signatures, as required on each document. Failure to comply with these requirements may result in the Proposal being deemed nonresponsive. The District may remove any proposal submitted with an unsigned proposal and/or a material failure from consideration for contract award.

4.2. All proposals received shall be evaluated by a committee based on criteria developed by the District. In evaluating proposals, the District may consider the extent to which the Respondent's services meet the District's needs and specifications, as stated herein, and the following criteria:

Factor

Proposal Price
Operations and Maintenance Approach
Approach to Project
Experience of Firm
References
Proposed Schedule
Financial Capacity

4.3. The District may request the Respondents to submit responses to requests for information or clarification and/or to make oral presentations to the evaluation committee to further discuss experience, qualifications and quality of service. These responses and/or presentations provide the Respondent with the opportunity to clarify their Proposal and ensure a mutual understanding of the Service to be provided. In addition, the evaluation committee may visit the Respondent's operations and make judgments directly affecting the evaluation of the proposal.

4.4. Submission of a proposal implies the Respondent's acceptance of the evaluation criteria and the Respondent's recognition that the evaluation committee may make subjective judgments based on the Respondent's proposal, responses to requests for information and/or presentations.

4.5. All proposals submitted shall be valid for a period of one (1) year from the proposal deadline.

5. CONTRACT NEGOTIATIONS:

5.1. The District reserves the right to identify competitive proposals, refine the requirements, and request a Best and Final Offer as part of this procurement.

5.2. Based on the results of the evaluation process, the District may prepare and submit a draft contract to the successful Respondent. The successful Respondent shall have the

opportunity to review and provide comments to the District. The District may consider all comments, so long as the changes do not substantively change the terms and conditions in the RFP and the Respondent's Proposal.

6. CONTRACT:

6.1. Contract Award: The successful Respondent will be required to execute a Contract with the District, which finalizes the terms and conditions set forth in the requirements of this RFP and the successful Respondent's Proposal. No award can be made until the District Board reviews and approves the execution of the contract.

6.2. Contract Extension: This contract may or may not be extended at the end of the original term at the discretion of the District.

7. PROTESTS:

7.1. All Protests must be filed and resolved in a manner consistent with the requirements of FTA Circular 4220.1F Third Party Contracting Guidelines (available for download at http://www.fta.dot.gov/legislation_law/12349_8641.html) and the Bid Protest Procedures. Upon request, the Special Projects Manager for the Bid will provide a copy of either of the aforementioned documents.

7.2. Terms used in the Bid Protest Procedures and not defined elsewhere in the Bid Protest Procedures are defined below

7.2.1. Appeal - Protestor's written summary describing the basis for appeal, provided to the Special Projects Manager when requesting reconsideration of the Special Project Manager's Protest denial.

7.2.2. Bid – a bid pursuant to which a bidder offers to perform the work of the Contract.

7.2.3. Contract – the contract for which Bids are sought.

7.2.4. Executive Director – the Executive Director of the District.

7.2.5. FTA – the Federal Transit Administration of the United States Department of Transportation.

7.2.6. Interested Party – Actual or prospective bidder whose direct economic interest would be affected by the award of the Contract or by the failure to award the Contract.

7.2.7. Prospective Bidder – Any bidder that has the actual capability and capacity to submit a bid meeting all the requirements set forth herein and in the bid documents bid or to be bid upon.

7.2.8. Protest – A succinct written description of the Protestor's objections to the content of a solicitation or award of a Contract.

7.2.9. Protestor – An Interested Party that has properly filed a timely Protest.

7.2.10. Special Projects Manager – the Special Projects Manager of the District.

7.2.11. Timely Filed Protest – A written document filed by a Protestor that meets the requirements outlined below and the instructions to proposers.

7.3. PROTEST REQUIREMENTS

7.3.1. In order for a Protest to be considered, the Protestor shall provide a written submission which shall contain at a minimum:

- 7.3.1.1.** Name and address of the Protestor;
- 7.3.1.2.** Protestor's relationship to the procurement sufficient to establish that the Protest is being filed by an Interested Party;
- 7.3.1.3.** Written proof that the Protest has been filed in a timely manner;
- 7.3.1.4.** The specific Contract for which the solicitation or award is being protested pursuant to these Bid Protest Procedures;
- 7.3.1.5.** The specific staff recommendation, board action, or inaction that is being protested;
- 7.3.1.6.** The provision(s) of the solicitation, regulations, and/or laws upon which the Protest is based (i.e., identification of the technical specifications or item of content in the solicitation);
- 7.3.1.7.** All documentation supporting the allegations of the Protest; and
- 7.3.1.8.** A statement of the specific relief requested.

7.3.2. If the Protest does not comply with any of the preceding requirements, it may not be considered for evaluation and may be returned to the Protestor.

7.3.3. At the Protestor's discretion, a Protest may be filed by facsimile (with original copy mailed by certified mail return receipt requested) or by any other return receipt means. The District is not responsible for lost or delayed deliveries. A Protest not filed within the time limits herein may be rejected without consideration or evaluation.

7.3.4. To be considered timely, Protests concerning the content of a Bid, including all attached documents must be filed with the Special Projects Manager within ten (10) calendar days after the District first issues the Bid and received by the Special Projects Manager not later than 5:00 p.m. (local time) on such tenth calendar day. If the tenth calendar day falls on a weekend or legal holiday, the Protest period ends at 5:00 p.m. (local time) the following business day.

7.3.5. The Special Projects Manager shall issue a written decision on a content based Protest prior to the deadline for submission of Bids.

7.3.6. Protests concerning a recommendation for award or on any ground not based upon the content of the Bid must be filed with the Special Projects Manager by an Interested Party within fifteen (15) calendar days after the District awards the contract and must be received by the Special Projects Manager not later than 5:00 p.m. (local time). If the fifteenth calendar day falls on a weekend or legal holiday, the Protest period ends at 5:00 p.m. (local time) the following business day.

7.3.7. An Appeal to the Executive Director concerning a denial to a Protest must be filed by an Interested Party within seven (7) calendar days after the denial of the Protest.

7.3.8. The date of filing of a Protest or Appeal is the date of receipt of the Protest or Appeal by the Special Projects Manager.

7.3.9. All Protests must be filed in writing with:

Special Projects Manager
East End District
3211 Harrisburg
Houston, Texas 77003

No other location or addressee is acceptable.

7.3.10. All Appeals must be filed in writing with:

Executive Director
c/o Special Projects Manager
East End District
3211 Harrisburg
Houston, Texas 77003

Note: Appeals addressed to the Executive Director, c/o the Special Projects Manager, must be delivered to the Special Projects Manager for date and time stamping.

7.3.11. The District will respond to each substantive issue raised in all timely filed Protests. The Special Projects Manager shall make a written determination of the Protest, within forty-five (45) calendar days from receipt of Protest. Any decision rendered by the Special Projects Manager may be appealed to the Executive Director for a final decision which must be rendered within thirty (30) calendar days from receipt of Appeal.

7.3.12. The Protestor may withdraw its Protest or Appeal at any time before the Executive Director issues a final decision.

7.4. APPEALS TO THE FTA

7.4.1. If the requirements of the Bid are federally funded and all administrative remedies described above have been exhausted, a Protestor may file a Protest with the FTA. FTA appeal reviews will be limited to failure to comply with these Bid Protest Procedures or violations of Federal law or regulation.

7.4.2. All appeals to the FTA must be submitted to the following FTA Regional Office:

Federal Transit Administration
819 Taylor Street
Room 8A36
Fort Worth, TX 76102
Regional Administrator Region VI
Phone: (817) 978-0550
Fax: (817) 978-0575

7.4.3. All appeals to the FTA must be submitted within seven (7) calendar days after a final decision with respect to the Protest has been rendered by the Executive Director.

8. PROPOSAL REQUIREMENTS:

8.1. To achieve a uniform review process and obtain the maximum degree of comparability, the Proposals shall be organized in the manner specified below. Proposals shall be submitted on printed, bound 8 ½" X 11" sheets of paper using 12-point type single-spaced text. Three-ring binders are acceptable. Do NOT submit the entire RFP with your Proposal. The original RFP with Exhibits and all addenda will be included in the Contract as an attachment. The proposal shall be clearly organized. There is no page limit requirement.

8.2. The Respondents are required to submit three (3) printed copies of their Proposal and one (1) electronic copies on USB flash drives.

8.3. The District may remove Proposals not conforming to the instructions or addressing all requirements, as specified herein, from consideration for contract award. The District, however, reserves the right to accept such proposals if it is determined to be in the District's best interest. The proposal shall include:

8.3.1. Title Page: Show the solicitation title and number, name of the Respondent, address, telephone number(s), e-mail, name of contact person, and date and time due.

8.3.2. Letter of Transmittal and Acknowledgement of Addendum: The Respondent should submit a letter expressing their interest in the project. The letter must contain, at a minimum, the following information:

8.3.2.1. Briefly state the Respondents understanding of the Service to be performed and make a positive commitment to provide the services as specified herein.

8.3.2.2. Provide the name(s) of the person(s) authorized to make representations for your firm, their title(s), address, telephone number, and e-mail address.

8.3.2.3. The letter shall be signed by an individual who has the authority to bind the Respondent. The name and title of the individual(s) signing the proposal shall be clearly printed immediately below the signature.

8.3.2.4. Acknowledge receipt of all addenda by completing **EXHIBIT D, Acknowledgement of Addenda, as well as each individually signed Addendum.**

8.3.3. Financial Capacity: Responses in this area should demonstrate that the proposer has control of the facility to be leased, is in good financial standing to continue to own and operate the facility in the future, and otherwise has a financially sustainable ownership profile.

8.3.4. References: The Respondent shall provide at least three (3) references within the last five (5) years for which the same or similar Service has been provided in the Respondent Information Form (**EXHIBIT E**). Include a point of contact, address, e-mail, phone number and a brief description of the Service provided. The District will conduct reference checks to verify and validate vendor's performance. The District may remove Proposers with failed performance from consideration for contract award. **Failing to provide verifiable references may result in the Respondent being non-responsive and removed from consideration for contract award.**

8.3.5. Respondent Information Form: The Respondent shall complete the Respondent Information Form (**EXHIBIT E**) showing the number of personnel, equipment and other operational services that will be used to meet the requirements herein.

8.3.6. Price Proposal Form: Complete the Price Proposal Form (**EXHIBIT F**)

8.3.7. Best Value Procurement Information: Respond to the information in the Best Value Procurement Information Form (**EXHIBIT G**)

8.3.8. Certifications: The Respondent shall provide fully executed certifications, as identified herein. Failing to provide the following certifications may result in the Respondent being removed from consideration for Contract award.

8.3.9. Insurance: The Respondent/Contractor shall provide a Certificate of Liability Insurance or a letter stating the Respondent/Contractor's ability to obtain the insurance coverage in accordance with **EXHIBIT A**, Minimum Insurance Requirements. If the successful Respondent/Contractor submits a letter, then they shall submit a certificate of insurance prior to commencing Service.

8.3.9.1. Respondent/Contractor Pre-Award Certifications, EXHIBIT C:

- 8.3.9.1.1.** Lobbying Certification
- 8.3.9.1.2.** Suspension and Debarment Certification
- 8.3.9.1.3.** Respondent/Contractor Certification:
- 8.3.9.1.4.** DBE and SBE Subcontractor Certification
- 8.3.9.1.5.** Delinquent State Business Tax Certification
- 8.3.9.1.6.** Conflict of Interest Questionnaire
- 8.3.9.1.7.** House Bill 89 Verification

9. EXCEPTIONS/SUBSTITUTIONS: All proposals meeting the intent of this RFP shall be considered for contract award. The Respondents taking exception to the scope of work, terms, and conditions and/or offering substitutions shall state these exceptions in **EXHIBIT E**, Respondent Information Form. The absence of such a list shall indicate that the Respondent has taken none and the District shall hold the successful Respondent/Contractor responsible to perform in strict accordance with the Contract. The District reserves the right to accept and/or reject the exceptions and/or substitutions as deemed to be in the best interest of the District.

PART IV - SCOPE OF WORK

1. **PROJECT TITLE:** Satellite Parking Use Agreement
2. **SCOPE OF WORK:** The East End District (District) is seeking use, for a period of 40 years, 250 total vehicular parking spaces that are within walking distance (1/4 mile) to the Houston METRO light rail line along the Green Line in the East End community of Houston.

The location of the spaces should be within ¼ mile of a light rail station on Harrisburg Boulevard and east of Milby Street. The facility / lot should be ADA compliant and Texas Department of Licensing and Regulations (TDLR) compliant.

The successful proposer, should agree to provide at least the following:

Number of Regular Vehicular Parking Spaces	Number of ADA Accessible Parking Spaces	Total Number of Spaces	Time of Day/Week
242	8	250	Monday – Friday 5:00 a.m. to 7:00 p.m.
18	2	20	All Other Days and Times

The District may accept less than the 250 total parking spaces desired. If less than the 250 spaces is proposed, be very clear in the number of spaces and the associated time periods. The District does require that some amount of spaces be available outside of normal commuter hours.

The proposal must also include the provision of operations and management of the parking spaces by the current garage owner or their designee. The daily transit parking rate would be subsidized via agreement at a daily rate that will initially be set at \$3 per day. Operations and management (O&M) costs would be paid from the daily parking rate at the risk of the O&M provider or lessor. Net revenue meaning revenue less O&M costs of the transit spaces, from the transit-related parking is conveyed to the District. Daily parking rates are to be adjusted dependent upon utilization with the goal of covering O&M costs and subsidizing transit to the maximum extent possible. The objective is to subsidize parking at a degree at which the transit related spaces are fully occupied, and O&M costs are fully covered. Future rate adjustments must be concurred with by the District the District Board of Directors, and other project partners. However, the parking rate is not anticipated to exceed the highest rate set by Houston METRO for a similar facility within their service area.

Use of the facility during non-transit periods and when not needed for transit use is not a component of this agreement and is not otherwise restricted with the exception that transit use, during the specified time period, is the priority and will be enforced via compliance inspections.

The proposed parking agreement is for a period of 40 years and will be paid for in a lump sum, up-front fashion. A component of this agreement requires a ground-lease, from the owner, to the District, of the property for which the garage/lot lies. This ground-lease will allow the value of the property itself to be used as match for federal funding used to pay for the parking agreement.

The agreement will also include the purchase and installation of METRO Q-Card readers, which will be paid for by the lessor. This equipment and installation will be coordinated through the District and Houston METRO.

The agreement will also include an annual fee, paid every year, of approximately \$15,000, subject to a 3% annual escalation fee, paid by the selected lessor to the East End District. This fee will offset costs associated with administrative, accounting, and other related expenses by the District as it relates to the administration of the long-term lease.

Successful proposers should at a minimum, also include the following:

- Safety/security features to include lighting;
- 24-hour access;
- Exterior signage necessary to notify the public that the garage is available for use;

Proposers are encouraged to identify other project components which would ensure a successful operation. All elements can be included within the proposal and incorporated into the price proposal accordingly.

PART V- PRICE, INSPECTION, INVOICING AND PAYMENT

1. **CONTRACT:** The proposed agreement is for a period of 40 years and would be paid for in a lump sum, up-front. A *draft* contract is within this RFP in section within **EXHIBIT B**. The agreement will cover the use of the parking spaces as defined within the “Scope” section of this RFP.
2. **PRICE:** The Contract will be paid for in a lump sum, up-front fashion. Other payments are not expected through the duration of the contract.
3. **PAYMENT:**
 - 3.1. In accordance with Chapter 2251, V.T.C.A., Texas Government Code, any payment to be made by the District to the Contractor will be made promptly within thirty (30) days of the date the District receives a correct invoice, as specified herein.
4. **NON-APPROPRIATION:** Contract shall be a commitment of the District’s current revenues only. It is understood and agreed the District shall have the right to terminate Contract at the end of any District fiscal year if the governing body of the District does not appropriate funds sufficient to purchase the estimated yearly Service, as determined by the District’s budget for the fiscal year in question. The District may affect such termination by giving the Contractor a written notice of termination at the end of its then current fiscal year.
5. **OVERSIGHT:** The District will monitor the parking facility to ensure that the area is well-maintained, operational, and being used in accordance with the project intent. If the District finds that the parking facility is being operated in breach of the contract, the District will request appropriate remedies. The District reserves the right to assess penalties as identified in the contract.

EXHIBIT A – MINIMUM INSURANCE REQUIREMENTS

The insurance requirements are specified within the draft contract which is included within **EXHIBIT B**.

EXHIBIT B - FEDERALLY REQUIRED CONTRACT CLAUSES

1. FLY AMERICA

- a.** The Respondent/Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their Respondents/Contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Respondent/Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements.
- b.** The Respondent/Contractor also agrees to include any applicable requirements in each subcontract involving international air transportation financed in whole or in part with Federal assistance provided by FTA.

2. BUY AMERICA – Does not apply to this contract.

3. CHARTER BUS and SCHOOL BUS REQUIREMENTS – Does not apply to this contract.

4. CARGO PREFERENCE REQUIREMENTS – Does not apply to this contract.

5. SEISMIC SAFETY REQUIREMENTS – Does not apply to this contract.

6. ENERGY CONSERVATION –

- a.** As authorized by the State of Texas, The Texas State Energy Conservation Office (SECO) has adopted the most recent edition of the International Energy Conservation Code (IECC) without amendment for new buildings or additions only. The Respondent/Contractor shall design the facility in accordance with 2009 IECC.

7. CLEAN WATER

- a.** The Respondent/Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The Respondent/Contractor agrees to report each violation to the Owner and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- b.** The Respondent/Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

8. BUS TESTING – Does not apply to this contract.

9. PRE-AWARD and POST DELIVERY AUDIT REQUIREMENTS – Does not apply to this contract.

10. LOBBYING

- a. Respondents/Contractors who apply for an award of \$100,000 or more shall file the Certification Regarding Lobbying, required by 49 CFR Part 20, New Restrictions on Lobbying, with the Owner. Each subcontractor shall file the Certification Regarding Lobbying with the Respondent/Contractor that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.
- b. The Respondent/Bidder/Contractor and subcontractors shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from subcontractors to Respondent/Bidder/Contractor to the Owner. The Respondent/Bidder/Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
- c. The Lobby Certification to be completed by the Respondent/Contractor and subcontractor(s) is provided herein under **EXHIBIT C**, Respondent/Contractor Pre-Award Certifications.

11. ACCESS TO RECORDS AND REPORTS

The following access to records requirements applies to this contract:

- a. The Owner is an FTA Recipient in accordance with 49 C.F.R. 18.36(i). The Respondent/Contractor agrees to provide the Owner, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Respondent/Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- b. The Respondent/Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The Respondent/Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Respondent/Contractor agrees to maintain same until the Owner, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 C.F.R. 18.39(i)(11).

- d. FTA does not require the inclusion of these requirements in subcontracts.

12. FEDERAL CHANGES

- a. The Respondent/Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Owner and FTA, as they may be amended or promulgated from time to time during the term of this contract. The Respondent/Contractor's failure to so comply shall constitute a material breach of this contract.
- b. The Respondent/Contractor also agrees to include any applicable requirements in each subcontract involving a federal change financed in whole or in part with Federal assistance provided by FTA.

13. BONDING REQUIREMENTS – Does not apply to this contract.

14. CLEAN AIR

- a. The Respondent/Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The Respondent/Contractor agrees to report each violation to the Owner and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- b. The Respondent/Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

15. RECYCLED PRODUCTS

- a. If the Respondent/Contractor procures \$10,000 or more of one of the Environmental Protection Agency designated items in a fiscal year or has procured \$10,000 or more of such items in the previous fiscal year using Federal funds, the Respondent/Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247, including:
 - i. Paper and paper products.
 - 1. Paper and paper products, excluding building and construction paper grades.
 - ii. Non-paper office products.
 - 1. Office recycling containers and office waste receptacles.
 - 2. Plastic desktop accessories.

3. Toner cartridges.
4. Plastic-covered binders containing recovered plastic; chipboard and pressboard binders containing recovered paper; and solid plastic binders containing recovered plastic.
5. Plastic trash bags.
6. Printer ribbons.
7. Plastic envelopes.
8. Plastic clipboards containing recovered plastic.
9. Plastic file folders containing recovered plastic.
10. Plastic clip portfolios containing recovered plastic.
11. Plastic presentation folders containing recovered plastic.
12. Office furniture containing recovered steel, aluminum, wood, agricultural fiber, or plastic.

- b. The Respondent/Contractor also agrees to include these requirements in each subcontract if the subcontractor procures \$10,000 or more of one of the Environmental Protection Agency designated items in a fiscal year or has procured \$10,000 or more of such items in the previous fiscal year using Federal funds.

16. DAVIS-BACON and COPELAND ANTI-KICKBACK ACTS – Does not apply to this contract.

17. CONTRACT WORK HOURS and SAFETY STANDARDS ACT – Does not apply to this contract.

18. RESERVED

19. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

- a. The Owner and the Respondent/Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Owner, the Respondent/Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b. The Respondent/Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

20. PROGRAM FRAUD and FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

- a.** The Respondent/Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Respondent/Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Respondent/Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Respondent/Contractor to the extent the Federal Government deems appropriate.
- b.** The Respondent/Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Respondent/Contractor, to the extent the Federal Government deems appropriate.
- c.** The Respondent/Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

21. TERMINATION

The Owner’s termination requirements come from the attached sample contract for this project (**ATTACHMENT A**).

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

- a.** This contract is a covered transaction for purposes of 49 C.F.R. Part 29. As such, the Respondent/Contractor is required to verify that none of the Respondent/Contractor, its principals, as defined at 49 C.F.R. 29.995, or affiliates, as defined at 49 C.F.R. 29.905, are excluded or disqualified as defined at 49 C.F.R. 29.940 and 29.945.
- b.** The Respondent/Contractor is required to comply with 49 C.F.R. 29, Subpart C and must include the requirement to comply with 49 C.F.R. 29, Subpart C in any lower tier covered transaction it enters.
- c.** The certification (**EXHIBIT C**) is a material representation of fact relied upon by the Owner. If it is later determined that the Respondent/Contractor knowingly rendered an erroneous certification, in addition to remedies available to the Owner, the Federal

Government may pursue available remedies, including but not limited to suspension and/or debarment. The Respondent/Contractor agrees to comply with the requirements of 49 C.F.R. 29, Subpart C and Executive Order 12549 while this offer is valid and throughout the period of any contract that may arise from this offer.

- d. The Respondent/Contractor also agrees to include these requirements in each subcontract exceeding \$25,000 financed in whole or in part with Federal assistance provided by FTA.

23. PRIVACY ACT

The following requirements apply to the Respondent/Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- a. The Respondent/Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,
- b. 5 U.S.C. § 552a. Among other things, the Respondent/Contractor agrees to obtain the express consent of the Federal Government before the Respondent/Contractor or its employees operate a system of records on behalf of the Federal Government. The Respondent/Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- c. The Respondent/Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

24. CIVIL RIGHTS REQUIREMENTS

The following requirements apply to the underlying contract:

- a. **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Respondent/Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Respondent/Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b. **Equal Employment Opportunity** - The following requirements apply to the underlying contract:
 - i. **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Respondent/Contractor agrees to comply with all

applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Respondent/Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Respondent/Contractor agrees to comply with any implementing requirements FTA may issue.

ii. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Respondent/Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Respondent/Contractor agrees to comply with any implementing requirements FTA may issue.

iii. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Respondent/Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Respondent/Contractor agrees to comply with any implementing requirements FTA may issue.

c. The Respondent/Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified, only if necessary, to identify the affected parties.

25. BREACHES AND DISPUTE RESOLUTION

The Owner’s breach and dispute resolution requirements come from the attached sample contract for this project (**ATTACHMENT A**).

26. PATENT AND DISPUTE RESOLUTION – Does not apply to this contract.

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS – Does not apply to this contract.

28. DISADVANTAGED BUSINESS ENTERPRISES

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The Owner's overall DBE Program Goal is 22%. The Owner incorporates the race neutral goal of 14% as established within the DBE Program. There is no DBE Goal on this procurement and any DBE participation will be achieved race neutrally.
- b. Respondent/Contractor shall not discriminate "on the basis of" race, color, national origin, or sex in the performance of this contract. Respondent/Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by Respondent/Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate. Each subcontract Respondent/Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. Respondent/Contractor is required to document all subcontractor participation including non-DBE subcontractors. Award of this contract is conditioned on submission of the following information Respondent/Contractor Certification in **EXHIBIT C**, Respondent/Contractor Pre-Award Certifications with the proposal:
 - i. (1) the names and addresses of subcontractors that will participate in the contract;
 - ii. (2) a description of the work that each subcontractor will perform;
 - iii. (3) whether the subcontractors are a DBE, non-DBE, or a Small Business;
 - iv. (4) the ethnic code, as described in the form;
 - v. (5) the age of the firm;
 - vi. (6) the annual gross receipts from the firm;
 - vii. (7) the dollar amount of the participation of each DBE firm participating; and
 - viii. (8) written confirmation from the DBE and/or SBE on the DBE and SBE Subcontractor Letter of Intent in **EXHIBIT C**, Respondent/Contractor Pre-Award Certifications.
- d. The Respondent/Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Respondent/Contractor's receipt of payment for that work from the owner. In addition, Respondent/Contractor is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the owner and Respondent/Contractor's receipt of the partial retainage payment related to the subcontractor's work.
- e. The Respondent/Contractor must promptly notify owner whenever a DBE subcontractor performing work related to this contract is terminated or fails to

complete its' work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Respondent/Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of owner.

- f. The Respondent/Contractor shall report DBE participation on a monthly basis on the Contractor Payment Report Form.
- g. The District encourages the Respondent/Contractor on DOT-assisted contract to make use of financial institution owned and controlled by socially and economically disadvantaged individuals. The Federal Reserve Statistical Release maintains a list of Minority-Owned Banks (<http://www.federalreserve.gov/releases/mob/>).

29. RESERVED

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

- a. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, "whether or not" expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Respondent/Contractor shall not perform any act, fail to perform any act, or refuse to comply with any the Owner requests which would cause the Owner to be in violation of the FTA terms and conditions.
- b. The Respondent/Contractor also agrees to include any applicable requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA.

31. DRUG AND ALCOHOL TESTING – Does not apply to this contract.

32. ACCESSIBILITY

- a. ADA Accessibility ensures that all individuals regardless of disability are not excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- b. The Respondent/Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities.
- c. The Respondent/Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794,

which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable.

- d.** In addition, the Respondent/Contractor agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal directives except to the extent FTA approves otherwise in writing.
- e.** The Respondent/Contractor and its subcontractors shall adhere to any applicable ADA Accessibility requirements from the following:
 - i.** 49 CFR Part 27 – Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance, U.S. DOT regulation
 - ii.** 49 CFR Part 37 - Transportation Services for Individuals with Disabilities (ADA), U.S. DOT regulation
 - iii.** 49 CFR Part 38 and 36 C.F.R. Part 1192 – Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles, Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulation
 - iv.** 28 C.F.R. Part 35 – Nondiscrimination on the Basis of Disability in State and Local Government Services, U.S. DOJ regulation
 - v.** 28 C.F.R. Part 36 – Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, U.S. DOJ regulation
 - vi.** 41 C.F.R. Subpart 101-19 – Accommodations for the Physically Handicapped, U.S. General Services Administration (U.S. GSA) regulation"29 C.F.R. Part 1630 – Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, U.S. EEOC
 - vii.** 47 C.F.R. Part 64, Subpart F – Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled, U.S. Federal Communications Commission regulation
 - viii.** 36 C.F.R. Part 1194 – Electronic and Information Technology Accessibility Standards, U.S. ATBCB regulation
 - ix.** 49 C.F.R. Part 609 – Transportation for Elderly and Handicapped Persons, FTA regulation

- f. Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

33. VETERAN'S PREFERENCE – Does not apply to this Contract.

ATTACHMENT A – SAMPLE CONTRACT

EXHIBIT C – RESPONDENT/CONTRACTOR PRE-AWARD CERTIFICATIONS

This checklist will be used to ensure that all required procurement certifications listed within have been read, initialed, and signed by the Respondent/Contractor BEFORE the proposal is submitted. All certifications listed below follow this checklist.

Respondent/Contractor's Initials:

- | | |
|--|-----------|
| 1. Lobbying Certification | _____ |
| 2. Suspension and Debarment Certification | _____ |
| 3. Respondent/Contractor Certification | _____ |
| 4. DBE and SBE Subcontractor Certification | _____ |
| 5. Delinquent State Business Tax Certification | _____ |
| 6. Conflict of Interest Questionnaire | _____ |
| 7. Certificate of Interested Parties | <u>NA</u> |
| 8. Senate Bill 252 Certification | <u>NA</u> |
| 9. House Bill 89 Verification | _____ |
| 10. Contractor Payment Report Form | <u>NA</u> |

I HEREBY ATTEST THAT EXHIBIT B, FEDERALLY REQUIRED CONTRACT CLAUSES, WAS READ AND MY INITIALS ABOVE INDICATE THAT EACH ITEM WAS PROPERLY PREPARED AND EXECUTED.

DATE: _____

SIGNATURE: _____

NAME / TITLE: _____

RESPONDENT/

CONTRACTOR: _____

LOBBYING CERTIFICATION

Certification for Contracts, Grants, Loans, and Cooperative Agreements (to be submitted with each bid or offer exceeding \$100,000)

The Respondent/Contractor certifies that to the best of his or her knowledge and belief, that:

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Respondent/Contractor/Subcontractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Respondent/Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

DATE: _____

SIGNATURE: _____

NAME / TITLE: _____

RESPONDENT/

CONTRACTOR: _____

SUSPENSION AND DEBARMENT CERTIFICATION

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS PRIMARY COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

The prospective primary Respondent/Contractor certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the prospective primary Respondent/Contractor is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

DATE: _____

SIGNATURE: _____

NAME / TITLE: _____

RESPONDENT/

CONTRACTOR: _____

INSTRUCTIONS FOR CERTIFICATION

By signing and submitting this proposal, the Respondent/Contractor is providing the certification set out below.

1. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Respondent/Contractor shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the District's determination whether to enter into this transaction. However, failure of the Respondent/Contractor to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
2. The certification in this clause is a material representation of fact upon which reliance was placed when the District determined to enter into this transaction. If it is later determined that the Respondent/Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the District may terminate this transaction for cause or default.
3. The Respondent/Contractor shall provide immediate written notice to the District to which this proposal is submitted if at any time the Respondent/Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the District to which this proposal is submitted for assistance in obtaining a copy of those regulations (13 CFR Part 145).
5. The Respondent/Contractor agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a subcontractor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the District entering into this transaction.
6. The Respondent/Contractor further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- Lower Tier Covered Transactions," provided by the District entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a Respondent/Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for transactions authorized under paragraph 6 of these instructions, if a Respondent/Contractor in a covered transaction knowingly enters into a lower tier covered transaction with a subcontractor who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the District may terminate this transaction for cause or default.

9. The Respondent/Contractor also agrees to include these requirements in each subcontract, or a lower tier covered transaction, exceeding \$25,000 financed in whole or in part with Federal assistance provided by FTA.

RESPONDENT/CONTRACTOR CERTIFICATION

Instructions: The prime Respondent/Bidder/Contractor shall complete this form by listing 1) Names of ALL proposed subcontractors, whether or not the subcontractor is a DBE or SBE. 2) Contact information, 3) Description of work to be performed/product to be provided, 4) Status as a DBE or non-DBE, 5) Ethnic Code of firm, 6) Gender code of owner, 7) Age of the firm, 8) Annual gross receipts of the firm, and 9) % or \$ amount of Total Subcontract. Those contractors which are listed on this form as DBEs must have current certification as a DBE with a participating TUCP certifying agency. The DBE certification must be complete by the time the proposals are submitted. Additionally, those (sub)contractors which are listed on this form as DBEs must complete DBE SUBCONTRACTOR CERTIFICATION, agreeing to the information listed here.

RESPONDENT/
CONTRACTOR: _____

PROJECT NAME: _____

ETHNIC CODES

- A) Black American B) Hispanic American C) Native American
D) Subcontinent Asian American E) Asian-Pacific American F) Non-Minority Women
G) Other

GENDER CODES

- A) Male B) Female C) Choose Not to Disclose

1) Name of Subcontractor	2) Address, Telephone # of DBE Firm (Including name of contact person)	3) Description of Work, Services Provided. Where applicable, specify "supply" or "Install" or both.	4) DBE, SBE or non-DBE	5) Ethnic Code	6) Age of Firm	7) Annual Gross Receipts	8) % or \$ amount of Total Contract

THIS SCHEDULE MUST BE COMPLETED AS INSTRUCTED ABOVE AND INCLUDE EVERY SUBCONTRACTOR PROPOSED ON THIS PROJECT.

The undersigned will enter into a formal agreement with DBE and/or SBE contractors for work listed in this schedule upon execution of a contract with the District. The Respondent/Contractor agrees to the terms of this schedule by signing below and submitting the **Form 4**, as completed by the DBE or SBE subcontractor(s).

SIGNATURE OF AUTHORIZED REPRESENTATIVE

DATE

DBE AND SBE SUBCONTRACTOR CERTIFICATION

Note: DBE and SBE firms participating in the DBE or SBE Program must have "current" certification status with a UCP Certifying Agency by the due date established for this Invitation for Bid (IFB) or Request for Proposal (RFP).

1. TO: (Respondent/ Contractor): _____
2. The undersigned is either currently certified under a Unified Certification Program (UCP) as a DBE, SBE or will be at the time this RFP is due.
3. The undersigned is prepared to perform the following described work and/or supply the material listed in connection with the above project (where applicable specify "supply" or "install" or both) _____

_____ and at the following price \$ _____ and/or _____ % of the total contract amount (should be the same \$ or % found on **RESPONDENT/ CONTRACTOR CERTIFICATION**).

4. The DBE or SBE subcontractor should complete this section only if the DBE or SBE is subcontracting any portion of its subcontract.

With respect to the proposed subcontract described above, the undersigned DBE anticipates that _____ % of the dollar value of this subcontract will be awarded to other contractors. Any and all DBE subcontractors a DBE subcontractor uses must be listed on Respondent/Contractor Certification and must also be DBE certified.

DATE: _____ DBE/SBE FIRM: _____

SIGNATURE: _____

PRINT NAME: _____

PHONE NUMBER: _____

DATE: _____ **RESPONDENT/
CONTRACTOR:** _____

SIGNATURE: _____

PRINT NAME: _____

PHONE NUMBER: _____

DELINQUENT STATE BUSINESS TAX CERTIFICATION

All Respondents shall certify that Respondent is not delinquent in a tax owed the state under Chapter 171, Tax Code, pursuant to the Texas Business Corporation Act, Texas Statutes, Article 2.45.

DATE: _____

SIGNATURE: _____

NAME / TITLE: _____

RESPONDENT/

CONTRACTOR: _____

CONFLICT OF INTEREST QUESTIONNAIRE

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
<p>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	OFFICE USE ONLY Date Received	
1 Name of vendor who has a business relationship with local governmental entity.		
2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)		
3 Name of local government officer about whom the information is being disclosed. <div style="text-align: center; border-top: 1px solid black; width: 80%; margin: 0 auto;"> Name of Officer </div>		
4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.		
<div style="margin-bottom: 20px;"> <p>A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <div style="display: flex; justify-content: center; gap: 50px;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </div> </div> <p>B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <div style="display: flex; justify-content: center; gap: 50px;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </div>		
5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.		
6 <input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).		
7		
Signature of vendor doing business with the governmental entity		Date

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;

or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

CERTIFICATE OF INTERESTED PARTIES

*For reference only, this form is filled out with the awarded Contractor online
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm*

CERTIFICATE OF INTERESTED PARTIES		FORM 1295																																					
Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.		OFFICE USE ONLY																																					
1 Name of business entity filing form, and the city, state and country of the business entity's place of business.		<div style="font-size: 2em; transform: rotate(-45deg); opacity: 0.3; pointer-events: none;"> Must file online at www.ethics.state.tx.us/File </div>																																					
2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.																																							
3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.																																							
4	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 35%; text-align: left; padding: 5px;">Name of Interested Party</th> <th style="width: 30%; text-align: left; padding: 5px;">City, State, Country (place of business)</th> <th colspan="2" style="text-align: left; padding: 5px;">Nature of Interest (check applicable)</th> </tr> <tr> <th></th> <th></th> <th style="width: 20%; text-align: center; padding: 5px;">Controlling</th> <th style="width: 25%; text-align: center; padding: 5px;">Intermediary</th> </tr> </thead> <tbody> <tr><td style="height: 30px;"></td><td></td><td></td><td></td></tr> <tr><td style="height: 30px;"></td><td></td><td></td><td></td></tr> <tr><td style="height: 30px;"></td><td></td><td></td><td></td></tr> <tr><td style="height: 30px;"></td><td></td><td></td><td></td></tr> <tr><td style="height: 30px;"></td><td></td><td></td><td></td></tr> <tr><td style="height: 30px;"></td><td></td><td></td><td></td></tr> <tr><td style="height: 30px;"></td><td></td><td></td><td></td></tr> </tbody> </table>			Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)				Controlling	Intermediary																												
Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)																																					
		Controlling	Intermediary																																				
5 Check only if there is no Interested Party. <input type="checkbox"/>																																							
6 UNSWORN DECLARATION My name is _____, and my date of birth is _____. My address is _____ (street) _____ (city) _____ (state) _____ (zip code) _____ (country). I declare under penalty of perjury that the foregoing is true and correct. Executed in _____ County, State of _____, on the _____ day of _____, 20____. <div style="text-align: right; margin-right: 100px;"> _____ Signature of authorized agent of contracting business entity (Declarant) </div>																																							
ADD ADDITIONAL PAGES AS NECESSARY																																							

Form provided by Texas Ethics Commission
www.ethics.state.tx.us
Revised 12/22/2011

SENATE BILL 252 CERTIFICATION

On this day, I, _____, the _____ for the **East End Management District**, pursuant to Chapter 2252, Section 2252.152 of the Texas Government Code, certify that I did review the website list prepared, maintained, and made available to the East End Management District by the Comptroller of the State of Texas of companies known to have contracts with or provide supplies or services to Iran, Sudan or any foreign terrorist organization. I have ascertained that the below-named company is not contained on said list of companies that do business with Iran, Sudan or any Foreign Terrorist Organization.

RESPONDENT FILL OUT THE BELOW SECTION:

Company Name

RFP or Vendor number

CERTIFICATION CHECK PERFORMED BY:

(signature)

East End District Representative

Date

HOUSE BILL 89 VERIFICATION

I, _____ (Person name), the undersigned representative of (Company or Business Name) _____ (hereinafter referred to as Company) **being an adult over the age of eighteen (18) years of age, after being duly sworn by the undersigned notary, do hereby depose and verify under oath that the company named-above, under the provisions of Subtitle F, Title 10, Government Code Chapter 2270:**

- a) Does not boycott Israel currently; and
- b) Will not boycott Israel during the term of the contract the above-named Company, business or individual with the East End Management District

Pursuant to Section 2270.001, Texas Government Code:

- 1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
- 2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.

DATE

SIGNATURE OF COMPANY REPRESENTATIVE

STATE OF _____ § COUNTY OF _____

On this day, BEFORE ME, the undersigned, personally appeared _____, the _____ of Company, and personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual executed the instrument for purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2019.

[SEAL]

NOTARY PUBLIC in and for the State of Texas

CONTRACTOR PAYMENT REPORT FORM

Provided for Reference

Instructions: Contractors are required to complete and submit this report, as specified in the contract or as requested, until final payment of the contract has been made. Failure to comply with the DBE provisions may result in contract termination, or the suspension or debarment of the contractor from doing business with the Owner in the future in accordance with the procedures set forth in the DBE Program. This report must be submitted with each invoice. Instructions for completing this report can be found on the following sheet.

1 Contract Number, if applicable	2 Invoice Number	3 Reporting Period		4 Contractor's Business Name	5 Contact Person	6 Address
		From:	To:			
7 Telephone Number	8 Date of Contract Award	9 Schedule Date of Completion	10 Original Contract Amount	11 Current Contract Modifications	12 Total Amount Received to Date	13 Total Amount Owed
14 Committed DBE %	15 Actual DBE Participation to date	16 Actual DBE % to date				

17 Name of DBE Subcontractor	18 Description of Work	19 Amount of payments made during current invoice period	20 Date of payments made during current invoice period	21 Subcontract Dollars	22 Amount paid to date	23 Percent paid to date	24 Amount of this invoice allocated to DBE Subcontractor

(Add rows to the table, as needed, to complete this section)

By completing this form, the Contractor acknowledges the Owner's prompt payment policy, which requires the Contractor to pay all subcontractors within 30 days of receiving payment from the Owner.

Signature	Date Signed	Name and Title of Individual Completing Report

EXHIBIT D – ACKNOWLEDGEMENT OF ADDENDA

*East End Management District
Satellite Parking Use Agreement*

The undersigned acknowledges receipt of the following addenda to the District Request for Proposal documents (give number and date of each)

ADDENDUM NUMBER _____ DATED: _____

ADDENDUM NUMBER _____ DATED: _____

ADDENDUM NUMBER _____ DATED: _____

ADDENDUM NUMBER _____ DATED: _____

ADDENDUM NUMBER _____ DATED: _____

ADDENDUM NUMBER _____ DATED: _____

Failure to acknowledge receipt of all addenda may cause the proposal to be considered non-responsive to the request which would require rejection of the proposal.

The undersigned understands that any condition stated above, clarification of the above, or information submitted on or with this form other than requested will render the quotation non-responsive.

DATE: _____

RESPONDENT/ CONTRACTOR: _____

ADDRESS: _____

CITY, STATE, ZIP: _____

AUTHORIZING OFFICIAL
SIGNATURE: _____

PRINT NAME: _____

TITLE: _____

EXHIBIT E - RESPONDENT INFORMATION FORM

Instructions: Respondent shall complete and submit this form as a part of the proposal. Respondent may submit information not fitting on this form as an attachment to the form.

COMPANY INFORMATION

LEGAL BUSINESS NAME: _____

ARE YOU A / AN: ☐ **INDIVIDUAL**, ☐ **LIMITED PARTNERSHIP**, ☐ **GENERAL PARTNERSHIP**, ☐ **CORPORATION**, ☐ **LIMITED LIABILITY COMPANY**

ADDRESS: _____

CITY, STATE ZIP CODE: _____

CONTACT: _____

TELEPHONE NUMBER: _____

E-MAIL: _____

YEAR ESTABLISHED: _____

NUMBER OF EMPLOYEES (COMPANY-WIDE): _____

LOCATION OF THE AVAILABLE PARKING: _____

YEAR THAT STRUCTURE WAS BUILT: _____

NUMBER OF SPACES AVAILABLE: _____

PROVIDE OPERATIONS AND MAINTENANCE IN-HOUSE ____ **YES** ____ **NO**

IF NO, NAME OF COMPANY: _____

REFERENCES

The Respondent shall provide (3) references for which the same or similar Service has been provided within the past five (5) years. If a third-party is proposed to provide maintenance and operations, please provide (3) references for that entity as well.

Company:	Contact Person:
Email:	Phone:
Address:	Location of Service:
Contract Hourly Rate: \$	Performing as: <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor
Contract Start Date:	Expected End Date:
Type of Transportation Service:	
Describe Transportation Service:	

Company:	Contact Person:
Email:	Phone:
Address:	Location of Service:
Contract Hourly Rate: \$	Performing as: <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor
Contract Start Date:	Expected End Date:
Type of Transportation Service:	

Describe Transportation Service:	
Company:	Contact Person:
Email:	Phone:
Address:	Location of Service:
Contract Hourly Rate: \$	Performing as: <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor
Contract Start Date:	Expected End Date:
Type of Transportation Service:	
Describe Transportation Service:	

Company:	Contact Person:
Email:	Phone:
Address:	Location of Service:
Contract Hourly Rate: \$	Performing as: <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor
Contract Start Date:	Expected End Date:
Type of Transportation Service:	
Describe Transportation Service:	

Company:	Contact Person:
Email:	Phone:
Address:	Location of Service:
Contract Hourly Rate: \$	Performing as: <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor
Contract Start Date:	Expected End Date:
Type of Transportation Service:	
Describe Transportation Service:	

Company:	Contact Person:
Email:	Phone:
Address:	Location of Service:
Contract Hourly Rate: \$	Performing as: <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor
Contract Start Date:	Expected End Date:
Type of Transportation Service:	
Describe Transportation Service:	
Company:	Contact Person:

Address:	Location of Service:
Contract Hourly Rate: \$	Performing as: <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor
Contract Start Date:	Expected End Date:
Type of Transportation Service:	
Describe Transportation Service:	

EXCEPTIONS / SUBSTITUTIONS

Please list any proposed exceptions and/or substitutions to the RFP.

PAGE / PARAGRAPH NUMBER	EXCEPTION / SUBSTITUTION

SUBCONTRACTOR INFORMATION

Please list any proposed subcontractors being utilized for the scope of work.

COMPANY NAME	DUNS NUMBER	RESPONSIBILITY	QUALIFICATIONS

THE UNDERSIGNED CERTIFIES THAT HE/SHE IS LEGALLY AUTHORIZED BY THE RESPONDENT TO MAKE THE STATEMENTS AND REPRESENTATIONS CONTAINED IN THIS DOCUMENT AND REPRESENTS AND WARRANTS THAT THE INFORMATION IS TRUE AND ACCURATE TO THE BEST OF HIS/HER KNOWLEDGE AND INTENDS THAT THE CITY RELY THEREON IN EVALUATING THE PROPOSAL.

DATE: _____

SIGNATURE: _____

NAME / TITLE: _____

RESPONDENT/
CONTRACTOR: _____

EXHIBIT F – PRICE PROPOSAL FORM

1. The lease will be paid up-front, in full, within 120 days of an executed contract. Included with the lease will be the use of parking spaces for transit users per the terms and descriptions outlined within the “Scope” section of this RFP. This includes the provision of a donated ground lease, free and clear of all liens, for the property for which the garage is situated, from the lessor to the District. Parking rates are subject to change based on input and guidance from the District based on audits and reviews. The owner is otherwise free to set a unique parking rate for the general public, so long as transit users have priority and pre-emption for their allocated spaces. The transit priority and pre-emption will be audited and will be a term within the final agreement.

Item/Component	Amount
40-Year Lump Sum Parking Agreement Price	\$

If proposing a lump sum for less than 250 parking spaces, list the proposed number of spaces- _____

2. The subsidized parking rate will be used to offset maintenance and operations costs, for the transit spaces. The intent of the project is to deliver a subsidized parking rate to the maximum extent possible, at a rate of no less than \$3 per day. The rate may be adjusted given market realities and actual costs, but final decisions regarding the rate will be made by the District, the District Board of Directors, and other project partners. As such, the provider should endeavor to provide maintenance and operations at a cost which can be absorbed by the daily rate while considering the benefits of non-transit utilization and cost recovered via the parking agreement itself. Any net revenue from the daily rate, meaning revenue less operations and maintenance costs for the transit spaces, will be returned to the District for use on transit-related infrastructure.

The price listed below should note a total annual maintenance and operations rate for the transit spaces in the first year of the agreement as well as the percentage of profit which is built into that rate. Additionally, an annual escalation factor is requested. Actual costs will be reviewed and audited for the future successful respondent.

Item/Component	Amount
Year 1 Maintenance and Operations Annual Total Rate	\$
Year 1 Maintenance and Operations Profit Rate (% of Total Rate)	%
Annual Maintenance and Operations Price Escalation Factor (Years 2-40)	%

EXHIBIT G – BEST VALUE PROCUREMENT INFORMATION FORM

Selection of a provider of a parking agreement for this project will be on a Best Value Procurement basis according to guidelines of the Federal Transit Administration.

Contract award will be made to the responsible firm whose submittal is most advantageous to the District based on bid price and other evaluation factors.

The combined evaluation factors will be approximately equal in importance to price in determining the most advantageous contract award.

The evaluation factors are listed below in general order of importance. The indicated information must be submitted along with all other bid package requirements in order to facilitate evaluation of the contractor.

1. **Approach to Project.** Submit a description of how you will deliver this project based upon the needs and objectives of the District as it relates to the utilization of transit-oriented parking. The approach should specifically include:
 - a. A graphic which identifies the geographic location of the site of the parking in relation to the Green Line (<https://www.ridemetro.org/Pages/GreenLine.aspx>) east of Milby St. A narrative description as to why this is an ideal location for a transit-oriented garage and how convenient access to a light rail stop/station will be facilitated.
 - b. A graphic site plan for the parking facility.
 - c. The number of spaces provided, documentation on amenities/appurtenances provided (bicycle parking, pedestrian lighting, restrooms, signage, wayfinding, landscaping, etc.). Be sure to describe your approach to deliver the project in a way consistent with the intent of this RFP. **The District may accept less than the 250 total parking spaces desired. If less than the 250 spaces is proposed, be very clear in the number of spaces and the associated time periods of availability within the lease.**
 - d. Documentation that the site meets Americans with Disabilities Act (ADA) provisions.
 - e. A statement which establishes that the proposer clearly understands that a ground-lease of the property, by the proposer, to the District, for \$1.00 a year, for the term of the parking agreement itself, will occur.
 - f. A statement which establishes that the proposer understands that the agreement will also include an annual fee, paid every year, of \$15,000, subject to a 3% annual escalation fee, paid to the East End District. This fee will offset costs

associated with administrative, accounting, and other related expenses by the District as it relates to the administration of the long-term lease.

- g. A statement which establishes that the proposer clearly understands that the funds used for this parking agreement will be federal in nature and will carry, with it, federal provisions as documented within this request for proposals. This includes the concept of “federal interest” in that any cancellation or breach of the parking agreement or ground lease by the proposer will require payment of the unamortized federal interest in the project back to the District.
 - h. A description of how operations and maintenance will be provided for the garage and for the transit-related component of the garage, if two or more uses exist. If a third party is providing for O&M, please document this. This description should include how transit users will be able to pay a different parking rate than the general public.
- 2. **Experience of Firm.** This will be evaluated based on your previous experience and demonstrated ability in owning, operating, and managing parking facilities.
- 3. **Proposed Schedule.** This will be evaluated based on project development schedule efficiency. For example, the schedule will differ dependent upon if the proposed garage exists, exists but needs improvements, is under construction, or does not currently exist.

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LUMP SUM PARKING USE LEASE AGREEMENT

THIS LUMP SUM PARKING USE LEASE AGREEMENT (this "Agreement") is executed effective as of the ____ day of _____, 2020 ("Effective Date"), by and between the _____, whose address is _____ (Lessor), and the East End Management District, a political subdivision of the State of Texas created pursuant to _____ ("Lessee"), whose address is East End District, 3211 Harrisburg Boulevard, Houston, TX 77003, (713-928-9916). Lessor and Lessee are sometimes referred to herein collectively as the "Parties" or singularly as a "Party".

PREAMBLE

This Lump Sum Parking Lease with Lessor is to secure the provision of a Facility which includes two-hundred fifty (250) parking spaces to be used for public transit purposes, and other appurtenances (signage, lighting, parking fee collection, etc.) to facilitate access to the adjacent METRO transit station. In addition, the Lessor is to provide operations and management of the facilities which are the subject of this Lease.

The initial daily parking rate for transit parking will initially be \$3 per day for vehicles parked as denoted below in Table 1:

Table 1: Parking Details

Number of Regular Vehicular Parking Spaces	Number of ADA Accessible Parking Spaces	Time of Day/Week
242	8	Monday – Friday 5:00 a.m. to 7:00 p.m.
18	2	All Other Days and Times

Operations and management (O&M) costs will be paid from revenues derived from the daily parking rate at the risk of the lessor. All net revenues from the transit-related parking will be conveyed to the District for reinvestment into transit-related public improvements. Daily parking rates may be adjusted, based upon utilization, with the goal of covering O&M costs and subsidizing transit to the maximum extent possible.

Revenue derived from use of the parking spaces, during non-transit periods and when not needed for transit use, is not a component of this agreement and is not otherwise restricted with the exception that transit use, during the specified time periods, are the priority. Failure to comply with this requirement may result in penalties and/or breach of contract.

This Lease Agreement is for a period of 40 years and will be paid for in a lump sum, up-front fashion. A component of the lease of the 250 parking spaces is execution of a separate ground-lease from the owner to the District, of the property upon which the facility operates. This

ground-lease will allow the value of the property itself to be used as match for federal funding programmed to pay for the capital lease.

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SECTION 1- RECITALS

WHEREAS, Lessor is the owner of that certain parcel of land, located at _____
Exhibit A (the “Land”);

WHEREAS, the Lessor has been selected by the Lessee to furnish a facility which will provide 250 parking spaces and other related infrastructure;

WHEREAS, the Lessor, has been selected by the Lessee to furnish a completed facility for utilization for park and ride parking, for commuters desiring to access the Houston METRO Light Rail facility;

WHEREAS, the Lessor has also agreed to provide pedestrian access, signage and other amenities to accommodate this access;

WHEREAS, the Lessee and Lessor have agreed to enter into this Agreement in accordance with all federal, state, and local laws;

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations, and benefits of Lessor and Lessee contained herein, Lessor and Lessee agree as follows:

SECTION 2 - DEFINITIONS

Facility – Refers to the provision of a minimum of two hundred-fifty (250) parking spaces and other pedestrian – transit access improvements which support access to METRO’s Light Rail Station

Federal Transit Administration (FTA) - Refers to the federal agency from which funding will be used to support the Lump Sum Payment

Ground Lease – Refers to a separate, stand alone, agreement which will (1) ensure continuing control of the project property by the Lessor, in the event of breach or default of contract, and (2) serve as the local “match” for federal funds used for this lump sum lease agreement. The Ground Lease must be executed in tandem with this contract and must be executed free of any other lien-hold interests in the project property

H-GAC – Refers to the Houston-Galveston Area Council

Lease Initiation Period – Refers to the day the Lessee assumes occupancy of the parking spaces and other infrastructure subject to this Lease Agreement

Lease – Refers to a forty (40) year Lump Sum Lease Agreement

Lessor – Refers to _____

Lessee – Refers to the East End Management District

Lump Sum Payment – Refers to a single payment to secure the Facility for a forty (40) year period

METRO – Refers to the Metropolitan Transit Authority of Harris County

Net Revenues – Refers to the transit-related parking revenue less operating and management cost

Operating and Management Cost – Refers to the cost to Lessor for maintenance, personnel, and equipment necessary to operate, maintain, and manage maintain the facility in a suitable condition for the purposes stated herein.

Park and Ride Revenue – Refers to the revenue derived from commuters parking in up to two hundred-fifty (250) spaces for commute purposes

Useful Life – Means the forty (40) year period of the Capital Lease, which is the estimated useful life of the facility

SECTION 3 - LUMP SUM LEASE

3.1 Lump Sum Amount. The Lessor and Lessee agree that the maximum compensation due to Lessor by Lessee to support the Lump Sum Amount due to Lessor for a forty (40) year lease of the Facility will not exceed \$ _____. The Lump Sum Amount will be provided no later than thirty (30) days prior to the agreed upon Occupancy Date for Lessee to take possession of the Premises.

3.2 Federal Interest. The Lessor and Lessee agree and acknowledge that the Federal Transit Administration (FTA) has an equitable interest in the forty (40) year Lump Sum Lease and that that interest will remain until full completion of the forty (40) year lease period. Lessor agrees that should the Lessor, through no fault of Lessee, default on its ability to provide “continuing control of use” by Lessee for the purposes stated herein, then Lessor will compensate Lessee on the basis of the remaining, unamortized useful life of the Lump Sum Lease, calculated on a straight line basis, as further described in Section 14 of this Agreement.

SECTION 4 - FEDERAL PROVISIONS

4.1 Federal Requirements. Lessor acknowledges that it has agreed to all the federal provisions which have been incorporated within this Capital Lease Agreement via **Exhibit B**, the original Request for Proposals (RFP) and Proposal itself.

SECTION 5 - FACILITY LEASE

LUMP SUM LEASE

5.1 Initiation of Facility Lease Period. Lessor and Lessee agree that the Facility Lease Period will begin upon the acceptance by the Lessor of the Premises. The Facility Lease Period will run concurrently with the Ground Lease incorporated by reference herein.

5.2 Facility Lease. Lessor, in consideration of the promises, covenants, obligations and benefits contained herein, does hereby lease unto Lessee and Lessee does hereby rent and lease from Lessor the Facility (the "Facility Lease"), subject to the terms of this Agreement. The Facility includes the use of 250 parking spaces and associated transit appurtenances as identified

within **Exhibit C, “Lease Details.”** The lease includes the provision of operating and management costs, as further defined within this agreement.

This Facility Lease, and the rights of the Lessee hereunder are subject to (i) all federal, state and local law, (ii) all restrictions, covenants, conditions, reservations, encumbrances, and easements, if any, relating to the Land and Facility, but only to the extent they are still in effect and shown of record in the Harris County real property records or apparent from visual inspection, and (iii) any rights reserved herein to Lessor. Notwithstanding any provision herein to the contrary, the under lying property which supports the Facility and related pedestrian/transit access improvements are considered an integral part of this Facility Lease.

5.3 Covenant of Quiet Enjoyment. Lessor covenants and warrants, to the extent permitted under the laws of the State of Texas, that, so long as Lessee is not in default hereunder, Lessee shall and may peaceably and quietly have, hold, occupy, use, and enjoy and shall have the full and unrestricted use and enjoyment of the Facility during the Lease Term, subject to the terms of this Agreement.

5.4 Facility Condition. Provided the Facility upon completion and acceptance by Lessee, substantially complies in all material respects with the representations and requirements contained within, Lessee accepts the Facility in its condition upon the date of the initiation of the Facility Lease Period, “AS IS, WHERE IS” and “WITH ALL FAULTS”, and acknowledges that it has examined or will examine the Facility, in accordance with the provisions hereof, and that it has not relied on any representation or warranty by Lessor or Lessor’s representatives, except as otherwise expressly stated herein, regarding the Facility, including any warranty or representation relating to value, suitability, fitness for a particular purpose, or condition of the Facility.

5.5 Lease Term. Subject to the terms and conditions hereof, the term of the Facility Lease is for a period of forty (40) years, beginning on the Lease Effective Date and ending at midnight on the day immediately preceding the 40th anniversary of the Lease Effective Date, unless terminated sooner as provided for in this Agreement (the “Lease Term”). Such Lease Term may be extended for one 5-year period in accordance with the terms of this Agreement: (a) upon Lessee’s written notice to Lessor of its intent to extend the Lease Term given no later than nine (9) months prior to the termination of the Lease Term, and (b) upon separate written agreement endorsed by the parties as to suitable rent to be paid by Lessee to Lessor during such extension no later than six (6) months prior to the termination of the Lease Term; provided, however, if the parties are unable to come to agreement as to the rent to be paid by Lessee during such extension by that date six (6) months prior to the termination of the Lease Term there shall be no such extension and the Lease Term shall terminate as originally provided. Any extension of the Lease Term is hereinafter referred to as the “Extended Lease Term.”

5.6 Use. Lessee shall use the Facility solely for the operation of the Project as a public transit facility including public parking, pedestrian/transit access and other related infrastructure which is part of this Lump Sum Lease Agreement. Lessor agrees that the Facility will be open to the general public for this purpose 24 hours a day, 365 days a year.

5.7 Federal Interest. Lessor and Lessee agree that with respect to federal funding which is used to support the Lump Sum Lease Amount, the FTA will retain an equitable interest in the value of the leasehold interest conveyed by Lessor to Lessee, during the initial forty (40) year Lease Term, subject to earlier termination as hereinafter provided. The term “equitable interest” refers to the proportionate value of federal funding to the total authorized expenses on the leasehold interest, but in no event to exceed (100%). Thereafter, all federal and FTA interest in such leasehold interest will cease.

Should there be a default by the Lessor, the parties shall compute the remaining unamortized pro-rata value of the unexpired Lease Term as follows: the portion of the Lump Sum Amount funded by FTA will be multiplied by a fraction, the numerator of which is the number of months then remaining in the initial forty (40) year Lump Sum Lease Term, and the denominator of which is 480. Lessor and Lessee agree that in no event will Lessor be obligated to pay Lessee compensation in excess of the amount, if any, owed by Lessee to the FTA with respect to development of the Project.

5.8 Continuing Control of Use. Lessor and Lessee agree that the initial Lease Term conveyed by Lessor to Lessee through this Agreement satisfies the FTA Continuing Control of Use provisions which require the Lessee to maintain “continuing control of use” of project Facility acquired through FTA funding, whether through purchase or lease, throughout their useful life. The FTA has determined that the useful life of an intermodal transit/parking facility such as the Facility is forty (40) years.

5.9 Ownership of Improvements. During the Lease Term, Lessee shall have beneficial use of all Facility improvements as identified in this agreement and all applicable exhibits, but title to and ownership of the Facility shall be in Lessor’s name. Upon expiration or termination of the Lease Term, such improvements shall be the property of Lessor, free and clear of all claims of Lessee and the FTA. Any personal property of Lessee or under Lessee’s control that remains on the Land, or within the Facility, upon termination of the Facility Lease shall be deemed abandoned and, at Lessor’s election, may be retained by Lessor as Lessor’s property, or disposed of by Lessor without notice or obligation to Lessee or any other party, and in such manner as Lessor deems fit.

5.10 Limitation on Detrimental Uses. During the Lease Term,

a. Lessee shall not use the Facility for any unlawful purpose nor cause, permit, or suffer any waste, damages, or injury to, or nuisance upon, any portion of the Facility. Lessee shall not permit any use of the Facility that is unlawful or sexually explicit or that pertains to sexually-oriented businesses; or constitutes a public or private nuisance; or in any way makes void or voidable any insurance then in force with respect thereto or makes it impossible to obtain insurance.

SECTION 6 - DEFAULT AND REMEDIES

6.1 Lessee’s Default. Each of the following events shall be an event of default by Lessee;

a. Failure or refusal to pay Lessor the Lump Sum agreed upon price for the forty (40) year parking use lease period, will constitute a default by Lessee under the terms of this Agreement shall likewise include the Facility and the underlying property.

6.2 Lessor's Remedies. Upon an event of default by Lessee, after notice and failure to cure by Lessee in accordance with Section 6.5, Lessor has the following remedy, in addition to any other remedies available to Lessor under applicable law.

a. Lessor may, at Lessor's election, terminate this Agreement by providing Lessee written notice of termination which shall result in this Agreement being terminated. Upon such termination, Lessee shall have no further rights hereunder and no rights of any sort to the use of the Facility constructed hereunder.

b. In the event that Lessee's default causes, results in or leads to the repayment of Federal Funds to FTA, Lessee shall be responsible for payment of those funds directly to FTA.

c. In the event of a default by Lessee, the FTA "equitable interest" in the Facility, as described in Section 5.9 herein, will cease. Notwithstanding anything to the contrary, Lessee agrees to take, at its sole cost and expense, all actions necessary to terminate and remove such FTA "equitable interest" in the Facility.

6.3 Mitigation of Damages. If Lessor terminates Lessee's right to possession of the Facility, as a result of a default by Lessee, then Lessor shall comply with Texas Property Code 91.006 – Landlord's Duty to Mitigate Damages.

6.4 Lessor's Default. Each of the following events will constitute an event of default by Lessor:

a. Failure by Lessor to perform as required any covenant, agreement, or obligation (other than the mere payment of a liquidated sum of money) of Lessor under this Agreement if the same is not cured within thirty (30) days after Lessee's written notice of such failure to Lessor; provided, that, if such default is of a nature that cannot reasonably be expected to be cured within said 30 days, then for such longer time as may be reasonably necessary so long as Lessor commences the cure within said 30 days and thereafter diligently prosecutes the same to completion within one hundred eighty (180) days from date of receipt of notice of default.

b. Lessor's failure to fulfill each of its obligations under this Agreement to Lessee during the entire Lease Term, thereby preventing Lessee from fulfilling its obligations to the FTA to provide for "continuing control of use of the Facility" throughout its useful life, and/or precluding public transportation services from the federally financed Project.

6.5 Lessee's Remedies. Notwithstanding anything to the contrary contained within this Agreement, Lessor's liability for damages and compensation to Lessee, in the event of Lessor's default under this Agreement, shall be limited to the amount required to repay to the FTA some or all of the federal funding utilized to fund the Lump Sum Amount, as a result of Lessor's default. Such repayment shall be made directly to Lessee, within thirty (30) days of written notification to the Lessor of the payment due, which notification shall include documentation

acceptable to Lessor evidencing the obligation of Lessee to return the funds to the FTA. Should the Lessor be unable or unwilling to provide payment to satisfy FTA repayment requirements, for any reason, the Lessor will surrender the property and the improvements constructed upon it to the Lessee for liquidation.

6.6 Unavoidable Default or Delay; Waiver. Any prevention, delay, nonperformance, or stoppage due to any of the following causes shall excuse nonperformance for the period of any such prevention, delay, nonperformance, or stoppage, except the obligations imposed by this Agreement for the payment of rent, the payment of Progress Payments, or the provision of insurance. The causes referred to above are strikes, lockouts, labor disputes, failure of power, acts of God, including, but not limited to, acts of public enemies of the State of Texas or of the United States, riots, insurrections, civil commotion, inability to obtain labor or materials or reasonable substitutes for either, governmental restrictions or regulations or controls, casualties, hurricanes, floods or other causes beyond the reasonable control of the Party obligated to perform (collectively, “Force Majeure”).

SECTION 7- MANAGEMENT AND OPERATIONS

7.1 Management. Lessor and Lessee acknowledge that Lessor is fully responsible for the management of the Facility which is the subject of this lease and that this responsibility includes continuous access for Lessee to the Facility.

7.2 Management Responsibilities. Management responsibilities are those defined as eligible for operating and management expenses within Section 7.3.

7.3 Operating and Management Expense. Lessor agrees that Lessor is solely responsible for the cost of Facility operations, maintenance, management, and administration, during the Lease Period. Where pro-rata costs are referenced, pro-rata is defined as the proportional share of the costs associated with transit utilization based on the number of transit parking spaces in relation to the overall number of parking spaces, on a percentage basis. The following expenses will be considered eligible operating and management expenses:

- a. The pro-rata cost of maintaining transit parking spaces for use by Lessee including the removal of all oil and grease on a periodic basis, the removal of all graffiti on a periodic basis, the daily removal of trash, and the repair of all damage which might render a parking space unsuitable for use.
- b. The pro-rata cost of managing parking for transit use. Parking management may include the cost of personnel assigned to manage the Park and Ride spaces or a pro-rata proportion of salaries, materials, and equipment, and/or a pro-rata portion of management fees paid to a parking management company retained by Lessor to manage all parking spaces in the facility.
- c. The pro-rata cost of security for the Facility.
- d. The pro-rata cost of marking and advertising related to facility parking, in which case the pro-rata cost; or marketing and advertising related directly to transit parking, in which case 100% of the cost.

- e. The pro-rata cost of utilities and insurance.
- f. The cost of an annual independent third-party audit.

7.4 Revenue Sharing.

a. Net Commuter Parking Revenue. Lessor and Lessee agree that the calculation of Net Revenue from the collection of fees for commuter parking will be based upon total revenues derived from commuter related parking minus the pro-rata share of total operating and management expense attributable to the transit parking spaces. Should revenues exceed total operating cost, the net revenue will be transferred to the Lessee.

b. Operating Loss. Lessor agrees that it will be solely responsible for any operating losses associated with the operation and management of the Facility.

7.5 Parking Oversight Committee. Lessor and Lessee agree that they will participate in no less than annual meetings with a Parking Oversight Committee (Committee), including representation from the Lessor, Lessee, Houston METRO, Houston-Galveston Area Council, and others as appropriate. This Committee will meet to review the management and operation of the Facility, revenues and expenses and, if necessary, make appropriate adjustments to ensure efficient operations and that park and ride fees are appropriate. The Committee will provide reasonable recommendations to the Lessee for changes in parking fees, operations, or other aspects of the commuter park and ride operation. The Lessee will be responsible for implementation of recommendations.

7.6 Modifications to Parking Rate. The Parking Oversight Committee will make recommendations to the East End District Board to adjust parking rates as necessary to offset operating and maintenance costs while incentivizing transit utilization. The East End Board will make the final determination on adjustment, which the Lessor is required to accommodate. A rate adjustment which would exceed the highest parking rate for a comparable park and ride facility, owned and operated by Houston METRO, will require written concurrence in the rate by the Transportation Director of H-GAC and Executive Director of Houston METRO.

7.7 Record Keeping. Lessor agrees to monitor, at a minimum, daily utilization of the facility to denote daily vehicle usage, time of usage, and duration of visit. Other metrics may be requested by the Parking Oversight Committee in the future. Lessor also agrees to maintain all records and documents related to Operating and Management Expense. These records should be organized and formatted in a way in which they can be viewed on a summary basis. All records must be kept on file and available for a period of three (3) years.

7.8 Parking Rates. Lessor will collect parking fees from transit parkers in the initial amount as identified in Table 1: Parking Details. The Lessor has, in all cases, the ability to charge a fare which is less than the minimum established by the District. Revenues derived from commuter use of up to Lessor's two-hundred fifty (250) parking spaces will be utilized by Lessor to offset maintenance and operating cost of the parking spaces and other facilities leased by Lessee. Revenue derived by Lessor from non-transit parking use will be the property of the Lessor.

7.9 Audit. The Lessor agrees to complete an annual independent and third-party audit, coordinated by the Lessee, but paid for by the Lessor as an eligible Operating and Management Expense. The selected auditor will be qualified from an accreditation and certification standpoint. The audit shall review all financial components and characteristics of the facility with the intent to identify actual and pro-rata costs associated with the operations and maintenance of the facility along with revenues.

7.10 Management and Operations Standards. Lessor shall operate, manage, and maintain the facility in a manner consistent with that as documented by the Lessee upon the acceptance and initiation of this lease. Additional standards include:

- a. Lessor will, to the maximum extent practicable, ensure that only transit users are able to utilize a subsidized rate.
- b. Lessor will prevent abuse of the facility and the publicly subsidized benefits by any user.
- c. Lessor will not take any action which prohibits, prevents, or otherwise disincentivizes a transit user from occupying space within the facility, to the extent that subsidized spaces are otherwise available.

7.11 Management and Operations Deficiencies, Disputes, and Resolutions. The Lessee reserves the right to monitor, oversee, and validate operational components of the Lessor. This oversight includes, but is not limited to, non-obstructive on-site presence at any time. If the Lessor does not Manage and Operate the facility in accordance with Section 7.10, the Lessee will, in writing, notify the Lessor of the deficiency. The Lessor will have the opportunity to remedy the claim per Section 6.4 of this agreement. If the Lessor is unable or unwilling to remedy a bona fide and reasonable deficiency within one-hundred and eighty (180) days that is otherwise prohibiting, obstructing, or damaging the functionality of the transit component of the facility, the Lessee has the ability to require the Lessor to install a new Operator/Manager. In this event the Lessee will have the option to assume the role of Operator/Manager or have the Lessor provide options for a new Operator/Manager for selection by the Lessee. In the event that a situation exists where the Lessor has demonstrated that they are unable or unwilling to Manage and Operate the facility in accordance with Section 7.10, and is unable or unwilling to remedy the situation, the Lessee reserves the right to terminate the agreement per Sections 6.4 and 6.5 of this agreement. Termination of the parking management agreement with the Lessor in no way impacts the revenue generated from other non-transit parking.

SECTION 8 - ACCESS

8.1 Access for Lessor. Lessee shall permit Lessor, and its agents, representatives, and employees to enter into the Facility for pursuit of Facility management activities and for the purposes of review and inspection of the Facility and Project as provided in this Agreement, to determine whether Lessee is in compliance with the terms of this Agreement, and for other reasonable purposes.

8.2 Access to Records. The Lessee shall have access to Lessor records necessary to audit performance under this Agreement. "Access" requires the possessing party to provide electronic copies of designated records upon request. Any request for access to records must be made in writing at least ten (10) days prior to the requested access date.

SECTION 9 - ENCUMBRANCE

9.1 Encumbrance. Lessor shall not have the right to mortgage, pledge, hypothecate, or otherwise transfer or assign the leasehold estate granted hereby to Lessee as security for a debt or other obligation (collectively, a "Mortgage").

SECTION 10 - LESSEE'S REPRESENTATIONS AND WARRANTIES

10.1 Lessee's Representations and Warranties. Lessee represents and warrants that:

- a. Lessee is a political subdivision of the State of Texas and is duly qualified to transact business under the laws of the State of Texas and has the power and authority to carry on its business as presently conducted and as contemplated to be conducted within the Facility by this Agreement, and to enter into and perform its obligations under this Agreement; and the execution, delivery, and performance by Lessee of this Agreement has been duly authorized by all necessary action.
- b. The execution, delivery, and performance of this Agreement by Lessee will not violate any law or Lessee's charter.

SECTION 11 - LESSOR'S REPRESENTATIONS AND WARRANTIES

11.1 Lessor's Representations and Warranties. Lessor represents and warrants that:

- a. Except as otherwise disclosed to Lessee, Lessor is the owner of the proposed Facility and has all power and authority necessary to enter into this Agreement.
- b. To the best of Lessor's knowledge, there is no pending or threatened condemnation action pertaining to the Land upon which the Facility is to be constructed.
- c. Lessor represents and warrants that the execution, delivery and performance of this Agreement by Lessor has been duly authorized by all necessary action by Lessor and/or its assignees, subsidiaries or affiliates.
- d. Lessor represents that the property and any improvements are owned in fee without any other lien-hold interests.

SECTION 12 - ASSIGNMENT AND SUBLETTING

12.1 Assignment and Sublease.

- a. Lessee shall not have the right to assign, sell, or otherwise transfer Lessee's interest in this Agreement without Lessor's prior written consent. Further, Lessee shall not have the right to Sublease any portion of the Facility without Lessor's prior written consent. For purposes of this Agreement, "Sublease" means any lease, license, occupancy agreement, franchise or other

similar agreement or arrangement relating to the use or occupancy of a portion of the Facility between Lessee and any party other than Lessor.

b. Lessor shall not have the right to assign this Agreement to another entity (successor, subsidiary, or affiliate) without the express written consent of Lessee. In such an event, the parties hereto agree all provisions and obligations of this Agreement shall remain unchanged.

SECTION 13 - INSURANCE AND INDEMNITY

13.1 Insurance.

a. Lessor's Insurance. During the Lease Term, Lessor will keep and maintain (or cause to be kept and maintained) in force policies of:

(i) Commercial general liability insurance covering Lessor and Lessee for liability for property damage, bodily injury, personal injury and death. The insurance must be in the amount of not less than \$5,000,000 combined single limit per occurrence and not less than \$10,000,000 in the aggregate. Costs of defense must be provided as an additional benefit and not included within the limits of liability (except for defense costs provided in behalf of an indemnitee). This insurance must protect against liability to any employees or servants of Lessee and to any other person or persons whose property damage, personal injury or death arises out of or in connection with the occupation, use, or condition of the Facility, and must include (i) coverage for premises and operations, and (ii) contractual liability coverage. Such policy must name Lessee as an additional insured;

(ii) Property insurance with a minimum total loss coverage of \$5 million, and a per incident loss coverage in the amount of \$1 million written on a "causes of loss – special form" basis. This insurance must include boiler and machinery coverage, wind damage, and flood coverage. The face value of the insurance to cover the Facility must be in an amount not less than the full actual replacement cost and must have a replacement cost endorsement or similar provision, an ordinance or law coverage endorsement, and an equipment floater, if necessary, to cover any equipment. Such policy must name Lessee as an additional insured as its interest may appear;

(iii) Worker's Compensation and Employer's Liability insurance, including All States Endorsement, to the extent required by federal law and complying with the laws of the State of Texas;

(iv) Comprehensive Automobile Liability insurance covering all owned, non-owned or hired automobiles to be used by the Contractor, with coverage at the minimum State of Texas requirements;

All such insurance shall be secured and maintained in a company or companies reasonably satisfactory to Lessee and shall be carried in the name of Lessor. Lessor's insurance shall be primary and not contributory to that carried by Lessee. Lessor shall provide copies of insurance policies required hereunder to Lessee on or before the Lease Initiation Date. The commercial

general liability policy shall include the ISO Form 20 11 01 96 (or equivalent) additional insured endorsement naming Lessee as an additional insured.

b. Lessee's Insurance. During the Lease Term, Lessee will keep and maintain (or cause to be kept and maintained) in force policies of:

(i) General liability insurance covering Lessee for liability for property damage, bodily injury, personal injury and death. The insurance must be in the amount of not less than \$1,000,000 per occurrence and not less than \$2,000,000 in the aggregate, maintained by the Lessee for operations and equipment within the facility. Costs of defense must be provided as an additional benefit and not included within the limits of liability (except for defense costs provided in behalf of an indemnitee). This insurance must protect against liability to any employees or servants of Lessor and to any other person or persons whose property damage, personal injury or death arises out of or in connection with the occupation, use, or condition of the Facility, and must include (i) coverage for premises and operations, and (ii) contractual liability coverage; and,

All such insurance shall be secured and maintained in a company or companies reasonably satisfactory to Lessor, and shall be carried in the name of Lessee. Lessee's insurance shall be primary and not contributory to that carried by Lessor. Lessee shall provide copies of insurance policies required hereunder to Lessee on or before the Lease Initiation Date. The commercial general liability policy shall include the ISO Form 20 11 01 96 (or equivalent) additional insured endorsement naming Lessor as an additional insured.

c. Waiver of Subrogation. Each Party shall secure an appropriate clause in, or an endorsement upon, each policy of insurance required to be provided by it hereunder, pursuant to which the respective insurance companies waive subrogation and rights of recovery or permit the insured to agree with the other party hereto to waive any claim it might have against the other Party. The waiver of subrogation or permission for waiver of any claim referred to herein shall extend to the agents of each Party hereto and their respective contractors and.

d. Release. To the extent permitted by law, each Party hereby releases the other with respect to any claim (including a claim for negligence) that it might otherwise have against the other Party, its officers, agents, or employees, for loss, damage, or destruction with respect to its property or injury to persons by fire or other casualty or other occurrence, to the extent such claim is actually covered under policies of all insurance required to be carried under this Section.

This section shall not preclude either Party from carrying additional insurance as it chooses or as required by the federal government. Additionally, this section shall not limit or modify any right, remedy or limitation on liability provided by law to either Party.

13.2 Indemnification. The Parties intend to agree to contractual comparative indemnification to the extent permitted by, and without waiving protections of, the United States Constitution, the Federal Transit Administration, and the laws of the State of Texas. To that end they agree as follows:

a. Lessee Indemnification. To the extent authorized by the United States Constitution, the laws of the State of Texas, the Federal Transit Administration, and without waiving any defenses

or consequences whatsoever under the same, the Lessee agrees to hold Lessor and its officers, employees, and agents harmless from and indemnify and defend each against any and all claims, actions, damages, suits, proceedings, judgments, and liabilities, including reasonable and necessary attorneys' fees and expenses, for personal injury, death, and/or property damage resulting from the acts and/or omissions of the Lessee, and/or the acts or omissions of others under the Lessee's supervision or control.

b. Lessor Indemnification. To the extent authorized by the United States Constitution, the laws of the State of Texas, the Federal Transit Administration, and without waiving any defenses or consequences whatsoever under the same, Lessor agrees to hold Lessee and its officers, employees, and agents harmless from and indemnify and defend each against any and all claims, actions, damages, suits, proceedings, judgments, and liabilities, including reasonable and necessary attorneys' fees and expenses, for personal injury, death, and/or property damage resulting from the acts and/or omissions of Lessor or the negligent acts and/or omissions of others under Lessor's supervision or control.

c. Joint Liability. In the event the Parties are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the state of Texas, without, however, waiving any governmental immunity available to any Party under Texas law and without waiving any defenses of any Party under Texas law.

SECTION 14 - TERMINATION OF LEASE

14.1 Termination of the Lease.

a. Expiration of Term. Upon termination of this Agreement, Lessor shall have all right, title to and legal ownership of the Facility. Upon the expiration of the Lease Term, all of Lessee's and the FTA's equitable interest in the Facility will expire and cease, and Lessor will have both legal title and beneficial use of same free of any interest or claim of any sort in favor of Lessee or the FTA. Should this Agreement be extended, Lessee will continue to occupy and utilize the Facility in accordance with the terms hereof during the Extended Lease Term.

b. Cessation of the Project. Should the Lessor decide that the Facility will no longer be available for use for its originally intended purpose, of providing public transportation services, prior to the termination of the Lease Term, Lessee and Lessor agree that Lessor will provide to Lessee a minimum of one-hundred eighty (180) days' written notice of its intention to cause the cessation of public transit services. and Lessee and Lessor agree that the Lessor shall purchase the remaining unamortized pro-rata value of the unexpired Lease Term, and shall pay this amount to Lessee, at which time this Agreement will terminate and Lessor will assume one hundred percent (100%) equitable interest in the Project along with its legal title. In such event, Lessee shall be responsible for taking any action necessary to cause the federal government's "equitable interest" in the Project to be terminated. The parties shall compute the "remaining unamortized pro-rata value of the unexpired Lease Term" as follows: the portion of the Lump Sum Amount funded by FTA will be multiplied by a fraction, the numerator of which is the

number of months then remaining in the initial forty (40) year Lease Term, and the denominator of which is 480. Lessor and Lessee agree that in no event will Lessor be obligated to pay Lessee compensation in excess of the amount, if any, owed by Lessee to the FTA for cessation of public transit activity.

Should there be actions taken by a third-party which would permanently disrupt public transportation service to this location, the Lessee will work to identify another public use for the 250 parking spaces consistent with the disposition requirements outlined within Federal Transit Administration circular 5010.1E, section IV o. 3.

SECTION 15 - CONDEMNATION

15.1 Condemnation.

a. Definitions. The following definitions apply in construing provisions of this Agreement relating to a taking of all or any part of the Facility or any interest in same by eminent domain or inverse condemnation:

- (i) “Partial Taking” means any taking or transfer of an insignificant portion of the Facility by eminent domain or by inverse condemnation or for any public or quasi-public use under the law, which leaves the remainder of the Facility in such condition and in such form, shape, or size as to be used effectively and practicably in the reasonable opinion of Lessor.
- (ii) “Total Taking” means any taking or transfer by eminent domain or by inverse condemnation or for any public or quasi-public use under the law of the entire Facility, or of a substantial part of the Facility that leaves the remainder of the Facility in such condition or in such form, shape, or reduced size as to be not effectively and practicably usable in the reasonable opinion of Lessor for the use or intended uses intended herein.

15.2 Total or Partial Taking by a Public Entity. In the event of a Partial Taking by a public entity, this Agreement terminates only as to the portion of the Facility so taken or transferred as of the date title to such portion vests in the condemning authority, but continues as to the portion of the Facility not so taken or transferred. Any condemnation award or payment in lieu of condemnation paid by the condemning authority shall be allocated on a pro-rata basis to the effected users. In the event that continuing control of use is impacted, it is the responsibility of the Lessee to coordinate these impacts with the FTA.

15.4 Voluntary Conveyance. A voluntary conveyance to a public utility, governmental agency, or authority under threat of a taking under the power of eminent domain in lieu of formal proceedings, is a taking under this Section.

15.5 Notification of Threatened Condemnation. If either Party receives notice of a threatened condemnation affecting all or any portion of the Facility, such Party shall promptly notify the other Party. In the event of a Total or Partial Taking by a party not the Lessee, (i) each Party may participate in any proceedings relating to any threatened condemnation of all or any

portion of the Facility, and (ii) neither Party shall consent to a voluntary conveyance in lieu of condemnation without the consent of the other Party.

15.6. Repayment to FTA. Lessee shall be responsible for any repayment of federal funding due to the FTA for the Project for any taking under the provisions for Total and Partial Takings by a public entity. Lessee specifically agrees that Lessor shall have no obligation for any repayment to the FTA for the Project for any taking under the provisions for Total and Partial Takings by a public entity.

SECTION 16 - TAXABLE PROPERTY

16.1 Taxable Property. It is up to the Lessor to determine with the appropriate taxing entities if the Facility subject to this lump sum lease, constitutes an exemption from taxation.

SECTION 17 - OTHER PROVISIONS

17.1 Interpretation. The table of contents and the captions throughout this Agreement are for convenience and ease of reference only and do not define, limit, augment, or describe the scope, content, or intent of this Agreement. No promise, representation, warranty or covenant not included in this Agreement has been or is relied on by either party. Each party has relied on its own examination of this Agreement, the counsel of its own advisors, and the warranties, representations, and covenants contained in this Agreement. The failure or refusal of either party to inspect the Facility, to read this Agreement or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection, or advice. The foregoing shall not apply if a court finds this Agreement ambiguous, in which case it shall use its usual methodology to resolve the ambiguity, including but not limited to prior documents and related exhibits signed by the parties.

17.2 Exhibits, Addenda. The following exhibits are incorporated herein for all purposes, regardless of whether they may exist at the time of execution of this Agreement:

Exhibit A:

Parcel Map

Exhibit B:

Request for Proposals and Proposal

Exhibit C:

Lease Details

17.3 Amendment. This Agreement may not be changed, modified or amended except by written instrument signed by both Lessor and Lessee.

17.4 Severability. The invalidity or illegality of any provision hereof shall not affect the remainder of this Agreement.

17.5 No Partnership, Joint Venture, or Principal Agent Relationship. Nothing in this Agreement or any acts of the parties hereto shall be construed to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the parties.

17.6 Governing Law. This Agreement will be governed by and construed in accordance with the internal laws of the State of Texas, without regard to the conflicts of law principles that would require the application of any other law.

17.7 Venue. Venue for judicial resolution of any dispute arising out of this agreement shall be solely in Harris County, Texas.

17.8 Records and Auditing. Each party shall make available to the other upon request, and within ten (10) days of its receipt of written request from the other party, electronic copies of any document relevant to an audit for business purposes that are not confidential or privileged by law as to the other party. A reasonable charge may be imposed for the reproduction of requested records. Records that are made available to the other party shall be kept confidential to the extent permitted by law. Each Party understands that the other has special obligations to disclose documents in its possession, as a matter of law.

17.9 Notices. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be deemed given to a party when (a) delivered by hand or by a nationally-recognized overnight courier service (costs prepaid); (b) sent by facsimile with confirmation of transmission by the transmitting equipment; or (c) received or rejected by the addressee, if sent by certified mail, postage prepaid and return receipt requested, in each case to the following:

If to Lessor, to:

If to Lessee, to: East End District

3211 Harrisburg Boulevard

Houston, Texas 77003

ATTN:

17.10 Successors and Assigns. This Agreement shall be binding upon and shall be enforceable by and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

17.11 Time. Time shall be of the essence for all purposes hereunder.

17.12 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement.

SIGNATURE BLOCKS

Exhibit A:

Parcel Map

Exhibit B:

Request for Proposals and Proposal

Exhibit C:

Lease Details

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