

DOCUMENT 00 52 00
DESIGN-BUILD AGREEMENT

THIS DESIGN-BUILD AGREEMENT ("DBA") made for the convenience of the parties this 6th day of **December, 2011** by and between **Transworld Construction Inc.**, ("DESIGN-BUILDER) located at **1178 Folsom Street, San Francisco, California 94103** and the City and County of San Francisco, State of California (the "CITY"), acting by and through the Airport Commission (the "COMMISSION") of the San Francisco International Airport, under and by virtue of the Charter and Administrative Code of the City and County of San Francisco.

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number PSC 4066-11/12 on December 19, 2011; and

WHEREAS, the COMMISSION by its Resolution No. 11-0274 awarded this DESIGN-BUILD AGREEMENT to DESIGN-BUILDER on the 6th day of December, 2011, (a copy of which is attached and made a part of this DBA), awarded to design-builder the following contract:

**DESIGN-BUILD SERVICES FOR SAN FRANCISCO INTERNATIONAL AIRPORT DATA
CENTER PROJECT**
(San Francisco International Airport Contract No. 9078.A)

NOW, THEREFORE, DESIGN-BUILDER, in consideration of the mutual covenants set forth in this DESIGN-BUILD AGREEMENT, promises and agrees to provide all services to design and construct the Project in accordance with the requirements of the Contract Documents, to perform the Work in good and workmanlike manner to the satisfaction of the COMMISSION, to prosecute the Work with diligence from day to day to Final Completion, to furnish all design services and construction work, labor, materials, and equipment to be used in the execution and completion of the Work in accordance with the Contract Documents, and to otherwise fulfill all of DESIGN-BUILDER'S obligations under the Contract Documents, as and when required under the Contract Documents to the satisfaction of the COMMISSION.

DESIGN-BUILDER'S execution of this DESIGN-BUILD AGREEMENT signifies its acceptance of the Contract Time and Estimated Contract Budget as being sufficient for completion of the Work, as well as acceptance of the other terms and conditions of the Contract Documents.

ARTICLE 1 - WORK

- 1.01 Contract Documents. DESIGN-BUILDER shall provide all Work according to the Contract Documents, which are incorporated into and made a part of this DESIGN-BUILD AGREEMENT by this reference, and all labor, materials and equipment used in providing the Work shall comply with the Contract Documents. The Contract Documents, which comprise the entire agreement between DESIGN-BUILDER and the CITY concerning the Provision of the Work, are defined in the General Conditions (Document 00 72 00) and Supplemental Conditions (Document 00 73 00.) Any undefined term used in this DESIGN-BUILD AGREEMENT shall be given the definition set forth in the General Conditions (Document 00 72 00) and Supplemental Conditions (Document 00 73 00.)
- 1.02 Design-Builder's General Responsibilities. DESIGN-BUILDER shall provide on a complete, turnkey basis, a fully functional, complete and operational Project designed and constructed in accordance with the Contract Documents, including but not limited to, all investigations, analyses, surveys, engineering, design, procurement, materials, labor, equipment, workmanship,

construction and erection, commissioning, shipping, subconsultants, subcontractors, material suppliers, permits, insurance, bonds, fees, taxes, duties, documentation, spare parts, materials for initial operation, security, disposal, startup, testing, training, warranties, guarantees, and all incidentals.

1.03 Compliance with Laws.

- A. DESIGN-BUILDER shall keep itself fully informed of and comply with the Charter, ordinances and regulations of the CITY and other local agencies having jurisdiction over the Work, and all federal and state laws and regulations in any manner affecting the Contract Documents, the performance of the Work, or those persons engaged therein.
- B. All construction and materials provided under the Contract Documents shall be in full accordance with the latest laws and requirements, or the same as may be amended, updated or supplemented from time to time, of the Code specified in the Contract Documents, Americans with Disability Act Accessibility Guidelines, CAL-OSHA, Federal Aviation Administration (FAA), Department of Homeland Security, Transportation Security Administration, Caltrans, the State Division of Industrial Safety of the Department of Industrial Relations, the Division of the State Architect – Access Compliance, the Public Utilities Commission of the State of California, the State Fire Marshal, the National Fire Protection Association, the San Francisco Department of Public Health, state and federal laws and regulations, and of other bodies or officials having jurisdiction or authority over same, and they shall be observed and complied with by DESIGN-BUILDER and any and all persons, firms and corporations employed by or under it.
- C. Authorized persons may at any time enter upon any part of the Work to ascertain whether such laws, ordinances, regulations or orders are being complied with.
- D. No additional costs will be paid or extensions of time granted as a result of such compliance.

ARTICLE 2 - CONTRACT TIME

2.01 Completion Dates.

- A. The Work on the new data center shall be Substantially Complete within 270 consecutive calendar days, beginning with and including the official date of Notice to Proceed as established by the COMMISSION, and Final Completion in accordance with Article 9 of the General Conditions (Document 00 72 00) within 30 consecutive calendar days after the date the CITY issues a Notice of Substantial Completion.
- B. The Work on the South Minimum Point of Entry (SMPOE) Tier II upgrade shall be Substantially Complete within 300 consecutive calendar days, beginning with and including the official date of Notice to Proceed as established by the COMMISSION, and Final Completion in accordance with Article 9 of the General Conditions (Document 00 72 00) within 30 consecutive calendar days after the date the CITY issues a Notice of Substantial Completion.

2.02 Liquidated Damages. It is understood and agreed by and between DESIGN-BUILDER and the CITY that time is of the essence in all matters relating to the Contract Documents and that the CITY will suffer financial loss if the Work is not completed within the above-stated Contract Time, plus any extensions thereof allowed in accordance with Article 7 of the General Conditions (Document 00 72 00). The CITY and DESIGN-BUILDER further understand and agree that the

actual cost to CITY which would result from DESIGN-Builders' failure to complete the Work within the Contract Time is extremely difficult, if not impossible, to determine. Accordingly, DESIGN-BUILDER and the CITY agree that as liquidated damages for delay (but not as a penalty), DESIGN-BUILDER shall pay the CITY the amounts set forth in Document 00 54 39 (Contract Time and Liquidated Damages) for each calendar day that expires after the above Contract Time and the Work remains incomplete.

ARTICLE 3 – CONTRACT SUM

3.01 Contract Sum.

- A. DESIGN BUILDER and the CITY agree that, upon performance and fulfillment of the mutual covenants set forth herein, the CITY will, in the manner provided by law and as set forth in the Contract Documents, and the DESIGN BUILDERS Fee Proposal dated November 7, 2011, pay or cause to be paid to DESIGN BUILDER the following price(s), as indicated below:
1. For the initial scope of work, which includes complete design services for the complete Project described in the contract documents including design build overhead and profit, and reimbursable expenses, estimated bonds and insurance and estimated general conditions, the not-to-exceed amount of **One Million Four Hundred Eighty-five Thousand Dollars (\$1,485,000)** which is broken down as follows:
 - a. **Design Services: Five Hundred Forty-five Thousand Dollars (\$545,000)** for complete design services as described under this Contract for the complete Project. This lump sum design cost includes all design build overhead and profit and reimbursable expenses. Payments shall be made on a percent complete basis pursuant to a mutually agreed upon Schedule of Values.
 - b. **General conditions:** In the amount of **Six Hundred Ninety Thousand Dollars (\$690,000)**, based on a direct construction project cost of \$5.75 Million. This general conditions amount includes insurance and bond costs and shall be prorated through all activities so that the sum of all the Schedule of Values line items equal the Design-Builder's total design-build contract sum less any allowances designated by the Airport Project Manager. The final value of general conditions will be based on the application of **twelve percent (12.00%)** applied to the cost of construction for each approved trade package.
 - c. **Allowance:** For completion of initial construction activities to inform the design process, including selective demolition, utility/site investigations condition assessments, and/or to expedite certain critical project activities, and at the sole discretion and direction of the Airport Project Manager, the Commission shall pay the Contractor in accordance with the Contract Documents an allowance of up to **Two hundred fifty thousand dollars (\$250,000)** payable on a task order basis.
 2. An **overhead and profit** percentage of **seven percent (7.00%)** shall be applied to the cost of construction for each approved trade package which includes home office overhead and profit, and shall be applied to the direct cost of construction for each approved trade package to calculate the lump sum fee for overhead and profit.

3. The DESIGN BUILDER understands and agrees that the DESIGN BUILDER may procure **major equipment** directly rather than assigning procurement to subcontractors, provided that the DESIGN BUILDER receives authorization in advance from the Airport Project Manager, and all procurements are competitively bid. The DESIGN BUILDER's **procurement fee shall not exceed 10%, which is in addition to the Fee identified in subparagraph A.3.01.A.2 above.**
 - B. The DESIGN BUILDER understands and agrees that the DESIGN BUILDER shall be solely responsible for providing all resources that may be necessary to provide the Work, and that the CITY shall have no obligation whatsoever to finance any part of such costs except with respect to those amounts which become due under the terms and conditions of the Contract Documents.
 - C. The DESIGN BUILDER understands and agrees that the DESIGN BUILDER shall provide to the CITY a guaranteed maximum price (GMP) for the Project once all Trade Bid Packages have been bid. The GMP shall include: all design fees, equipment costs and the total cost of construction including general conditions and overhead and profit.
 - D. The DESIGN BUILDER understands and agrees that the DESIGN BUILDER shall not self perform construction, other than project management, supervision and administrative tasks.
 - E. The DESIGN BUILDER understands and agrees that the procurement of trade work subcontractors shall be in compliance with Chapter 6 of the San Francisco Administrative Code, Section 6.61, Section (L).
 - F. The DESIGN BUILDER understands and agrees that the DESIGN BUILDER shall not utilize subcontractor default insurance (SDI) for any trade subcontractor work.
 - G. The DESIGN BUILDER understands and agrees that the DESIGN BUILDER shall not utilize a Contractor's Controlled Insurance Program (CCIP) for any trade subcontractor work.
 - H. The DESIGN BUILDER understand and agrees that the design rate schedule submitted with the DESIGN BUILDERS proposal dated November 7, 2011, as part of Document 00 42 53 (3) will be used for any design change orders that may occur during the course of the project.
- 3.02 Certification by Controller. This DESIGN-BUILD AGREEMENT (DBA) is subject to the budget and fiscal provisions of the CITY's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of the CITY's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

ARTICLE 4 – LABOR REQUIREMENTS

- 4.01 Applicable Laws and Agreements. Compensation and working conditions for labor performed or services rendered under this DBA shall be in accordance with the Contract Documents, the San Francisco Charter, and applicable sections of the San Francisco Administrative Code, including section 6.22(E).
- 4.02 Prevailing Wages. The latest Wage Rates for Private Employment on Public Contracts in the City and County of San Francisco, as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations, and, when federal funds are

involved, the current General Wage Determination Decisions, as determined by the U.S. Secretary of Labor, as same may be changed during the term of this DBA, shall be included in this DBA and are hereby incorporated by this reference. DESIGN-BUILDER agrees that any person performing labor in the provision of the Work shall be paid not less than the highest general prevailing rate of wages as so determined. If federal funds are involved, where the minimum rate of pay for any classification differs among State, City and Federal wage rate determinations, the highest of the three rates of pay shall prevail. DESIGN-BUILDER shall include, in any contract or subcontract relating to the Work, a requirement that all persons performing labor under such contract or subcontract shall be paid not less than the highest prevailing rate of wages for the labor so performed. DESIGN-BUILDER shall require each subcontractor and supplier, at any tier, to submit weekly certified payrolls to the City electronically via the City-selected Project Reporting System ("PRS"), an Internet-based system accessible on the World Wide Web through a web browser.

- A. The latest prevailing wage rates are located at the following website www.gpo.gov/davisbacon/ca.html under San Francisco County and appropriate construction type activities.

4.03 Penalties. DESIGN-BUILDER shall forfeit to the CITY back wages due plus fifty dollars (\$50.00) for:

- A. Each laborer, workman, or mechanic employed in the provision of the Work, for each calendar day or portion thereof during which such laborer, workman, or mechanic is not paid the highest general prevailing rate of wage for the work performed; or
- B. Each laborer, mechanic or artisan employed in the provision of the Work, for each calendar day or portion thereof during which such laborer, mechanic or artisan is compelled or permitted to work for a longer period than five days (Monday-Friday) per calendar week of eight hours each, and not compensated in accordance with the prevailing overtime standard and rate.

ARTICLE 5 – INDEMNITY

5.01 To the fullest extent permitted by law, and consistent with California Civil Code section 2782, the DESIGN-BUILDER shall assume the defense of, indemnify and hold harmless the CITY, its boards and commissions, other parties designated in Document 00 73 16 (Insurance Requirements), and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims, suits, damages, actions, losses and liabilities of every kind, nature and description, including but not limited to attorney's fees, directly or indirectly arising out of, connected with or resulting from the performance or nonperformance of the Work. The liability of DESIGN-BUILDER shall not be limited to the amount of insurance coverage required under the Contract Documents. This indemnification shall not be valid in the instance where the loss is caused by the sole negligence or intentional tort of any person indemnified herein.

ARTICLE 6 – RIGHTS AND REMEDIES

6.01 General. The provisions of the Contract Documents shall not limit the duties, obligations, rights and remedies otherwise imposed or available by law or in equity. No action or failure to act shall in any way abridge the rights and obligations of the Parties to the Contract Documents, or condone a breach thereunder, unless expressly agreed to by the Parties in writing. All remedies

provided in the Contract Documents shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided, the CITY shall have any and all equitable and legal remedies that it would in any case have.

- 6.02 No Waiver. No waiver of any breach of any provision of the Contract Documents shall be held to be a waiver of any other or subsequent breach. The only waiver by the CITY shall be a waiver in writing that explicitly states the item or right being waived.
- 6.03 City's Remedies for False Claims and Other Violations. Under San Francisco Administrative Code section 6.22M, DESIGN-BUILDER or any Subconsultant, Subcontractor or Supplier who fails to comply with the terms of this DBA, who violates any provision of Chapter 6 of the Administrative Code or rules and regulations adopted per that Chapter, who submits false claims, or who violates against any governmental entity a civil or criminal law relevant to its ability to perform under or comply with the terms and conditions of the DBA, may be declared an irresponsible Design-Builder and debarred according to the procedures set forth in San Francisco Administrative Code section 6.80, et seq.
- A. Additionally, DESIGN-BUILDER or its Subconsultants, Subcontractors or Suppliers who submits a false claim may be subject to monetary penalties, investigation, and prosecution as set forth in Administrative Code section 6.80, et seq.
- B. DESIGN-BUILDER shall include in each subcontract and purchase order for Work a clause incorporating the provisions of this Paragraph 6.03.

ARTICLE 7 – RESOLUTION OF CONFLICTING TERMS

- 7.01 The Contract Documents and any other agreements between the Parties relating to the Project are intended to be read together and integrated as a whole, and shall be construed and interpreted in a manner so as to avoid any conflicts to the extent possible. Supplementary provisions in the Contract Documents shall not be deemed to be in conflict. It is expressly agreed by and between DESIGN-BUILDER and the CITY that should there be any conflict between the terms of this DBA and the Proposal of DESIGN-BUILDER, then this DBA shall control and nothing herein shall be considered as an acceptance of any terms of the Proposal which conflict with this DBA.

ARTICLE 8 – GOVERNING LAW AND VENUE

- 8.01 Governing Law. The Contract Documents shall be interpreted in accordance with the laws of the State of California and the provisions of the CITY's Charter and Administrative Code, including but not limited to Chapter 6 of the San Francisco Administrative Code, which is incorporated by this reference as if set forth herein in full.
- 8.02 Venue. All Claims, counter-claims, disputes and other matters in question between the CITY and DESIGN-BUILDER arising out of or relating to this DBA or its breach will be decided by a court of competent jurisdiction within the State of California.

ARTICLE 9 – DISPUTE REVIEW BOARD

- 9.01 Not applicable.

ARTICLE 10 – NOTICES TO PARTIES

- 10.01 Unless otherwise indicated in the Contract Documents, all written communications sent by the Parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To CITY: Reuben Halili
Project Manager
San Francisco International Airport
Design & Construction Division
P. O. Box 8097
San Francisco, California 94128
Email: reuben.halili@flysfso.com
FAX: (650) 821-7799

To DESIGN-BUILDER: Erik J. Liu
Vice President
Transworld Construction, Inc.
1178 Folsom Street
San Francisco, California 94103
Email: erik@transworldconstruction.com
FAX: (415) 863-3578

- 10.02 From time to time, the parties may designate new address information by notice in writing, delivered to the other Party.
- 10.03 The delivery to DESIGN-BUILDER at the legal address listed above, as it may be amended upon written notice, or the depositing in any post office or post office box regularly maintained by the United States Postal Service in a postage paid wrapper directed to DESIGN-BUILDER at such address, of any drawing, notice, letter or other communication shall be deemed legal and sufficient service thereof upon DESIGN-BUILDER.

ARTICLE 11 – PROPRIETARY OR CONFIDENTIAL INFORMATION OF CITY

- 11.01 DESIGN-BUILDER understands and agrees that, in the performance of the Work under this DBA or in contemplation thereof, DESIGN-BUILDER may have access to private or confidential information which may be owned or controlled by CITY and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to CITY. DESIGN-BUILDER agrees that all information disclosed by CITY to DESIGN-BUILDER shall be held in confidence and used only in performance of this DBA. DESIGN-BUILDER shall exercise the same standard or care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

ARTICLE 12 – TERMINATION

- 12.01 This DESIGN-BUILD AGREEMENT and the other Contract Documents shall, unless sooner terminated, terminate upon Final Completion of the Work or as set forth in Article 14 of the General Conditions (Document 00 72 00) or as may be modified in the Supplemental Conditions (Document 00 73 00).

IN WITNESS WHEREOF, the DESIGN-BUILDER and the CITY have hereunto set their hands and seals, and have executed this DESIGN-BUILD AGREEMENT in quadruple, the day and year first above written.

DESIGN-BUILDER:

By my signature hereunder, as DESIGN-BUILDER, I certify that I have read and understand the section captioned MacBride Principles – Northern Ireland including in Document 00 73 73 (Statutory Requirements), the CITY's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

I further certify that I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

BY: _____

Title

CITY:

BY: _____

John L. Martin, Airport Director

Approved as to form:

DENNIS J. HERRERA

City Attorney

BY: _____

Kathryn Luhe
Deputy City Attorney

Attest:

Jean Caramatti, Secretary
Airport Commission

Resolution No: 11-0274

Adopted on: December 6, 2011

END OF DOCUMENT

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 11-0274

**AWARD CONTRACT NO. 9078.A, NEW DATA CENTER TO TRANSWORLD
CONSTRUCTION IN THE INITIAL AMOUNT OF \$1,485,000**

WHEREAS, on February 15, 2011 by Resolution No. 1-0035, the Commission authorized Staff to issue a Request for Qualifications/Proposal (RFQ/P) for design-build services for Contract No. 9078.A, New Data Center; and

WHEREAS, under this contract a design-build contractor will construct new data center facility and upgrade the existing South Minimum Point of Entry (SMPOE) facility; and

WHEREAS, on November 7, 2011, the Airport received five proposals from design-build contractors in response to the RFQ/P; and

WHEREAS, the proposals were evaluated based on the contractor's qualifications and cost proposals, as allowed under Section 6.61 (F) (Design-Build Ordinance) of the Administrative Code; and

WHEREAS, following the evaluation including application of the LBE rating bonus, the Airport has determined that Transworld Construction provides the best value to the Airport based on the combination of their technical score, oral interview score, and price proposal; and

WHEREAS, the initial award amount of \$1,485,000 for design, mobilization, general conditions, and an owner's allowance of \$250,000 for initial construction activities to inform the design process, including selective utility/site investigations and facility condition assessments; and

WHEREAS, the contract duration is 270 calendar days to Substantial Completion for the data center, 300 calendar days for the SMPOE upgrades and 330 calendar days to Final Completion from Notice to Proceed; and

WHEREAS, the Final Contract Cost will be determined through a competitive process by which the contractor will obtain a minimum of 3 bids from pre-qualified subcontractors for each trade package, which will be presented to the Commission for award at the various phases of the project, along with the final Guaranteed Maximum Price at or near the end of bidding of all trade packages; and

WHEREAS, the Airport's preliminary forecast of the total design-build contract value is \$7.3 million, which will be updated for the Commission at each award of additional scope; and

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 11-0271

- WHEREAS, staff will develop an allocation of costs for the Airport's share of the contract pertaining to the work at the SMPOE; and
- WHEREAS, the Data Center scope will be reimbursed by the City's Department of Technology in an amount up to \$6 million, in accordance with the agreed upon terms; and
- WHEREAS, the Airport's share of the contract will be funded by Airport capital funds; and
- WHEREAS, Transworld Construction has committed to meet the 24% HRC LBE subcontractor participation goal established by HRC; now, therefore be it
- RESOLVED, that the Commission hereby awards Contract No. 9078.A New Data Center to Transworld Construction in the initial amount of \$1,485,000; and, be it further
- RESOLVED, that the Commission approves a contingency budget of \$111,375 for Type I change orders; and, be it further
- RESOLVED, that the Commission authorizes the Director to accept the work upon completion and make final payment provided the work is completed in accordance with Commission established procedures.

I hereby certify that the foregoing resolution was adopted by the Airport Commission

at its meeting of DEC 06 2011

Jean Carmona
Secretary