

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

I. PARTIES

A. Address

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made by and between the **CITY OF HOUSTON, TEXAS** a home-rule city, ("City") and _____, a corporation authorized to do business in Texas ("Contractor").

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

City
Director, Houston Airport System
or Designee
City of Houston
P.O. Box 60106
Houston, Texas 77205-0106

Contractor

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

TABLE OF CONTENTS

	Page No.
I. PARTIES.....	1
A. Address.....	1
B. Table of Contents	1
C. Parts Incorporated.....	3
D. Controlling Parts.....	3
E. Signatures	4
II. DEFINITIONS.....	5
III. DUTIES OF CONTRACTOR.....	6
A. Scope of Services	6
B. Performance	7
C. Reports.....	7
D. Payment of Subcontractors.....	8
E. Personnel of the Contractor.....	8
F. RELEASE.....	8
G. SUBCONTRACTOR’S INDEMNIFICATION	8
H. Insurance	9
I. Warranties.....	9
J. Confidentiality - Protection of City's Interest	10
K. Use of Work Products.....	10
L. Licenses and Permits	10
M. Compliance with Equal Opportunity Ordinance.....	11
N. Drug Abuse Detection and Deterrence	11
O. Conflicts of Interest.....	11
P. Non-Discrimination.....	12
Q. MWBE Compliance	12
IV. DUTIES OF CITY.....	12
A. Payment Terms	12
B. Taxes	12
C. Limit of Appropriation.....	13
D. Access to Data.....	14
V. TERM AND TERMINATION	14
A. Contract Term.....	14
B. Termination for Convenience by City.....	14
C. Termination for Cause by Contractor	15
D. Termination for Cause by City.....	16
VI. MISCELLANEOUS.....	17
A. Independent Contractor.....	17
B. Severability	17

C.	Entire Agreement.....	17
D.	Written Amendment.....	17
E.	Applicable Laws.....	18
F.	Notices.....	18
G.	Captions.....	18
H.	Non-Waiver.....	18
I.	Inspections and Audits.....	19
J.	Enforcement.....	19
K.	Ambiguities.....	19
L.	Survival.....	19
M.	Publicity.....	20
N.	Parties In Interest.....	20
O.	Successors and Assigns.....	20
P.	Business Structure and Assignments.....	20
Q.	Remedies Cumulative.....	20
R.	CONTRACTOR DEBT.....	21
S.	Pay or Play.....	21
T.	Subcontracting.....	21

EXHIBITS

- A. Scope of Services**
- B. Equal Employment Opportunity Ordinance**
- C. MWBE Subcontract Terms**

- C. Parts Incorporated

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

- D. Controlling Parts

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

E. Signatures

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

ATTEST/SEAL:

By: _____
Name:
Title:

By: _____
Name:
Title:
Tax ID No. _____

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS
Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

Mario C. Diaz, Director,
Houston Airport System

City Controller

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

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

II. DEFINITIONS

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

"Additional Services" are those services not specifically described in Exhibit "A" but which are related to those services for which Contractor shall be entitled to additional compensation.

"Agreement" means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.

"CDO" means the Mayor's Chief Development Officer or such other representative as she or he may designate.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

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

"Director" means the Director of the Houston Airport System. For purposes of this Agreement, the Director designates the Deputy Director of External Affairs for HAS to act on his behalf and wherever the word "Director" is found in this Agreement, it shall mean the Deputy Director of External Affairs for HAS.

"FAA" means the Federal Aviation Administration.

"HAS" means the Houston Airport System which is the City department responsible for administering this Agreement.

"IGR Director" means the Director of the Mayor's Office of Intergovernmental Relations or the person she or he designates.

"Letter of Authorization" means the document signed by both Parties which authorizes the performance of Additional Services pursuant to the terms and conditions of this Agreement.

"Parties" mean the entities set out in the Preamble who are bound by this Agreement.

"Reimbursable Expenses" means (without markup) (i) identifiable communication expenses including reasonable costs of copying and printing (other than for the Contractor's internal use), postage, delivery services, and long distance telephone charges; (ii) upon the prior written approval of the Director, the ordinary and reasonable costs of travel to and from the City (including common carrier coach fares, ground transportation expenses, lodging and meals), not to exceed the amount established under the City's then current travel reimbursement policy set forth in A.P. 2-5 Revised which can be found at www.houstontx.gov/adminpolicies/2-5.pdf; and (iii) any sales tax Contractor is legally required to pay for its services under this Agreement.

III. DUTIES OF CONTRACTOR

A. Scope of Services

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material and supervision necessary to perform the specific, measurable services set forth in Exhibit "A", as directed in writing by the Director. Contractor shall only communicate through the Director or other authorized HAS personnel regarding this Agreement. Any Additional Services the Director desires Contractor to perform shall be negotiated between the Parties as to scope and compensation. Upon reaching agreement regarding such services, the Director shall issue a Letter of Authorization setting forth the agreed scope and compensation. Should there be a disagreement between the Parties as whether a particular service is established in Exhibit "A" or whether it is an Additional Service, the Director, in his sole reasonable discretion, shall resolve the disagreement by making a determination which Contractor agrees to honor. City and Contractor shall establish and

maintain an "arms length" relationship in which Contractor provides specific, measurable services as described herein in exchange for the specific monetary amounts described herein. Contractor acknowledges that all services it provides herein shall be for the sole benefit of HAS and such services shall be delivered consistent with the FAA's "Policy and Procedures Concerning the Use of Airport Revenue," 64 Fed. Reg. 7696 (Feb. 16, 1999) and 49 U.S.C. 47107 (b) which requires that all revenue generated by a public airport which receives FAA grant funds must be expended for the capital or operating costs of the airport. Consequently, Contractor agrees that all its efforts pursuant to this Agreement shall be singularly directed towards representing HAS and should the FAA validly object to any provision of this Agreement, the parties shall negotiate in good faith to amend accordingly or terminate this Agreement if agreement is not reached.

B. Performance

Contractor must regularly update the Director and other persons that the Director designates regarding Contractor's performance under this Agreement. Contractor shall promptly inform the Director of all significant events relating to the performance of this Agreement. Contractor shall meet (either by teleconference or if required by the Director, in person) on a quarterly basis with the Director to discuss issues handled by Contractor under this Agreement and share relevant information regarding results of Contractor's efforts. Contractor's business practices shall be subject to and in accordance with the terms and conditions of this Agreement, as interpreted by the Director, in his sole, reasonable discretion.

C. Reports

Contractor shall submit written quarterly privileged reports to the Director, the CDO and the IGR Director throughout the Term of this Agreement in a format approved in writing and in advance by the Director. Such reports shall be due on the fifth business day after the conclusion of each

quarter together with elements required by the Director, shall include a narrative setting forth in detail all actions taken by Contractor during the reporting period which are in furtherance of the scope of services set forth in Exhibit "A", together with the results of those actions. Within ten days of receipt of each report, the Director shall have the opportunity to forward written questions or comments to Contractor regarding any of the activities set forth in the particular report and Contractor shall respond to all such questions or comments in written detail within five days of receipt.

D. Payment of Subcontractors

Contractor shall make timely payments to all persons and entities supplying labor, materials or equipment for the performance of this Agreement. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.**

E. Personnel of the Contractor

Upon notice from the Director that the City considers the services performed by a Contractor employee or subcontractor to be inadequate, Contractor shall give due consideration to removing such employee or subcontractor from performing services under this Agreement.

F. RELEASE

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

NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

G. SUBCONTRACTOR'S INDEMNIFICATION

CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

H. Insurance

Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. Liability policies must be issued by a company with a rating of at least B+ and a financial size of Class VI or better according to the current year's Best's Key Rating Guide, Property-Casualty United States. Contractor shall maintain the following minimum insurance coverages in the following amounts:

Professional Liability --\$1,000,000 combined single limit.

Defense costs are excluded from the face amount of the policy. Aggregate Limits are per 12-month policy period.

Contractor shall give 30 days advance written notice to the Director before policies may be canceled or nonrenewed. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled or nonrenewed so as to maintain in effect the required coverage.

If Contractor does not comply with this requirement, the Director, in his sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin to terminate for default.

I. Warranties

Contractor's performance shall conform to the professional standards prevailing in Washington, D.C. with respect to the scope, quality, due diligence and care of the services Contractor provides under this Agreement.

J. Confidentiality - Protection of City's Interest

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

K. Use of Work Products

(1) The City may use all notes, plans, computations, databases, tabulations, exhibits, photographs, reports, underlying data and other work products (collectively, the "Documents") that Contractor prepares or obtains under this Agreement.

(2) During the Term, Contractor shall deliver the original Documents to the Director on request. Within five business days after this Agreement expires or is earlier terminated, Contractor shall deliver to the Director the original Documents, and all other files and materials Contractor produces or gathers during its performance under this Agreement. Contractor may retain copies of any such Documents for its own use.

L. Licenses and Permits

Contractor shall obtain, maintain and pay for all licenses, permits and certificates including all professional licenses required by any statute, ordinance, rule, regulation or this contract, including but not limited to registration as a federal lobbyist in the District of Columbia. Contractor shall

immediately notify the Director of any suspension, revocation or other detrimental action against his or her license.

M. Compliance with Equal Opportunity Ordinance

Contractor shall comply with City's Equal Employment Opportunity Ordinance as set out in Exhibit "B."

N. Drug Abuse Detection and Deterrence

By executing this Agreement, the City agrees to waive the requirements of Executive Order No. 1-31. Notwithstanding, Contractor represents that it has a controlled substance policy in place which Contractor agrees to maintain and enforce throughout the Term of this Agreement.

O. Conflicts of Interest

Contractor represents and warrants that after a thorough review pursuant to its normal conflict-checking procedures, as of the Countersignature Date, Contractor represents that it does not have an actual or potential conflict of interest with HAS or the City. Throughout the Term, the Contractor shall not take any action knowingly that will raise a potential or actual conflict of interest between the City's or HAS' interests and the interests of other clients (or potential clients). In the event such action is taken, the Contractor shall immediately notify the Director in writing or by phone and shall immediately take action to resolve the conflict in a manner favorable to HAS and the City.

Notwithstanding the above, if an ethical conflict presents itself due to actions taken by or a position asserted by a client of Contractor, but not by any action taken or position asserted by Contractor itself, this Agreement shall not require Contractor to provide advice to HAS or the City regarding matters and policy relating to such conflict in which HAS or the City's position is adverse to the position of the conflicted firm client.

P. Non-discrimination

Contractor agrees that it shall comply with the applicable non-discrimination provisions required by the Federal government, including but not limited to the provisions of 49 CFR Part 21 and 49 CFR Part 21, Appendix C (a)(1).

Q. MWBE

Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements that are directly related to the Scope of Work in at least 11% of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunities and will comply with them.

Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to mediation to be conducted by the Office of Business Opportunity if directed to do so by that office. MWBE subcontracts must contain the terms set out in Exhibit "C".

IV. DUTIES OF CITY

A. Payment Terms

TO BE NEGOTIATED

B. Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of

these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

C. Limit of Appropriation

(1) The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$_____ to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

(3) The City makes a supplemental allocation by issuing to the Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

\$_____

(4) The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

(5) City Council delegates to the Director the authority to approve up to \$_____ in supplemental allocations for this Agreement without returning to Council.

D. Access to Data

The City shall, to the extent permitted by law, allow Contractor to access and make copies of documents in the possession or control of the City or available to it that are reasonably necessary for Contractor to perform under this Agreement.

The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for Contractor's use.

V. TERM AND TERMINATION

A. Contract Term

Unless sooner terminated in accordance with the terms and conditions hereof, this Agreement shall commence on the Countersignature Date and shall continue for _____ years ("Term"). [The Director, in his sole discretion, may extend the Term hereof for two additional one-year periods by given written notice to Contractor at least 30 days before expiration of the Term (as may have been extended by the exercise of a previous option year).]

B. Termination for Convenience by City

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

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

TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

C. Termination for Cause by Contractor

Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date. The date must be at least 30 days

after the Director receives notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date.

D. Termination for Cause by City

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

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

If a default occurs, the Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The Director, at his or her sole option, may extend the termination date to a later date. If the Director allows Contractor to cure the default and Contractor does so to the Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate this Agreement on the termination date, at no further obligation of the City.

To effect final termination, the Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

VI. MISCELLANEOUS

A. Independent Contractor

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

B. Severability

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

C. Entire Agreement

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

D. Written Amendment

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

E. Applicable Laws

Contractor agrees to comply with the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

Venue for any litigation relating to this Agreement is Harris County, Texas.

F. Notices

All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

G. Captions

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

H. Non-Waiver

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

An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of

performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

I. Inspections and Audits

City representatives have the right to perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least three (3) years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

J. Enforcement

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

K. Ambiguities

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

L. Survival

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

M. Publicity

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

N. Parties In Interest

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

O. Successors and Assigns

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

P. Business Structure and Assignments

Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

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

Q. Remedies Cumulative

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in

the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

R. CONTRACTOR DEBT

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

S. Pay or Play

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

T. Subcontracting

Contractor shall not subcontract any of its performance under this Agreement without the prior written approval of the Director.

EXHIBIT "A"

SCOPE OF SERVICES

Contractor agrees to perform the following services in coordination with HAS:

EXHIBIT "B"

EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.

2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.

3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.

5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.

6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

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

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

EXHIBIT "C"

MWBE SUBCONTRACT TERMS

Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers are clearly labeled **"THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT"** and contain the following terms:

1. _____ (MWBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director").

2. _____ (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of subcontractor's books and records, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep its books and records available for inspection for at least 4 years after the end of its performance under this subcontract. Nothing in this provision shall change the time for bringing a cause of action.

3. Within 5 business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given under Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of the agent.

4. Any controversy between the parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract must, upon the written request of one party served upon the other or upon notice by the Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 -- "the Act"). Arbitration must be conducted according to the following procedures:

a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within 30 days or the matter may be referred to arbitration.

b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with the American Arbitration Association on file in the City's Affirmative Action Division Office.

c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.

d. If the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.