

Exhibit 1

6. CITY OF HOUSTON FAIR CAMPAIGN ORDINANCE:

The City of Houston Fair Campaign Ordinance makes it unlawful for a Contractor to offer any contribution to a candidate for City elective office (including elected officers and officers-elect). All respondents to this invitation to bid must comply with Houston Code of Ordinances Chapter 18 as amended relating to the contribution and solicitation of funds for election campaigns. Provisions of this ordinance are provided in part in the paragraphs that follow. Complete copies may be obtained from the office of the City Secretary.

Candidates for city office may neither solicit nor receive contributions except during a period commencing 270 calendar days prior to an election date for which a person is a candidate for such office and ending 90 calendar days after the election date, including run off elections if such candidate is on the ballot.

Further, it shall be unlawful either for any person who submits a bid or proposal to contribute or offer any contribution to a candidate or for any candidate to solicit or accept any contribution from such person for a period commencing at the time of posting of the City Council Meeting Agenda including an item for the award of the Contract and ending upon the 30th day after the award of the Contract by City Council.

For the purposes of this Ordinance, a **Contract** is defined as each Contract having a value in excess of \$30,000 that is let by the City for professional services, personal services, or other goods or services of any other nature whether the Contract is awarded on a negotiated basis, request for proposal basis, competitive proposal basis or formal sealed competitive bids. The term **Contractor** includes proprietors of proprietorships, partners having an equity interest of 10% or more of partnerships, (including limited liability partnerships and companies), all officers and directors of corporations (including limited liability corporations), and all holders of 10% or more of the outstanding shares of corporations.

A STATEMENT DISCLOSING THE NAMES AND BUSINESS ADDRESSES EACH OF THOSE PERSONS WILL BE REQUIRED TO BE SUBMITTED WITH EACH BID OR PROPOSAL FOR A CITY CONTRACT.

Completion of the attached form entitled "**Contractor Submission List**" will satisfy this requirement. Failure to provide this information may be just cause for rejection of your bid or proposal.

7. CONTRACTOR SUBMISSION LIST FORM

7.1.1.1.1.1.1.1 CITY OF HOUSTON FAIR CAMPAIGN ORDINANCE

The City of Houston Fair Campaign Ordinance makes it unlawful for a Contractor to offer any contribution to a candidate-for City elective office (including elected officers-elect) during a certain period of time prior to and following the award of the Contract by the City Council. The term "Contractor" includes proprietors of proprietorships, partners or joint venturers having an equity interest of 10 percent or more for the partnership or Joint Venture, and officers, directors and holders of 10 percent or more of the outstanding shares of corporations. A statement disclosing the names

and business addresses of each of those persons will be required to be submitted with each bid or proposal for a City Contract. See Chapter 18 of the Code of Ordinances, Houston, Texas for further information.

This list is submitted under the provisions of § 18-36(b) of the Code of Ordinances, Houston, Texas, in connection with the attached proposal, submission or bid of:

Firm or Company Name: _____

Firm or Company Address: _____

The firm/company is organized as a (Check one as applicable) and attach additional pages if needed to supply the required names and address:

SOLE PROPRIETORSHIP

Name

Proprietor

Address

A PARTNERSHIP

List each partner having equity interest of 10% or more of partnership (if none state "none")

Name

Partner

Address

Name

Partner

Address



A CORPORATION

LIST ALL DIRECTORS OF THE CORPORATION (IF NONE STATE "NONE")

Name

Director

Address

Name

Director

Address

Name

Director

Address

CONTRACTOR SUBMISSION LIST FORM (CONTINUED)

LIST ALL OFFICERS OF THE CORPORATION (IF NONE STATE "NONE")

Name

Officer

Address

Name

Officer

Address

Name

Officer

Address

LIST ALL INDIVIDUALS OWNING 10% OR MORE OF OUTSTANDING SHARES OF STOCK OF THE CORPORATION (IF NONE STATE "NONE")

Name

Owner

Address

Name

Owner

Address

Name

Owner

Address

I certify that I am duly authorized to submit this list on behalf of the firm, that I am associated with the firm in the capacity noted below and that I have personal knowledge of the accuracy of the information provided herein.

Preparer

Printed name

Title

NOTE: This list constitutes a **government record**, as defined by **§ 37.01** of the Texas Penal Code.

Exhibit 2

Exhibit 3

PERFORMANCE BOND

THE STATE OF TEXAS §
COUNTY OF HARRIS §

_____, ("Principal") and _____, ("Surety"), shall pay to the City of Houston, Texas ("City"), the sum of \$ _____ in accordance with the terms and conditions stated below:

On or about this date, the Principal executed a _____ Agreement in writing with the City for _____ ("Agreement"), which is incorporated into this Bond.

The conditions of this obligation are that if the Principal performs its obligations under the terms of the Agreement and this Bond in all respects, then this obligation is void and has no further force and effect; otherwise this obligation remains in effect and the sum of \$ _____ is payable to the City on demand.

The Surety relieves the City and its representatives from the exercise of any diligence whatever in securing the Principal's compliance with the terms of the Agreement, and the Surety waives any notice to it of the Principal's default or delay in the performance of the Agreement. The Surety shall take notice of and is held to have knowledge of all acts or omissions of the Principal, its agents, and representatives in all matters pertaining to the Agreement.

The City and its representatives may at any time, without notice to the Surety, make any changes in the terms and conditions of the Agreement, or extend it, and may add to or deduct from the Principal's obligations under the Agreement. Such changes, if made, do not in any way relieve, release, condition, or limit the obligation in this Bond and undertaking or release the Surety therefrom.

SURETY AND PRINCIPAL AGREE TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, AND REPRESENTATIVES FROM ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, DAMAGES, FINES, AND EXPENSES ARISING OUT OF OR RESULTING FROM ANY FAILURE ON THE PART OF THE PRINCIPAL, ITS AGENTS, AND REPRESENTATIVES, TO FULLY PERFORM UNDER THE AGREEMENT, INCLUDING ANY CHANGES OR EXTENSIONS TO IT.

If the City brings any suit or other proceeding at law on the Agreement or this Bond, or both, the Principal and the Surety shall pay to the City the additional sum of 10 percent of whatever amount the City recovers, which sum of 10 percent is agreed by all parties to be indemnity to the City for the expense of and time consumed by its City Attorney, his or her assistants, and office staff, and other costs and damages to the City. The amount of 10 percent is fixed and liquidated by the parties because the exact damage to the City would be difficult to ascertain.

This Bond and all obligations created under it shall be performable in Harris County, Texas, and all are non-cancelable. This Bond must be automatically renewed annually on the anniversary of the effective date of the Bond for the term of the Agreement and any extensions, unless the Surety gives the Principal and the City 30 days written notice before the renewal date that the Surety will not renew this Bond, in which case the Principal shall provide the City with a replacement bond (in the same form as this Bond) before the renewal date. The provisions of V.T.C.A., Government Code Section 2253, as amended, control even though the Statute may not be applicable.

All notices required or permitted by this Bond must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out on the signature page of this Bond or at such other address as the receiving party designates by proper notice to the sending party.

This Bond is effective on _____ and is binding on the Principal and the Surety, their heirs, executors, administrators, successors and assigns, jointly and severally.

Exhibit 4

Instructions for Assisting With the Completion of an Affidavit of Ownership

Page One of the Form – Affidavit of Ownership or Control

- Complete all blanks on the affidavit.
- In the space provided for the "undersigned authority," can be any individual associated with the contracting entity. The Contracting Entity refers to the company doing business with the City.
- Include the following information:
 - Full name (Affiant)
 - Title position within the company
 - Official company name doing business with the City

Page Two of the Form – Contracting Entity

- The residence address should be provided if Sole Proprietorship, Partnership, or Limited Partnership has been selected on page one.
- A physical address is required. (P.O. Box will not be accepted.)
- Full names should be provided. (Initials will not be accepted.)
- If anyone in the company owns 5% or more of the company (and this includes persons who own 100%) then complete the requested information relating to the 5% owners. (Attach additional sheets as needed.) **If there are no 5% owners, state "NONE" in the space provided.**
- If your company is a non-profit organization, please provide the complete information for the President, Vice-President, Secretary, and Treasurer.
- Ensure the document has been signed by the Affiant and notarized prior to submitting it to the City of Houston.

Page Three of the Form – Item Number 6 Optional Information

- If an appeal of taxes has been filed on behalf of your company, please include a copy of the official form received by the appropriate agency.

Page Three of the Form – Notary Seal

- Ensure the document has been notarized and has the official seal on the original document submitted to the City.

CITY OF HOUSTON CONTRACTOR OWNERSHIP DISCLOSURE ORDINANCE:

City Council requires knowledge of the identities of the owners of entities seeking to contract with the City in order to review their indebtedness to the City prior to entering contracts. Therefore, all respondents to this invitation to bid must comply with Houston Code of Ordinances Chapter 15, as amended (Sections 15-122 through 15-126) relating to the disclosure of owners of entities bidding on, proposing for or receiving City contracts. Provisions of this ordinance are provided in part in the paragraphs that follow. Complete copies may be obtained from the office of the City Secretary.

Contracting entity means a sole proprietorship, corporation, non-profit corporation, partnership, joint venture, limited liability company, or other entity that seeks to enter into a contract requiring approval by the Council but excluding governmental entities.

A contracting entity must submit at the time of its bid or proposal, an affidavit listing the full names and the business and residence addresses of all persons owning five percent or more of a contracting entity or, where a contracting entity is a non-profit corporation, the full names and the business and residence addresses of all officers of the non-profit corporation.

Completion of the "**Affidavit of Ownership or Control**", included herein, and submitted with the Official Bid or Proposal Form. Failure to provide this information may be just cause for rejection of your bid or proposal.

Orig. Dept.:

File/I.D. No.:

5. The information shown below is true and correct for the Contracting Entity and all owners of 5% or more of the Contracting Entity and, where the Contracting Entity is a non-profit entity, the required information has been shown for each officer. *[NOTE: IN ALL CASES, USE FULL NAMES, LOCAL BUSINESS AND RESIDENCE ADDRESSES AND TELEPHONE NUMBERS. DO NOT USE POST OFFICE BOXES FOR ANY ADDRESS. INCLUSION OF E-MAIL ADDRESSES IS OPTIONAL, BUT RECOMMENDED. ATTACH ADDITIONAL SHEETS AS NEEDED.]*

Contracting Entity:

Name:	_____
Business Address <i>[No./Street]:</i>	_____
<i>[City / State / Zip Code]:</i>	_____
Telephone Number:	_____
Email Address:	_____
Residence Address <i>[No./Street]:</i>	_____
<i>[City / State / Zip Code]:</i>	_____
Telephone Number:	_____
Email Address:	_____

5% Owner(s) or More (IF NONE, STATE "NONE."):

Name:	_____
Business Address <i>[No./Street]:</i>	_____
<i>[City / State / Zip Code]:</i>	_____
Telephone Number:	_____
Email Address:	_____
Residence Address <i>[No./Street]:</i>	_____
<i>[City / State / Zip Code]:</i>	_____
Telephone Number:	_____
Email Address:	_____

Orig. Dept.:

File/I.D. No.:

6. Optional Information

Contracting Entity and/or [REDACTED] [NAME OF OWNER OR NON-PROFIT OFFICER] is actively protesting, challenging or appealing the accuracy and/or amount of taxes levied against [REDACTED] [CONTRACTING ENTITY, OWNER OR NON-PROFIT OFFICER] as follows:

Name of Debtor: [REDACTED]
Tax Account Nos.: [REDACTED]
Case or File Nos.: [REDACTED]
Attorney/Agent Name: [REDACTED]
Attorney/Agent Phone No.: [REDACTED]
Tax Years: [REDACTED]

Status of Appeal [DESCRIBE]: [REDACTED]

Affiant certifies that he or she is duly authorized to submit the above information on behalf of the Contracting Entity, that Affiant is associated with the Contracting Entity in the capacity noted above and has personal knowledge of the accuracy of the information provided herein, and that the information provided herein is true and correct to the best of Affiant's knowledge and belief.

Affiant

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 20_____

(Seal)

Notary Public

NOTE: This affidavit constitutes a government record as defined by Section 37.01 of the Texas Penal Code. Submission of a false government record is punishable as provided in Section 37.10 of the Texas Penal Code. Attach additional pages if needed to supply the required names and addresses.

Exhibit 5

Sample Letter of Intent

THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT.

TO: City of Houston
Administering Department

Date: _____

Project Name: _____
Project Number: _____
Bid Amount: _____
M/W/DBE Goal: _____

_____ agrees to enter into a contractual agreement
Prime Contractor

with _____ who will provide the following goods/ services in
M/W/DBE Subcontractor
connection with the above referenced contract:

for an estimated amount of \$ _____ or _____% of the total contract value.

_____ is currently certified with the City of Houston's Affirmative
(M/W/DBE Subcontractor)
Action and Contract Compliance Office to function in the aforementioned capacity.

_____ **Prime Contractor** _____ **M/W/DBE Subcontractor**

intend to work on the above-named contract in accordance with the M/W/DBE Participation Section of the City of Houston Bid Provisions, contingent upon award of the contract to the aforementioned Prime Contractor.

Signed (Prime Contractor)

Signed (M/W/DBE Subcontractor)

Printed Signature

Printed Signature

Title

Date

Title

Date

CITY OF HOUSTON CERTIFIED MWBE SUBCONTRACT TERMS

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

1. _____ (M/WBE 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. _____ (M/WBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action or the applicable statute of limitations.
3. Within five (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 pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.
4. As concluded by the parties to this subcontract, and as evidenced by their signatures hereto, any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on 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 shall be conducted according to the following procedures:
 - a. Upon the decision of the Director or upon written notice to the HR Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (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 Office of the City's Affirmative Action Division.
 - 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. In the event the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

These provisions apply to goal oriented contracts. A goal oriented contract means any contract for the supply of goods or non-professional services in excess of \$100,000.00 for which competitive proposals are required by law; not within the scope of the MBE/WBE program of the United States Environmental Protection Agency or the United States Department of Transportation; and which the City Purchasing Agent has determined to have significant MWBE subcontracting potential in fields which there are an adequate number of known MBEs and/or WBEs to compete for City contracts.

The MWBE policy of the City of Houston will be discussed during the pre-proposal conference. For information, assistance, and/or to receive a copy of the City's Affirmative Action Policy and/or Ordinance, contact the Affirmative Action Division at (713) 837-9000, 611 Walker Street, 7th Floor, Houston, Texas 77002.

City of Houston
Affirmative Action and Contract Compliance
Schedule of MWDBE Participation

PROJECT NAME & NUMBER: [REDACTED]

PRIME CONTRACTOR: [REDACTED]

LIAISONPHONE: [REDACTED]

NAME OF MINORITY/WOMEN DISADVANTAGED FIRM	CERTIFICATION NO.	DESCRIPTION OF WORK TO BE PERFORMED	SUBCONTRACT AMOUNT	% OF TOTAL CONTRACT
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
TOTALS				[REDACTED]

\$ [REDACTED] % [REDACTED] \$ [REDACTED] % [REDACTED]
Total Contract Amount MWDBE Goal MWBE Subcontract Amount MWBE % of Total Contract Amount

The undersigned will enter into a formal contract with MWDBE firms for work listed in this schedule contingent upon being awarded the contract for the above referenced project. Signed Letters of Intent for each firm listed above may be submitted prior to contract award.

Signature: _____

Name: [REDACTED]

Title: [REDACTED]

NOTE: All firms must be certified by the City of Houston Affirmative Action and Contract Compliance Office to count toward the MWDBE participation goal. 07/08

Exhibit 6

CONFLICT OF INTEREST QUESTIONNAIRE:

Chapter 176 of the Local Government Code requires every Vendor or Contractor with the City of Houston (“City”) to file a Conflict of Interest Questionnaire with the City Secretary of the City of Houston by the **seventh** business day after:

1. Any contract discussions or negotiations begin, or
2. Submitting an application, responses to requests for proposals, bids, correspondence, or any writing related to a potential agreement with the City.

The Conflict of Interest Questionnaire is available for downloading from the Texas Ethics Commission’s website at <http://www.ethics.state.tx.us/forms/CIQ.pdf> . The completed Conflict of Interest Questionnaires will be posted on the City Secretary’s website. There will also be a list of the City’s Local Government Officers on the City of Houston’s website.

Additionally, each Vendor or Contractor must file updated questionnaires no later than **September 1st** of each year that the Vendor or Contractor seeks to contract with the City, or the **seventh** business day after the date of an event that would render the questionnaire incomplete or inaccurate.

However, a Vendor or Contractor is not required to file a new questionnaire in any year if the vendor has completed a questionnaire between June 1st and September 1st of that year, unless the previous questionnaire is incomplete or inaccurate.

Original Conflict of Interest Questionnaire shall be filed with Houston’s Records Administrator (Ms. Anna Russell, City Secretary, 900 Bagby, First Floor, Houston, Texas 77002). Vendors and Contractors shall include a copy of the form that was submitted to the City Secretary as part of the BID package. Any questions about filling out this form should be directed to your attorney

Failure of any Vendor or Contractor to comply with this law is a Class C misdemeanor.

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

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 person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of person who has a business relationship with local governmental entity.

2 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 the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

Yes No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes No

D. Describe each employment or business relationship with the local government officer named in this section.

4

Signature of person doing business with the governmental entity

Date

Exhibit 7

SAMPLE FOR AWARD OVER \$50,000.00

ACORD. CERTIFICATE OF INSURANCE Issue Date (MM/DD/YY)

PRODUCER

ISSUERS OF POLICIES THE ISSUER MUST HAVE A RATING OF AT LEAST B+ AND FINANCIAL SIZE OF CLASS VI OR BETTER ACCORDING TO THE CURRENT YEAR'S BEST RATING.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

SAMPLE FORM

COMPANIES AFFORDING COVERAGE

- COMPANY A
- COMPANY B
- COMPANY C
- COMPANY D
- COMPANY E

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR.	TYPE OF INSURANCE	POLICY NUMBER	EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION (MM/DD/YY)	POLICY LIMITS
A.	General Liability <input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Claims Made <input checked="" type="checkbox"/> Occur <input checked="" type="checkbox"/> Owners & Contractors Prot.				General Aggregate \$1,000,000 Products-Comp/Op Agg. \$1,000,000 Personal & Adv. Injury \$1,000,000 Each Occurrence \$500,000 Fire Damage (Any one fire) \$50,000 Med. Expense \$5,000 (Any one person)
A.	Automobile Liability <input checked="" type="checkbox"/> Any Auto <input checked="" type="checkbox"/> All Owned Autos <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-Owned Autos <input type="checkbox"/> Garage Liability	Auto Liability Insurance for autos furnished or used in the course of performance of this Contract. Including Owned, Non-owned, and Hired Auto coverage. (Any Auto coverage may be substituted for Owned, Non-owned and Hired Auto Coverage.) If no autos are owned by Contractor, coverage may be limited to Non-owned and Hired Autos. If Owned Auto coverage cannot be purchased by Contractor, Scheduled Auto coverage may be substituted for Owned Auto coverage. EACH AUTO USED IN PERFORMANCE OF THIS CONTRACT MUST BE COVERED IN THE LIMITS SPECIFIED.			Combined Single Limit \$1,000,000 Bodily Injury (Per person)\$ Bodily Injury (Per Accident) \$ Property Damage \$
	Excess Liability			Each Occurrence	\$
				Aggregate	\$
	Worker's Compensation and Employee Liability	Statutory Limits		<input checked="" type="checkbox"/> Statutory Limits Each Accident Disease - Policy Limit Disease - Each Employee	\$100,000 \$100,000 \$100,000
	Other				

DESCRIPTION OF OPERATION/LOCATIONS/VEHICLES/SPECIAL ITEMS

City of Houston is named as additional insured on Auto and General Liability policies, and Waiver of Subrogation on Auto, General Liability, and Worker's Compensation. Material alteration on cancellation notice as shown below:
For (Project Name)

CERTIFICATE HOLDER

MUST BE MODIFIED AS FOLLOWS:

CITY OF HOUSTON / ADMIN & REG AFFAIRS DEPT
STRATEGIC PURCHASING DIVISION
P.O. BOX 1562
HOUSTON, TEXAS 77251

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED, NON-RENEWED, OR MATERIALLY ALTERED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL MAIL THIRTY (30) DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT.

AUTHORIZED REPRESENTATIVE

- MUST INCLUDE:**
1. Buyer's Name
 2. Project Name
 3. Project Number

Exhibit 8

Payment for Additional Services not listed shall be based on the Coefficient factor of _____ multiplier times the sum of applicable unit prices in the R.S. Means Cost Data books (latest edition in effect at that time). For this Agreement, the unit price shall be the "Total Bare Costs" column in the R.S. Means Cost Data books adjusted using the Houston, Texas Cities Cost Index "total weighted average". Each unit price is comprised of the overhead, labor burden, profit, equipment, and material costs to accomplish that specific task.

Exhibit 9

**CITY OF HOUSTON
DRUG DETECTION AND DETERRENCE PROCEDURE**

- (a) It is the policy of the City to achieve a drug-free workforce and to provide a workplace that is free from the use of illegal drugs and alcohol. It is also the policy of the City that the manufacture, distribution, dispensation, possession, sale or use of illegal drugs or alcohol by contractors while on City premises is prohibited. By executing this Contract, Contractor represents and certifies that it meets and shall comply with all the requirements and procedures set forth in the Mayor's Policy on Drug Detection and Deterrence, City Council Motion No. 92-1971 ("Mayor's Policy") and the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), both of which are on file in the Office of the City Secretary.
- (b) Confirming its compliance with the Mayor's Policy and Executive Order, Contractor, as a condition precedent to City's obligations under this Contract, will have filed with the Contract Compliance Officer for Drug Testing ("CCODT"), prior to execution of this Contract by the City, (i) a copy of its drug-free workplace policy, (ii) the Drug Policy Compliance Agreement substantially in the format set forth in Attachment "5a" to the Executive Order, together with a written designation of all safety impact positions, and (iii) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the format set forth in Attachment "5c" to the Executive Order. If Contractor files written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six (6) months during the performance of this Contract or upon the completion of this Contract if performance is less than six (6) months, a Drug Policy Compliance Declaration in a form substantially similar to Attachment "5b" to the Executive Order. The Drug Policy Compliance Declaration shall be submitted to the CCODT within thirty days of completion of this Contract. The first six (6) month period shall begin to run on the date City issues its notice to proceed hereunder or if no notice to proceed is issued, on the first day Contractor begins work under this Contract.
- (c) Contractor shall have the continuing obligation to file with the CCODT written designations of safety impact positions and Drug Policy Compliance Declarations at anytime during the performance of this Contract that safety impact positions are added if initially no safety impact positions were designated. Contractor also shall have the continuing obligation to file updated designations of safety impact positions with the CCODT when additional safety impact positions are added to Contractor's employee work force.
- (d) The failure of Contractor to comply with the above Sections shall be a breach of this Contract entitling City to terminate in accordance with Article IV.

ATTACHMENT C

**Contractor's Certification of No Safety Impact Positions
In Performance of a City Contract**

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

_____ (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has no employee safety impact positions as defined in §5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Contractor agrees and covenants that it shall immediately notify the City's Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

Date

Contractor Name _____
Signature _____
Title _____

ATTACHMENT D

**CONTRACTOR'S CERTIFICATION OF NON-APPLICATION OF
CITY OF HOUSTON DRUG DETECTION AND DETERRENCE PROCEDURES
FOR CONTRACTORS**

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

_____ (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has fewer than fifteen (15) employees during any 20-week period during a calendar year and also certify that Contractor has no employee safety impact positions as defined in 5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Safety impact position means a Contractor's employment position involving job duties that if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health or safety of the employee, co-workers, and/or the public.

Date

Contractor Name _____
Signature _____
Title _____

Exhibit 10

CITY OF HOUSTON, TEXAS

EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

Pursuant to City Council Ordinance No. 78-1538, passed August 9, 1978, all contracts entered into by the City of Houston involving the expenditure of Ten Thousand (\$10,000.00) Dollars, or more, shall incorporate the following Equal Employment Opportunity Clause:

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 or 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 workers' 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 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 workforce 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 nondiscrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, 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 each of its 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 11



City of Houston
Affirmative Action and Contract Compliance

POP-1
(Document 00840)

Pay or Play
Program Requirements

I. Pay or Play Program Elements

A. Purpose

Authorized by Ordinance 2007-534 and Executive Order 1-7, the purpose of the Pay or Play Program is (1) to create a more level playing field among competing contractors so that those who provide health benefits to their employees are not disadvantaged in the bidding process; and 2) to recognize and account for the fact that there are costs associated with the health care of the uninsured.

B. Program Elements

1. Covered contracts: Contracts covered by the program are those that are advertised after July 1, 2007, which are valued at or above \$100,000 and are not primarily for the procurement of property, goods, supplies or equipment.
2. Covered employees: This program applies to employees of a covered contractor or subcontractor, including contract labor, who are over age 18, work at least 30 hours per week and work any amount of time under a covered city contract or subcontract.
3. Compliance with the program means that the contractor either:
 - "Pays" by contributing \$1.00 per covered employee per hour for work performed under the contract with the City; or
 - "Plays" by offering health benefits to covered employees. Health benefits must meet or exceed the following standards:
 - The employer will contribute no less than \$150 per covered employee per month toward the total premium cost.
 - The employee contribution, if any amount, will be no greater than 50% of the total monthly premium cost.
4. Subcontracts: The prime contractor is responsible for compliance on behalf of covered employees, including contract labor, of subcontractors with subcontracts valued at or greater than \$200,000, if the subcontract is not primarily for the procurement of property, goods, supplies or equipment. Subcontractor compliance includes submission of applicable reports and/or payments to the prime, as well as maintenance of records.
5. Exemptions/Waivers: The City of Houston will award a contract to a contractor that neither Pays nor Plays only if the contractor has received an approved waiver.
6. Administration: Contractor performance in meeting Pay or Play program requirements will be managed by the contracting department. The Office of Affirmative Action and Contract Compliance will have administrative oversight of the program, including audit responsibilities. Questions about the program should be

referred to the department POP Liaison or the Office of Affirmative Action and Contract Compliance.

II. Documentation and Reporting Requirements

A. Document that must be signed and returned to administering department with the bid/proposal.

1. Notice to Prospective City Contractors (Form POP-1A) acknowledges bidder/proposers' knowledge of the program and its requirements, and the intention to comply.

B. Documents that must be signed and returned to administering department within a period designated by the department's Contract Administrator, upon notification of low bidder or successful proposer status:

1. Certification of Contractor's Intent to Comply with Pay or Play Program (Form POP-2).
Note - Contractors that opt to "play" must provide proof of coverage, including documentation from insurance provider, and names of covered employees.
2. List of Participating Subcontractors (Form POP-3)

C. The contractor will comply with the following reporting requirements:

1. Contractors that opt to Play
Provide periodic reports to the contract administrator showing proof of coverage. Reporting schedule will be determined by administering department based on length of contract. (Form POP-7)
2. Contractors that opt to Pay
Provide monthly reports to administering department, detailing names of employees, hours worked, exemptions (if any) and amount owed. (Form POP-5)

Contractors shall submit an initial report with the second invoice to the department. Payments based on monthly reports are due to the contracting department with submission of the following month's invoice. Payments may be made via wire transfer, provided that proof of transaction is submitted to administering department.

III. Compliance and Enforcement

The Affirmative Action and Contract Compliance Office will audit program compliance. Contractors willfully violating or misrepresenting POP program compliance will be subject to corrective and/or punitive action, including but not limited to the assessment of fines and penalties and/or debarment.

The Pay or Play Program Requirements Form (POP-1) and all other POP Forms are available for downloading from the City of Houston's Website at <http://www.houstontx.gov/aacc/popforms.html>

Exhibit 12



**CERTIFICATION OF AGREEMENT TO
 COMPLY WITH PAY OR PLAY PROGRAM**

Contractor Name: _____ \$ _____
 (Contractor/Subcontractor) (Amount of Contract)

Contractor Address: _____

Project No.: [GFS/CIP/AIP/File No.] _____

Project Name: [Legal Project Name] _____

In accordance with the City of Houston Pay or Play Program authorized by Ordinance 2007-534, Contractor agrees to abide by the terms of this Program. This certification is required of all contractors for contracts subject to the program. You must agree EITHER to PAY or to PLAY for each covered employee, including those of subcontractors subject to the program.

- Yes No Contractor agrees to Pay \$1.00 per hour for work performed by covered employees, including compliance for covered subcontractors' employees and contract labor, under the contract with the City.
- Yes No Contractor agrees to offer health benefits to each covered employee, including compliance by the covered subcontractors that meet or exceed the following criteria:
 - (1) the employer will contribute no less than \$150 per employee per month toward the total premium cost; and
 - (2) the employee contribution, if any amount, will be no greater than 50% of the total premium cost.
- Yes No Contractor agrees to pay on behalf of some covered employees and contract labor and play on behalf of other covered employees, in accordance with program requirements, including subcontractors' employees, if applicable.
- Yes No If contract labor is utilized the Contractor agrees to report hours worked by the contract laborer and Pay \$1.00 per hour for work performed.
- Yes No Contractor will comply with all provisions of the Pay or Play Program and will furnish all information and reports requested to determine compliance with program provisions.
- Yes No For Prime Contractors Only: Contractor will file compliance reports with the City, which will include activity for subcontractors subject to the program, in the form and to the extent requested by the administering department or the Affirmative Action and Contract Compliance Office. Compliance reports shall contain information including, but not limited to, documentation showing employee health coverage and employee work records.

Following Information is Mandatory	Prime Contractor	Sub-Contractor
Total No. Of Employees on City Job		
No. Of Employees-"Playing"		
No. Of Employees -"Paying"		
No. Of Employees "Exempt"		

I hereby certify that the above information is true and correct.

 CONTRACTOR (Signature)

 DATE

 NAME AND TITLE (Print or type)

Exhibit 13

ONE-YEAR MAINTENANCE BOND

THE STATE OF TEXAS §

§KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF HARRIS §

THAT WE, _____, as Principal, hereinafter called "Contractor" and the other subscriber hereto _____, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Houston, a municipal corporation, in the sum of _____ Dollars (\$_____) for the payment of which sum well and truly to be made to the City of Houston and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors and assigns jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with the City of Houston for _____

all of such work to be done as set out in full in said Contract Documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, if the said Contractor shall comply with the provisions of Subparagraph 12.2.2 of the General Conditions, and correct Work not in accordance with the Contract Documents

discovered within the established one-year period, then this obligation shall become null and void, and shall be of no further force and effect; otherwise, the same is to remain in full force and effect.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Contract Documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

IN WITNESS THEREOF, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST, SEAL: (if a corporation)

WITNESS: (if not a corporation)

(Name of Contractor)

By: _____

By: _____

Name:

Name:

Title:

Title:

Date:

ATTEST/WITNESS: (SEAL)

(Full Name of Surety)

By: _____

(Address of Surety for Notice)

Name:

Title:

Date:

By: _____

Name:

Title:

Date:

This Ordinance and/or Contract have been reviewed as to form by the undersigned legal assistant and have been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

Date

Paralegal

STATUTORY PAYMENT BOND

THE STATE OF TEXAS §

§KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF HARRIS §

THAT _____, as Principal, hereinafter called "Contractor" and the other subscriber hereto _____, as Surety, do hereby acknowledge ourselves to be held and firmly bound unto the City of Houston, a municipal corporation, in the sum of _____ Dollars (\$ _____) for the payment of which sum, well and truly to be made to the City of Houston, and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a contract in writing with the City of Houston for _____

all of such work to be done as set out in full in said Contract Documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein;

NOW, THEREFORE, if the said Contractor shall pay all claimants supplying labor and materials to him or a subcontractor in the prosecution of the Work provided for in the Contract, then, this obligation shall be void; otherwise the same is to remain in full force and effect;

PROVIDED HOWEVER, that this bond is executed pursuant to the provisions of Article 5160 of the Revised Civil Statutes of Texas, as amended, and all liabilities on this bond shall be determined in accordance with the provisions of said Article to the same extent as if it were copied at length herein.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Contract Documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

IN WITNESS THEREOF, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST, SEAL: (if a corporation)

WITNESS: (if not a corporation)

(Name of Contractor)

By: _____

Name:

Title:

By: _____

Name:

Title:

Date:

ATTEST/WITNESS: (SEAL)

(Full Name of Surety)

By: _____

Name:

Title:

Date:

(Address of Surety for Notice)

By: _____

Name:

Title:

Date:

This Ordinance and/or Contract have been reviewed as to form by the undersigned legal assistant and has been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

Date

Paralegal

PERFORMANCE BOND

THE STATE OF TEXAS §

§KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF HARRIS §

THAT WE, _____, as Principal, hereinafter called "Contractor" and the other subscriber hereto _____, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Houston, a municipal corporation, in the sum of _____ Dollars (\$_____) for the payment of which sum, well and truly to be made to the City of Houston and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with the City of Houston

all of such work to be done as set out in full in said Contract Documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, if the said Contractor shall faithfully and strictly perform Contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the Contract Documents referred to therein and shall comply strictly with each and every provision of Contract and with this bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect.

It is further understood and agreed that the Surety does hereby relieve the City of Houston or its representatives from the exercise of any diligence whatever in securing compliance on the part of the Contractor with the terms of the Contract, and the Surety hereby waives any notice to it of any default, or delay by the Contractor in the performance of its Contract and agrees that it, the Surety,

shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the Contractor in all matters pertaining to the Contract. The Surety understands and agrees that the provision in the Contract that the City of Houston shall retain certain amounts due the Contractor until the expiration of thirty days from the acceptance of the Work is intended for the City's benefit, and the City of Houston shall have the right to pay or withhold such retained amounts or any other amount owing under the Contract without changing or affecting the liability of the Surety hereon in any degree.

It is further expressly agreed by Surety that the City of Houston or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Contract Documents and in the Work to be done thereunder, as provided in the Contract, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this bond and undertaking or release the Surety therefrom.

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify and save harmless the City of Houston from any liability, loss, cost, expense, or damage arising out of or in connection with the work done by the Contractor under the Contract.

If the Contract Price is greater than \$1.2 million and in the event that the City of Houston shall bring any suit or other proceeding at law on the Contract or this bond or both, the Contractor and Surety agree to pay to the City the sum of 10 percent of whatever amount may be recovered by the City in suit or legal proceeding, which sum of 10 percent is agreed by all parties to be indemnity to the City for the expense of or time consumed by its City Attorney, his assistants, and office force, and other cost and damage occasioned to the City. This amount of 10 percent is fixed and liquidated by the parties, it being agreed by them that the exact damage to the City would be difficult to ascertain.

This bond and all obligations created hereunder shall be performable in Harris County, Texas. This bond is given in compliance with the provisions of Article 5160, Revised Civil Statutes of Texas, as amended, which is incorporated herein by this reference. However, all of the express provisions hereof shall be applicable whether or not within the scope of said statute.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Contract Documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

IN WITNESS THEREOF, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST, SEAL: (if a corporation)

WITNESS: (if not a corporation)

(Name of Contractor)

By: _____

Name:

Title:

By: _____

Name:

Title:

Date:

ATTEST/WITNESS: (SEAL)

(Full Name of Surety)

By: _____

Name:

Title:

Date:

(Address of Surety for Notice)

By: _____

Name:

Title:

Date:

This Ordinance and/or Contract have been reviewed as to form by the undersigned legal assistant and has been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

Date

Paralegal

Exhibit 14

THE STATE OF TEXAS §

COUNTY OF HARRIS §

SERVICE AGREEMENT

FOR

OPERATION AND MAINTENANCE SERVICES

FOR THE GREATER NORTHEAST HOUSTON SERVICE AREA WATER

AND WASTEWATER UTILITIES AND FACILITIES

THIS CONTRACT FOR OPERATION AND MAINTENANCE SERVICES FOR THE GREATER NORTHEAST HOUSTON SERVICE AREA WATER AND WASTEWATER UTILITIES AND FACILITIES is made on the Countersignature Date by and between the **CITY OF HOUSTON, TEXAS** (“the City”), a municipal corporation and home-rule city of the State of Texas principally situated in Harris County, acting by and through its governing body, the City Council and (“Service Provider”).

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

City

Service Provider

Director of Department of Public Works and Engineering

Or Designee

City of Houston

P.O. Box 1562
Houston, TX 77251

RECITALS

WHEREAS, the City of Houston issued a Request for Qualifications ("RFQ") soliciting qualified companies to manage, operate and maintain its Greater Northeast Houston Service Area Water and Wastewater Facilities (as defined herein); and

WHEREAS, the Contractor, in response to said Request for Qualifications submitted a statement of qualifications ("SOQ") evidencing its experience and interest in being selected to perform such services;

WHEREAS, the City of Houston issued a Request for Proposals (" RFP") on Month 00, 2009 inviting the Contractor, among others, to propose on the basis of its SOQ; and

WHEREAS, the Contractor, in response to the RFP, submitted a proposal ("Contractor's Proposal") for the management, operation and maintenance of the Greater Northeast Houston Service Area Water and Wastewater Utilities and Facilities; and

WHEREAS, the City of Houston has selected the Contractor, pursuant to the RFQ and the Contractor's SOQ and the RFP and the Contractor's Proposal, to manage, operate and maintain the Greater Northeast Houston Service Area Water and Wastewater Utilities and Facilities in accordance with the terms, conditions and provisions of this Service Agreement; and

WHEREAS, _____ ("Guarantor") has executed the Guarantee set forth in Schedule _____;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and the terms and conditions hereinafter set forth;

THE CITY OF HOUSTON AND THE CONTRACTOR HEREBY AGREE to the terms and conditions of the Service Agreement, which is composed of the documents contained in the Table of Contents of this Agreement. All of the above described documents are hereby incorporated into this Service Agreement by reference for all purposes. In the event of any conflict or inconsistency between or among the provisions of such documents, it is agreed that the provisions of the numbered parts control over the provisions of the attachments.

IN WITNESS WHEREOF, the City of Houston and Contractor have made and executed this Service Agreement in multiple copies, each of which is an original.

ATTEST/SEAL

CONTRACTOR

By: _____

By: _____

Corporate Secretary

Name:

Title:

ATTEST/SEAL

CITY OF HOUSTON

By: _____

By: _____

City Secretary

Mayor

APPROVED

COUNTERSIGNED

I. DEFINITIONS

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

“Additional Services” are described in Section 4.

“Agreement” or “Service Agreement” means this document.

“Basic Services” are described in Section 4.

“Change in Law” means (a) the enactment, adoption, promulgation, modification or repeal after the bid date of any federal, state, or local law, or local law, ordinance, code, rule, regulation or other similar legislation or the change in interpretation after the bid date, of any federal, state, or local law, ordinance, code, rule, regulation, official permit, license or approval by any regulatory

entity having jurisdiction with respect to the operation or maintenance of the Greater Northeast Houston Service Area Water and Wastewater Facilities, or (b) the imposition, after the bid date, of any material conditions on the issuance, modification or renewal of any official permit, license or approval necessary for the operation and maintenance of the Greater Northeast Houston Service Area Water and Wastewater Facilities, which establishes requirements with respect to the operation or maintenance of the Greater Northeast Houston Service Area Water and Wastewater Facilities that are more burdensome than the most stringent requirements:

- (i) in effect on the bid date, or
- (ii) specific requirements included in this Contract.

For purposes of part (a) of this definition, no enactment, adoption, promulgation or modification of laws, ordinances, codes, rules, regulations or similar requirement or enforcement policy with respect to any such requirement shall be considered a Change in Law if, as of the bid date, such law, ordinance, code, rule, regulation or other similar requirement would have directly affected the continued management, operation and maintenance of the Greater Northeast Houston Service Area Water and Wastewater Facilities by the City after the bid date in the absence of this Contract, and either such law, ordinance, code, rule, regulation or other similar requirement was (i) officially proposed by the responsible agency and published as a final rule in the Federal Register or equivalent federal, state or local publication before the bid date and thereafter becomes effective in the same form without further action or; (ii) enacted into law by the United States, a State or local body before the bid date. In no event shall a change in any federal, state or local tax law be considered a Change in Law.

“City” is defined in the Preamble of this Contract and includes its successors and assigns. Unless otherwise required herein, the Director is authorized to administer this Contract on behalf of the City, e.g. approve invoices, declare "Major Emergency", etc.

"CMMS" is defined in Attachment X.

"Contract" means this document, including all Appendices.

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

"Director" shall mean the Director of the Department of Public Works and Engineering, or such person as he or she shall designate with notice to the Service Provider.

"Force Majeure" is defined in Section F.

"Greater Northeast Houston Service Area Water and Wastewater Facilities" are described in Appendix A.

"Major Repair" means the repair or replacement initiated by the Contractor for which the costs per "unit" for material, parts and supplies minus salvage value of replaced unit (if any) equals \$50,000 or more. "Units" are itemized in Attachment X, Preventative Maintenance Standards, under the "Equipment" column.

"O&M Manuals" means the operating and maintenance manuals for the Water and Wastewater Facilities, including manuals for both systems operation and for the operation and maintenance of the individual items of equipment as provided by the manufacturer(s). The documents included hereunder will be designated by the City of Houston Representative.

"Preventive Maintenance Schedule" is described in Attachment X.

"Process Residual" means all waste and by products resulting from the operation and maintenance of the Water and Wastewater Facilities, including sludges, chemical residuals, lubricants, off-specification treated water and waste generated from emptying the various treatment units

“Service Provider” is defined in the Preamble of this Contract and includes its successors and assigns.

"Spare Parts Inventory" means the stock of spare parts to be maintained on site during the Service Term in accordance with the provisions of this Service Agreement.

II. GENERAL TERMS FOR OPERATION AND MAINTENANCE OF THE GREATER NORTHEAST HOUSTON SERVICE AREA WATER AND WASTEWATER UTILITIES AND FACILITIES

A. General

During the Service Term, Contractor shall provide full time management, operation and maintenance for the Greater Northeast Houston Service Area Water and Wastewater Facilities. The Contractor shall operate and maintain the Greater Northeast Houston Service Area Water and Wastewater Facilities as required in the Service Agreement below and all applicable federal, state and local laws, regulations and permits.

Contractor has had the opportunity to tour the Greater Northeast Houston Service Area Water and Wastewater Facilities and review the City of Houston's records prior to executing this Agreement and accepts the Greater Northeast Houston Service Area Water and Wastewater Facilities "as is", except for the equipment which in the opinion of the Contractor and the City of Houston Representative is not functional on July 1, 2010. Such equipment shall be repaired and replaced by Contractor in accordance with the procedures and pricing for Additional Services.

B. Staffing

The Contractor shall provide operational oversight of the Greater Northeast Houston Service Area Water and Wastewater Facilities 24 hours a day, 7 days a week and provide qualified management, supervision, technical support and personnel necessary to perform the services required by this Service Agreement. This operational oversight may be provided by a combination of on-site personnel and remote monitoring using an approved Supervisory Control and Data Acquisition (SCADA) system. If remote monitoring is provided, then 24 hour, 7 days a week staffing of the remote monitoring location is required.

The Contractor's plant manager shall have overall responsibility for the operation and maintenance of the Greater Northeast Houston Service Area Water and Wastewater Facilities and shall act as liaison between the Contractor and the City of Houston. The Contractor's staff shall include one chief operator (with a Texas Class 1 Water and Class A Wastewater Operator's License.)

The resume of the Contractor's Water/Wastewater Plant Manager(s) and Utility Maintenance Manager(s) shall be provided to the City of Houston with the Staffing Plan and the Plant Manager must be approved in writing by the City of Houston Representative on or before the Notice to Proceed. The Plant and Utility Maintenance Managers must reside within the Houston Metropolitan area. The City of Houston has selected the Contractor to perform the services contemplated under this Service Agreement based, in part, on the past successful experience and expertise of the designated Plant Manager(s), who shall provide such services under this Service Agreement for the initial three Contract Years. Accordingly, the Contractor shall not, absent good cause, replace or remove the approved Plant Manager(s) during the term of this Service Agreement without the prior approval of the City of Houston Representative. Contractor shall replace its Plant Manager(s) work is deemed unsatisfactory by the City of Houston Representative. Any replacement Plant Manager must be approved in writing by the City of Houston Representative prior to starting work. Provided, however, the City of Houston Representative shall not require any such replacement unless and until the City of Houston Representative has given the Contractor written notice concerning the unsatisfactory performance and reasonable time for the Plant Manager to demonstrate performance that satisfies the City of Houston Representative.

The Contractor shall maintain the operations staff shown in the Staffing Plan approved by the City of Houston Representative. Any changes in such staff shall be made only with the written approval of the City of Houston Representative. The Contractor, including the Plant and Utility Maintenance Manager(s), and the City of Houston shall actively pursue, establish and maintain a business like, responsible and responsive working relationship with each other. The Contractor shall also actively pursue, establish, and maintain good relations with the customers and representatives of all applicable regulatory agencies and other persons with which the Contractor and the Plant Manager have dealings relative to the Water and Wastewater Facilities. During each month or, as necessary on a more frequent basis, the Contractor shall meet with the City of Houston's staff to review operations, reports, on-going cost information and other data and information relating to its obligations under this Service Agreement. The

Contractor shall function to improve the operations of the Greater Northeast Houston Service Area Water and Wastewater Facilities by conserving energy and chemicals, controlling water quality, and improving maintenance.

C. Certain Warranties regarding workmanship, parts equipment and consumable supplies

Contractor warrants that it shall perform all work in a good and workmanlike manner, meeting the standards prevailing in the United States for operation and maintenance of large surface water treatment plants. Contractor shall perform all work using trained and skilled persons having experience performing the required activities under this Service Agreement.

Contractor warrants that with respect to any spare parts, replacement parts, equipment or consumable goods (chemicals, lubricants, etc.) furnished by it as follows:

- (i) That each item shall be free of defects in title;
- (ii) That each item shall be free of defects in materials and workmanship for a period of one year from the date of delivery;
- (iii) That each item meets or exceeds the specifications and requirements specified in the O&M Manuals and Preventive Maintenance Schedule for the instrument or equipment in which the item is installed;
- (iv) That each replacement item is new, or with the written consent of the City of Houston Representative has been rebuilt to an "as new" condition;
- (v) Contractor agrees to use its best efforts to enforce against vendors all warranties for such parts and consumable goods;
- (vi) That all water treatment chemicals and any lubricants which may have direct contact with treated water meet Texas Health Department, TCEQ, EPA, ANSI/NSF or AWWA standards for use in potable water systems, whichever are more stringent.

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ARE DISCLAIMED BY CONTRACTOR, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES FOR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

The Contractor shall maintain on behalf of the City of Houston all third party warranties on the equipment of the Water Facilities, and shall fully cooperate and assist the City of Houston, at Contractor's cost, in enforcing existing warranties and guarantees relative to the Water Facilities. This includes all existing warranties referred to the Contractor by the City of Houston Representative as well as equipment or components provided by vendors selected by the City of Houston. Contractor shall keep a running list of all current warranties and provide monthly reports as required in Attachment X.

D. Repair and Replacement - In General

The Contractor shall maintain and replace equipment, facilities, and the grounds of the Greater Northeast Houston Service Area Water and Wastewater Facilities as required to meet the water quality and quantity requirements herein. Contractor shall comply with all maintenance and diagnostic standards required in Attachment X.

E. Major Repairs

If Contractor believes that the Greater Northeast Houston Service Area Water and Wastewater Facilities require a Major Repair, before making Major Repair, the Contractor shall (i) obtain written approval from the City of Houston Representative for the Major Repair, and (ii) comply with the City of Houston's procurement and design requirements and the provisions of this Agreement for Additional Services. Any Major Repair costing more than \$50,000 must be approved by the City of Houston.

F. Removal of Force Majeure

In the event Contractor's performance is, or may be, affected by a Force Majeure, the City of Houston Representative may request that the Contractor take such actions necessary to eliminate or mitigate the effect of the Force Majeure (or in the case of a Change in Law, compliance with the changed law), and the Contractor shall submit to the City of Houston a proposal that includes proposed services and cost estimates for such project. The Director, at his discretion may provide the Contractor written authorization to proceed with the elimination of the Force Majeure in accordance with a Memorandum of Understanding signed by the Contractor and by the Director. Provided, however, any removal of a Force Majeure costing more than \$500,000 must be approved by the City of Houston's City Council. To proceed with

the Removal of the Force Majeure, Contractor must comply with the procurement and design requirements of Section 3.11.

G. Additional Services for Discretionary Replacements and Improvements

At any time the City of Houston Representative at his sole discretion may request the Contractor to make specific replacements and/or improvements to the Greater Northeast Houston Service Area Water and Wastewater Facilities ("Discretionary Replacements and Improvements"), and the Contractor shall submit to the City of Houston a proposal that includes a description of services, any required changes to this Agreement and a firm fixed price or cost estimate for the Discretionary Replacement and Improvement. Alternatively, the City of Houston may provide the Contractor with a scope of services (including without limitation, design plans and specifications) and the Contractor shall provide a firm fixed price or cost estimate or both (as required by the City of Houston) and any required changes to this Agreement. In either case, if the City of Houston desires the Contractor to proceed with such work, the City of Houston and the Contractor shall mutually develop and execute a signed agreement setting forth at a minimum, the scope of work and payment terms.

H. Inventories

Contractor and the City of Houston Representative shall conduct an inventory of the spare parts, chemicals and supplies, and shall sign jointly a schedule listing all items in such Inventories at the start-up of the Service Agreement ("Inventory"). Thereafter Contractor shall assume custody of all items in such Inventories and shall be responsible for replenishing such Inventories to at least their initial stock levels. Any suggested modifications to the inventoried items shall be submitted to the City of Houston Representative for approval.

Upon completion of the Service Term, such Inventories shall have the same composition as the initial Inventory unless otherwise approved in writing by the City of Houston Representative.

I. Title to All Parts

Ownership of all materials, equipment and supplies purchased by Contractor for operation and maintenance of the Greater Northeast Houston Service Area Water and Wastewater Facilities shall vest in the City of Houston upon delivery. Contractor shall promptly pay all its vendors and, if required by the City of Houston Representative, provide evidence of payment. Title to

replaced components that are removed from the Water and Wastewater Facilities by Contractor shall vest with Contractor upon removal. Contractor shall be required to dispose of such removed components.

J. Testing Services

Testing Services for equipment shall be performed by Contractor each year throughout the Service Term as specified in Attachment X.

The format for the report and the firm employed by the Contractor for testing and analysis must be approved in advance by the City of Houston Representative.

The Contractor shall promptly address any deficiencies identified in the testing report. If the Contractor fails to provide the City of Houston the testing report or fails to correct identified deficiencies, the City of Houston, as its sole discretion, may withhold up to 10 percent of the Monthly Fixed Fee for each month that Contractor fails to provide the report or fails to correct the identified deficiencies. All such amounts (without interest) shall be returned to Contractor upon satisfactory completion of the necessary work.

K. Procurement and Design

(a) The Contractor shall procure and provide in a timely manner all necessary materials, supplies, chemicals, fuel, equipment, construction, repairs, and utility services including electricity. The Contractor shall supply its own vehicles and rolling stock. Provided, however, the City of Houston, may procure and implement electrical service and such other items, including Discretionary Replacements and Improvements as it deems necessary. For services, materials, etc. for which the Contractor seeks reimbursement from the City of Houston, it must seek at least three informal bids (documented in writing) and award to the lowest responsible bidder, except as otherwise required by the City of Houston Representative. Further, the Contractor must ensure that the design for any Major Repair, Discretionary Replacement or Improvement, or Removal of a Force Majeure must (i) be performed by an engineer licensed in the State and having experience in the appropriate engineering discipline, and (ii) secure prior written approval of the design by the City of Houston Representative. The City of Houston Representative, however, may provide a written waiver for this requirement in whole or part. Additionally, the City of Houston reserves the right to have any of the above mentioned services

performed by an engineer of its choice, and the Contractor shall then implement such design on the same reimbursable basis as is stated elsewhere in this Agreement for each such category.

L. Inspection by Quality Assurance Team

(a) The City of Houston may, through its representative and agents, at the City of Houston's cost and expense, with the full cooperation of the Contractor and on a twenty-four (24) per day basis, have full access to and unlimited rights to inspect the Water and Wastewater Facilities including sampling and testing to determine whether the Contractor is in compliance with all of its obligations under this Service Agreement. The City of Houston will form a Quality Assurance Team, which will perform periodic inspections of the Greater Northeast Houston Service Area Water and Wastewater Facilities. The City of Houston will present the Contractor with a copy of any report made as a result of any such inspection. If such inspection shall reveal deficiencies in the operation or maintenance of the Water and Wastewater Facilities, the Contractor shall have thirty (30) days from the date of the Contractor's receipt of written notice by the City of Houston of such deficiencies to correct or take appropriate steps to commence the correction of such deficiencies or to dispute any such report.

If the Contractor fails to correct such identified deficiencies, the City of Houston, in its sole discretion, may withhold up to 10 percent of the Monthly Fixed Fee for each month that Contractor fails to correct the identified deficiencies. All such amounts shall be returned to the Contractor upon satisfactory completion of the necessary work.

(b) Corrections made with respect to a City of Houston inspection which results in a repair or replacement which would result in a Major Repair shall be treated as a Major Repair. Provided, however, other provisions of this Contract notwithstanding, Major Repairs necessitated by the failure of the Contractor to maintain the Water and Wastewater Facilities in accordance with this Contract shall be at the Contractor's expense.

The documentation provided in the CMMS with respect to the required preventive maintenance and its performance or lack of performance by the Contractor, shall be used, among other things, to determine if the Contractor maintained, or failed to maintain, the Water and Wastewater Facilities in accordance with this Agreement.

(c) In connection with such inspections or visits, the City of Houston shall, on behalf of itself, its agents and representatives, comply, and cause its agents and representatives to comply, with all reasonable rules and regulations adopted by the Contractor.

M. Use of City Facilities

The Contractor and its staff may use the Greater Northeast Houston Service Area Water and Wastewater Facilities for the sole express purpose of managing and operating the Utilities. In the event that the Contractor or its staff intends to use the Facilities for purposes other than those covered under this Service Agreement, the City of Houston and the Contractor shall execute an agreement on the cost for use of those Facilities. This cost may be subtracted from the fixed monthly Service Fee owed the Contractor, as a credit due back to the City.

N. Process Residuals and Other Wastes

Contractor shall arrange for the disposal of Process Residuals from the Greater Northeast Houston Service Area Water and Wastewater Facilities in strict accordance with the laws of the United States, the State of Texas, Harris County, and the City of Houston. The Contractor is the generator of such wastes and is responsible to respond to all claims, permit stipulations and manifests except for Process Residuals which are a Hazardous Waste due to a Force Majeure.

O. Security at the Greater Northeast Houston Service Area Water and Wastewater Facilities

Contractor shall provide twenty-four (24) hour continuous perimeter boundary protection for the Water and Wastewater Facilities. Access to the Water and Wastewater Facilities shall only be given to individuals presenting proper identification to security personnel. The Water and Wastewater Facilities gates shall remain closed except when admitting visitors or personnel. Contractor and the City of Houston Representative by mutual agreement shall provide a list of personnel allowed to have access to the site Water and Wastewater Facilities. The list may be amended from time-to-time.

P. Housekeeping; Maintenance of Buildings and Grounds

Contractor shall maintain the buildings, grounds, and landscaping of the Greater Northeast Houston Service Area Water and Wastewater Facilities in an attractive and neat manner so as to provide a facility that may be used for open house and plant tours. Specific standards are shown in Attachment B.

Q. Safety Program

Contractor shall ensure that all employees comply with applicable federal, state, and local health and safety regulations and all employees are oriented to the safety, health, and environmental regulations specific to the site. Contractor shall comply with the safety manual specific to practices and procedures of the Greater Northeast Houston Service Area Water and Wastewater Facilities contained in the Safety Program, approved by the City of Houston Representative, which may be amended from time to time with the approval of the Director.

Failure to take corrective action identified through site visits by City of Houston Representative or OSHA personnel will be grounds for termination.

R. Emergency Procedures Planning

The Contractor shall prepare all emergency procedures plans required by law, including the Clean Air Act Risk Management Plan and the Emergency Response Plan at such times as required by Attachment B. Such plans must be approved in writing by the City of Houston Representative, whose approval shall not be unreasonably withheld or denied. Contractor must comply with its emergency procedures plans, except as otherwise required by law.

If approved by the City of Houston Representative, Contractor may modify the emergency procedures plan from time to time.

S) Regulatory and Safety Reports

(a) Contractor shall in a timely manner, generate, file, store and provide to all governmental regulatory and permitting agencies having appropriate jurisdiction over the management, operation and maintenance of the Greater Northeast Houston Service Area Water and Wastewater Facilities, all information, notices and reports, including sampling and testing results, as may be required of the Contractor pursuant to applicable federal, State and local laws, regulations, permits and orders.

(b) The Contractor shall generate, file and provide to the City of Houston all information, notices and reports, including sampling and testing results, as may be required (A) by the City of Houston Representative, pursuant to applicable federal, State and local laws, regulations, permits and orders, to generate, file, store and provide to all governmental regulatory and permitting agencies having appropriate jurisdiction over the management, operation and

maintenance of the Water and Wastewater Facilities, (B) by any court having appropriate jurisdiction, (C) by this Service Agreement, and (D) of the Contractor, as expeditiously as possible after the requisite information is made or could be made available to the Contractor, but in no event later than the applicable date specified in this Service Agreement or that which may be reasonably required by the City of Houston under the circumstances to make appropriate filings or to give appropriate notices in a timely manner.

(c) The Contractor shall as soon as reasonably practicable under the circumstances, but no later than eight (8) hours or any period prescribed by applicable law, whichever is earlier, notify and provide the City of Houston with any and all information as the same becomes available relative to any activity, problem, event or circumstance that threatens or may threaten compliance with the quality or quantity requirements of the Service Agreement.

CONTRACT COMPLIANCE:

1. The Department of Public Works and Engineering reserves the right to monitor this contract for compliance to ensure legal obligations are fulfilled and that acceptable level of service are provided.
2. Monitoring may take the form of, but not necessarily limited to:
 - 2.1 Site visits
 - 2.2 Testing and sampling of goods and services
 - 2.3 Review of deliveries received for accuracy and timeliness
 - 2.4 Review of permits, certifications and/or licenses
 - 2.5 Review of contractor's invoices for accuracy
3. The responsibility for monitoring compliance rests with the Contract Compliance Section, Management Support Branch of the Office of the Director, Department of Public Works and Engineering.

III. DUTIES OF SERVICE PROVIDER

- A. Scope of Services – Basic Services

For and in consideration of the payment specified in this Contract, Service Provider shall provide all labor, materials, and supervision necessary to operate and maintain the Greater Northeast Houston Service Area Water and Wastewater Facilities as set out in this Agreement. It is intended for Basic Services Fee to be all inclusive of necessary operating and maintenance costs for the water production facilities; wastewater treatment plants; processing and disposal of wastewater process residuals; preventive maintenance and repair of the water distribution system, including routine exercising and inspection of system valves, backflow preventers and fire hydrants; preventive maintenance and repair of the wastewater collection system, including routine maintenance of all lift stations, removal of stoppages, and cleaning of lines. The Basic Services Fee shall include the cost for electricity, chemicals, expendables, supplies, labor, materials, and support services to perform the required scope of work.

The Fee for the Basic Services provided will be according to an annual schedule, as provided by the Contractor in its Cost Proposal. The Annual Service Fee will be paid to the Contractor by the City in twelve equal monthly payments.

Failure of performance shall be deemed a material breach of this contract. In addition, violation of any term or condition of this Service Agreement, or of any drinking water or treated effluent standard, shall be subject to a Service Fee Adjustment. This Adjustment will be taken as a Credit due back to the City from the Fixed Monthly Service Fee. Assessment for violations for non-performance shall be in the amount of \$1,000 per day per violation, for a maximum total daily amount of \$10,000.

B. Scope of Services – Additional Services

Service Provider shall perform Additional Services as specified in this Agreement.

C. Payment of Subcontractors

Service Provider shall make timely payments to all persons and entities supplying labor, materials or equipment for the performance of the Contract. Service Provider agrees to protect, defend, and indemnify the City from any claims or liability arising out of Service Provider's failure to make such payments. Disputes relating to payment of MWBE subcontractors shall be submitted to arbitration in the same manner as any other disputes

under the MWBE subcontract. Failure of the Service Provider to comply with the decisions of the arbitrator may, at the sole discretion of the City, be deemed a material breach leading to termination of this Contract.

D. Personnel of the Service Provider

Service Provider shall replace any personnel assigned to provide services under this Contract reasonably deemed unsuitable by the Director.

E. INDEMNIFICATION

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

- (1) SERVICE PROVIDER'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', SERVICE PROVIDERS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "SERVICE PROVIDER") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- (2) THE CITY'S AND SERVICE PROVIDER'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER SERVICE PROVIDER IS IMMUNE FROM LIABILITY OR NOT; AND

- (3) THE CITY'S AND SERVICE PROVIDER'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER SERVICE PROVIDER IS IMMUNE FROM LIABILITY OR NOT.

SERVICE PROVIDER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS FOR ACTIONS OR OMISSIONS OF THE SERVICE PROVIDER TAKING PLACE DURING THE TERM OF THIS AGREEMENT. SERVICE PROVIDER'S INDEMNIFICATION IS LIMITED TO \$1,000,000 PER OCCURRENCE. SERVICE PROVIDER SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE OR (IN THE CASE OF STRICT LIABILITY) WHERE THE CITY IS SOLEY AT FAULT OR THE SOLE "RESPONSIBLE PARTY."

F. TCEQ Fees; Fines

Fees imposed by the TCEQ, such as permit and inspection fees for the City's facilities, will be paid by the City.

Any fines imposed by the Texas Department of Health, the TCEQ, EPA, or other state or federal agencies for non-attainment of drinking water quality, effluent discharge violations, improper handling and disposal of sludge, or workplace safety shall be paid by the Service Provider, unless the violation is caused by a discharge into the sewer system that violates the requirements of the City's Industrial Waste Ordinance.

In the event the Service Provider believes the regulatory fine is unjustified because the alleged violation was caused by a force majeure, never occurred or other reason, it is the Service Provider's responsibility to contest the regulatory fine at its own expense.

G. Insurance

Service Provider shall maintain in effect certain insurance coverage, which is described as follows:

- (1) Risks and Limits of Liability. Service Provider shall maintain the following coverages and limits of liability:

<u>(Coverage)</u>	<u>(Limit of Liability)</u>
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	Bodily Injury by accident \$500,000 (each accident)
	Bodily Injury by Disease \$500,000 (policy limit)
	Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability:	Bodily Injury and Property
Including Broad Form Coverage,	Damage, Combined Limits of
Contractual Liability, Bodily and	\$1,000,000 each Occurrence
Personal Injury, and Completed	and \$2,000,000 aggregate
Operations	
Automobile Liability Insurance	\$1,000,000 combined single limit
(for vehicles Service Provider uses in performing under this Contract, including Employer's Non-Owned and Hired Auto Coverage)	
Pollution legal liability	\$1,000,000 occurrence/aggregate

Defense costs are excluded from the face amount of the policy.

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

(2) Form of Policies. The Director may approve the form of the insurance policies, but nothing the Director does or fails to do relieves Service Provider from its duties to provide the required coverage under this Contract. The Director's actions or inactions do not waive the City's rights under this Contract.

(3) Issuers of Policies. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide.

(4) Insured Parties. Each policy, except those for Workers' Compensation, Employer's Liability, and Professional Liability, must name the City (and its officers, agents, and employees) as Additional Insured parties on the original policy and all renewals or replacements.

(5) Deductibles. Service Provider shall be responsible for and pay any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, agents, or employees.

(6) Cancellation. Each policy must state that it may not be canceled, materially modified, or nonrenewed unless the insurance company gives the Director 30 days' advance written notice. Service Provider shall give written notice to the Director within five days of the date on which total claims by any party against Service Provider reduce the aggregate amount of coverage below the amounts required by this Contract. In the alternative, the policy may contain an endorsement establishing a policy aggregate for the particular project or location subject to this Contract.

(7) Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees.

(8) Endorsement of Primary Insurance. Each policy, except Workers' Compensation and Professional Liability (if any), must contain an endorsement that the policy is primary to any

other insurance available to the Additional Insured with respect to claims arising under this Contract.

(9) Liability for Premium. Service Provider shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.

(10) Subcontractors. Service Provider shall require all subcontractors to carry insurance naming the City as an additional insured and meeting all of the above requirements except amount. The amount must be commensurate with the amount of the subcontract, but in no case less than \$500,000 per occurrence. Service Provider shall provide copies of insurance certificates to the Director.

(11) Proof of Insurance.

(a) On the Effective Date and at any time during the Term of this Contract, Service Provider shall furnish the Director with Certificates of Insurance, along with an Affidavit from Service Provider confirming that the Certificates accurately reflect the insurance coverage maintained. If requested in writing by the Director, Service Provider shall furnish the City with certified copies of Service Provider's actual insurance policies.

(b) Service Provider shall continuously and without interruption, maintain in force the required insurance coverages specified in this Section. If Service Provider does not comply with this requirement, the Director, at his sole discretion, may

(1) immediately suspend Service Provider from any further performance under this Contract and begin procedures to terminate for default, or

(2) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Service Provider under this Contract.

The City shall never waive or be stopped to assert its right to terminate this Contract because of its acts or omissions regarding its review of insurance documents.

(12) Other Insurance. If requested by the Director, Service Provider shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Service Provider's operations under this Contract.

H. Confidentiality

The Service Provider recognizes that all materials to be prepared hereunder and all City data received by the Service Provider shall be kept in strictest confidence. The Service Provider shall not divulge such information except as approved in writing by the Director or as otherwise required by law.

I. Licenses and Permits

Except as provided herein, the Service Provider shall obtain and pay for all licenses, permits and certificates required by any statute, rule, or regulation of any regulatory body having jurisdiction over the conduct of its operations hereunder.

L. Compliance with Laws

Service Provider shall comply with all applicable state and federal laws and regulations and all provisions of the City of Houston Charter and Code of Ordinances.

M. Compliance with Equal Opportunity Ordinance

Service Provider shall comply with all provisions of the City's Equal Employment Opportunity Ordinance as set out in Exhibit "D."

N. Minority and Women Business Enterprises

It is the policy of the City of Houston to ensure that Minority and Women Business Enterprises have the opportunity to fully compete for and participate in City contracts. The purposes and objectives of Chapter 15, Article V of the City of Houston Code of Ordinances relating to Citywide Percentage Goals for contracting with Minority and Women Business Enterprises, are hereby incorporated into the bidding and contract documents.

Service Provider agrees to use its best efforts to carry out this policy through award of subcontracts to Minority and Women-owned Business Enterprises to the extent consistent with the efficient performance of this Contract.

Without limiting the Generality of the foregoing, Service Provider agrees that it will make good faith efforts to award subcontracts or supply agreements in at least 24% of the value of this Contract (Basic Services plus Additional Services) to Minority and Women-owned Business Enterprises certified by the City's Affirmative Action Division. While it is not a requirement of this Contract that Service Provider in fact meets or exceeds the Minority and Women-owned Business Enterprise goals, it is a requirement that Service Provider objectively demonstrate to the Director that it has exerted positive efforts to meet these goals. To this end, Service Provider shall maintain records showing (i) subcontracts and supply agreements with Minority Business Enterprises, (ii) subcontracts and supply agreements with Women-owned Business Enterprises, and (iii) specific efforts to identify and award subcontracts and supply agreements to Minority and Women-owned Business Enterprises. Service Provider shall be required to submit periodic reports of its efforts under this Article to the Director of Affirmative Action in such form and manner and at such time or times (but not more than quarterly) as he or she may prescribe.

Service Provider shall require written subcontracts with MWBE subcontractors and suppliers. All such contracts shall contain the terms set out in Exhibit "E."

O. Performance Bond

Service Provider shall furnish a performance bond for \$X,XXX,XXX conditioned on Service Provider's full and timely performance of the Contract. The bond must be in a form approved by the City Attorney and issued by a corporate surety authorized and admitted to write surety bonds in Texas. If the amount of the bond exceeds \$100,000, the surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability in excess of \$100,000 by a reinsurer listed on the U.S. Treasury list.

IV. DUTIES OF CITY

A. Method of Payment

(a) Subject to all terms and conditions of this Contract, the City shall pay fees to the Service Provider at the prices specified herein for all services rendered by the Service Provider in accordance with the terms and conditions of this Contract, but such fees shall only be payable from certain Allocated Funds, as provided in Section X.

Fees specified below are complete charges for the performance of Basic and Additional Services, and include all overhead, mileage and office expenses.

<u>Description of Services</u>	<u>Fees</u>
Basic Services	As described in Exhibit X, prorated for monthly payments
Additional Services	As mutually agreed upon by City and Contractor for each Defined Scope of Additional Work to be Performed by Contractor

(c) The Service Provider may invoice the cost of compliance with a Change in Law as it would for an Additional Service. In the alternative, the Service Provider and the Director may adjust the fees for Basic Services to cover the extra costs for compliance, but any adjustment greater than 5% of the Basic Services Fee (5 year total) must be approved by the City Council.

(d) Service Provider shall invoice the City for payment on or after the end of the month for which payment is requested. Each invoice must include documentation sufficient to justify the Additional Service fees, including (i) documentation showing Service Provider complied with the approval requirements herein as applicable, (ii) copies of original invoices and time sheets as required by the Director. The City shall tender each payment to Service Provider's address for notices in accordance with the time requirements of the Texas Payment Act (30 days of invoice). The City shall not unreasonably delay or withhold approval of any invoice or corresponding payment.

B. Limit of Appropriation – Allocated Funds: Limitation of City's Duties

(a) The City's duty to pay money to Service Provider for any purpose under this Contract is limited in its entirety by the provisions of this Section.

(b) 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 \$XXX,XXX to pay money due under this Contract. The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Contract, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies.

(c) The City makes a supplemental allocation by sending a notice signed by the Director and the City Controller to the Service Provider and, where in excess of the amount specified in Paragraph (d) below, approved by motion or ordinance of City Council in substantially the following form:

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Service Provider]

FROM: City of Houston, Texas (the "City")

DATE: [Date of notice]

SUBJECT: Supplemental allocation of funds for the purpose of the "[title of this Contract]" between the City and (name Service Provider) countersigned by the City Controller on (Date of Countersignature) (the "Contract").

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$_____, upon the request of the below-signed Director, has been allocated for the purposes of the Contract 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.

The aggregate of all sums allocated for the purpose of such Contract, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this notice, is \$_____.

SIGNED:

(Signature of the City Controller)

City Controller of the City

REQUESTED:

(Signature of the Director)

Director

(d) City Council delegates to the Director the authority to approve up to \$XX,XXX,XXX in supplemental allocations for this Contract without returning to Council.

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

C. Suspension of Performance - Service Provider's Right

(a) From time to time, the Service Provider may, at its option, compute the unspent portion of the Allocated Funds (the "Unspent Funds") according to the following formula:

$A - (B + C) = \text{Unspent Funds as of such time. In the foregoing formula:}$

"A" is the level of Allocated Funds as of such time.

"B" is the aggregate of all Contract Charges actually paid by the City by, through or under this Contract prior to such time.

“C” is the aggregate of all Contract Charges which have accrued prior to such time by, through or under this Contract but which have not been actually paid.

(b) The City shall, upon written request by the Service Provider, provide an accounting of the data necessary to compute the Unspent Funds as such data are shown on the books and records of the City.

(c) If, as of any such time when a computation is made, the level of the Unspent Funds is less than \$25,000, then the Service Provider shall be entitled to suspend its performance under this Contract by notifying the City at least thirty days prior to the effective date of the suspension. Such effective date must be specified in the Service Provider's notice to the City. After such notice is given, the Service Provider may, in its sole discretion, extend such effective date to any later date by so notifying the City.

(d) After any notice of suspension is given and prior to the specified effective date, the City may prevent the suspension from taking effect by notifying the Service Provider as to one or more supplemental allocations in an aggregate amount sufficient to raise the level of the Unspent Funds to at least \$25,000 (computed as of the dispatch of such notice of Supplemental Allocation). Whenever such a sufficient notice of Supplemental Allocation is given, the preceding notice of suspension shall lose its effectiveness and shall be treated as if it were never given.

(e) If prior to the specified effective date of any such suspension, the City fails to prevent such suspension from taking effect, then the Service Provider shall be entitled to suspend its performance under this Contract as of the effective date. The City shall then be obligated to pay to the Service Provider the lesser of the following: (i) the Contract Charges accrued prior to such suspension date, less any allowable credits and offsets, or (ii) The Unspent Funds as of the date of suspension.

(f) Suspension and payment, as specified in this Section, shall be the Service Provider's exclusive remedies in the event that the City fails or refuses to make the supplemental allocations necessary to prevent suspension of performance by the Service Provider. No such failure or refusal shall constitute a default or breach of this Contract by the City, and the Service Provider 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 which may be occasioned by any such failure or refusal.

D. Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. The Service Provider's invoices to the City shall not contain assessments of any of these taxes. The City exemption certificate and federal tax identification number will be furnished by the Director to the Service Provider where necessary to document this tax exemption.

E. Access to Sites

Service Provider is granted the unlimited lawful right of ingress to and egress from the premises of the Greater Northeast Houston Service Area Water and Wastewater Facilities without charge.

F. Access to Data

In addition to its other duties under this Contract, the City shall, to the extent permitted by law, provide access to all data and drawings in the possession of the City and allow the Service Provider to make copies of documents in the possession or control of the City, or available to the City, which are requested by the Service Provider and are reasonably necessary for the Service Provider to perform under this Contract.

City does not, however, represent that all existing conditions are fully documented, nor does the City obligate itself to develop new documentation for the use of the Service Provider.

G. City Supplied Items

City shall supply or pay third parties for the items and services described in the Supplementary Conditions in Section X.

V. TERM AND TERMINATION

A. Contract Term

This Contract shall become effective on the date of countersignature by the City Controller, and shall remain in effect for five years after the date of countersignature by the Controller unless sooner terminated as provided for in this Contract.

B. Termination for Convenience by City

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

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

TERMINATION OF THIS CONTRACT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE SERVICE PROVIDER'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS CONTRACT. SERVICE PROVIDER 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 by Either Party for Default

Either party may terminate its performance under this Contract if the other party defaults and fails to cure the default after receiving notice of it. Default occurs if a party fails to perform one or more of its material duties under this Contract. If a default

occurs, the injured party shall deliver a written notice to the defaulting party describing the default and the proposed termination date. The date must be at least 30 days after the defaulting party's receipt of the notice. The injured party, at its sole option, may extend the proposed termination date to a later date. If the defaulting party cures the default before the proposed termination date, the proposed termination is ineffective. If the defaulting party does not cure the default before the proposed termination date, the injured party may terminate its performance under this Contract on the termination date. The Director shall act on behalf of the City to notify Service Provider of a default and to effect termination.

VI. MISCELLANEOUS

A. Independent Contractor

The Service Provider agrees to perform the services under this Contract as an independent Service Provider and not as a subcontractor, agent or employee of the City.

B. Force Majeure

1. Timely performance by both parties is essential to this Contract. However, neither party is liable for delays or other failures to perform its obligations under this Contract to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, and other acts of God, explosions, war, terrorist acts, riots, and Changes in Law.

2. This relief is not applicable unless the affected party does the following:

- (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible; and

(b) provides the other party with prompt written notice of the cause and its anticipated effect.

3. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Contract by the City.

4. Service Provider is not relieved from performing its obligations under this Contract due to a strike or work slowdown of its employees. Service Provider shall employ only fully trained and qualified personnel during a strike.

C. Severability

In the event any term, covenant or condition herein contained shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein contained, provided that such invalidity does not materially prejudice either the Service Provider or the City in their respective rights and obligations contained in the valid terms, covenants or conditions hereof.

D. Written Amendment

Unless otherwise provided herein, this Contract may be amended only by written instrument duly executed on behalf of the City (by authority of an ordinance duly adopted by the City Council) and Service Provider. The Director or the City Representative is only authorized to perform the functions specifically delegated to him or her in this Contract.

E. Applicable Laws

This Contract is subject to all laws of the State of Texas, the City Charter and Ordinances of the City of Houston, the laws of the federal government of the United States of America and all rules and regulations of any regulatory body or officer having jurisdiction, including the City's Charter and Code of Ordinances.

Venue for any litigation relating to this Contract shall be Harris County, Texas.

F. Notices

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the respective other party at the address prescribed in the preamble of this Contract or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.

G. Acceptance and Approval

An approval by the Director, or by any other instrumentality of the City, of any part of Service Provider's performance shall not be construed to waive compliance with this Contract or to establish a standard of performance other than required by this Contract or by law. The Director is not authorized to vary the terms of this Contract.

H. Inspections and Audits

During business hours and with reasonable notice to the Service Provider, the Director, the City Attorney and the City Controller of the City shall have the right to perform, or cause to be performed, (1) audits of the books and records of the Service Provider pertaining to this Contract, and (2) inspections of all places where work is undertaken in connection with this Contract. The Service Provider shall be required to keep such books and records available for such purpose for at least 3 years after the ceasing of its performance under this Contract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

I. Enforcement

The City Attorney or designee shall have the right to enforce all legal rights and obligations under this Contract without further authorization. Service Provider covenants to provide to the City Attorney all documents and records that the City Attorney deems necessary to assist in determining Service Provider's compliance with this Contract, with the exception of those documents made confidential by federal or State law or regulation.

J. Survival

Service Provider shall remain obligated to the City under all clauses of this Contract that expressly or by their nature extend beyond and survive the expiration or termination of this Contract.

K. Parties In Interest

This Contract shall not bestow any rights upon any third party, but rather shall bind and benefit the City and Service Provider only.

L. Non-Waiver

Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on, and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

M. Hazardous and Toxic Materials

Service Provider warrants that each and every chemical substance constituting or contained in the products sold or otherwise transferred to the City under this Contract is in compliance with the Toxic Substances Control Act. Service Provider shall furnish Material Safety Data Sheets as required, and shall promptly furnish revisions or supplements as they become available.

N. Drug Detection and Deterrence

(a) It is the policy of the City to achieve a drug-free workforce and to provide a workplace that is free from the use of illegal drugs and alcohol. It is also the policy of the City that the manufacture, distribution, dispensation, possession, sale or use of illegal drugs or alcohol by Service Providers while on City Premises is prohibited. By executing this Contract, Service Provider represents and certifies that it meets and shall comply with all the requirements and procedures set forth in the Mayor's Policy on Drug Detection and Deterrence, City Council Motion No. 92-1971 ("Mayor's Policy") and the Mayor's Policy Drug Detection and Deterrence Procedures for Service Providers,

Executive Order No. 1-31 (“Executive Order”), both which are on file in the Office of the City Secretary.

(b) Confirming its compliance with the Mayor’s Policy and the Executive Order, Service Provider, as a condition precedent to City’s obligations under this Contract, will have filed with the Contract Compliance Officer for Drug Testing (“CCODT”), prior to the execution of this Contract by the City, (i) a copy of its drug-free workplace policy, (ii) the Drug Policy Compliance Agreement substantially in the format set forth in Exhibit “F,” together with a written designation of all safety impact positions and, (iii) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the format set forth in Exhibit “G.” If Service Provider files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six (6) months during the performance of this Contract or upon the completion of this Contract if performance is less than six (6) months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit “H.” The Drug Policy Compliance Declaration shall be submitted to the CCODT within thirty (30) days of the expiration of each six (6) month period of performance and within thirty (30) days of completion of this Contract. The first six (6) month period shall begin to run on the date City issues its notice to proceed hereunder or if no notice to proceed is issued, on the first day Service Provider begins work under this Contract.

(c) Service Provider shall have the continuing obligation to file with CCODT written designations of safety impact positions and Drug Policy Compliance Declarations at any time during the performance of this contract that safety impact positions are added if initially no safety impact positions were designated. Service Provider also shall have the continuing obligation to file updated designations of safety impact positions with the CCODT when additional safety impact positions are added to Service Provider’s employee work force.

(d) Service Provider shall require that its subcontractors hereunder comply with the Mayor’s Policy and the Executive Order and Service Provider shall be responsible for securing and maintaining the required documents for City inspection throughout the term of this Contract.

(e) The failure of Service Provider to comply with the above Section shall be a breach of this Contract entitling the City to terminate in accordance with Article IV.

O. Environmental Regulations

Service Provider shall comply with any rules, regulations, statutes or orders of the Environmental Protection Agency (“EPA”), or the Texas National Resource Conservation Commission (“TNRCC”), or any other governmental agency empowered with the authority to promulgate environmental rules and regulations. Failure to comply shall be considered a default that may cause termination of this Contract by the City.

Service Provider shall prevent the presence, use, generation, release, storage, disposal, or transportation of any Hazardous Materials on, under, in, above, to, or from the site other than in strict compliance with all applicable federal, state, and local laws, regulations, ordinances, and orders. For purposes of this paragraph, “Hazardous Materials” means any substances, materials, and wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances or orders. By way of example but not by way of limitation, Service Provider shall not deposit oil, gasoline, grease, lubricants or any ignitable or hazardous liquids, materials, or substances in the City’s storm sewer system or sanitary sewer system. Furthermore, Service Provider shall not dispose of, deposit or store oil, gasoline, grease, lubricants or any ignitable or hazardous liquids, materials, or substances, elsewhere on City property in any manner inconsistent with any of the aforementioned statutes, rules, regulations or orders.

P. Assignment

Service Provider shall not assign this Contract at law or otherwise or dispose of all or substantially all of its assets without the prior written consent of the Director, except assignment of account receivables for this Contract as provided in the Texas Business and Commerce Code (“Code”). Provided, however, the Director may not unreasonably deny such consent to assign the Contract.

Failure of Service Provider to obtain the Director’s written consent to the assignment of this Contract shall be an event of default and Director, at his sole discretion, may immediately terminate this Contract. In the case of an assignment under the Code,

Service Provider shall immediately furnish the City with reasonable 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.

Q. Entire Contract

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