

**AN ORDINANCE APPROVING AND AUTHORIZING A CONTRACT BETWEEN THE CITY OF HOUSTON AND SMART CITY ELECTRIC, INC. TO PROVIDE ELECTRICAL AND PLUMBING SERVICES TO EXHIBITORS FOR THE FACILITIES OF THE CONVENTION AND ENTERTAINMENT FACILITIES DEPARTMENT; CONTAINING PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.**

\* \* \* \* \*

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

**Section 1.** The City Council hereby approves and authorizes the contract, agreement or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document that is attached hereto as **“EXHIBIT A”** and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

**Section 2.** The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

**Section 3.** The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from Council.

**Section 4.** There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

**PASSED AND ADOPTED** this the 13<sup>th</sup> day of October, 2010.

**APPROVED** this the \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is OCT 19 2010.

  
 City Secretary

APPROVED AS TO FORM:

  
 John H. Liles, Jr.  
 Senior Assistant City Attorney  
 LD# 025-1000022-001

Requested by Dawn Ullrich, Director, CEF

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AYE	NO	
✓		MAYOR PARKER
••••	••••	COUNCIL MEMBERS
✓		STARDIG
✓		JOHNSON
✓		CLUTTERBUCK
✓		ADAMS
	ABSENT	SULLIVAN
✓		HOANG
✓		PENNINGTON
✓		GONZALEZ
✓		RODRIGUEZ
✓		COSTELLO
✓		LOVELL
✓		NORIEGA
✓		BRADFORD
✓		JONES
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT  
 REVIEW  
 DATE: OCT 19 2010

THE STATE OF TEXAS     §  
  §  
COUNTY OF HARRIS     §

**I. PARTIES**

A.     Address

**THIS AGREEMENT FOR LICENSEE AND EXHIBITOR UTILITY SERVICES** ("Agreement") is made between the **CITY OF HOUSTON, TEXAS** ("City"), a home-rule city of the State of Texas, principally situated in Harris County, acting by and through its governing body, City Council, and Smart City Electric, Inc. ("Contractor"), a Texas corporation.

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

<u>City</u>	<u>Contractor</u>
Director of Convention and Entertainment Facilities Department or Designee City of Houston P. O. Box 61469 Houston, Texas 77208	Mark M. Haley, President Smart City Electric, Inc. 5795 W. Badura Avenue, Suite 110 Las Vegas, NV 89118 (702) 943-6000

The Parties agree as follows:

B.     Table of Contents

This Agreement consists of the following sections:

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**EXHIBITS**

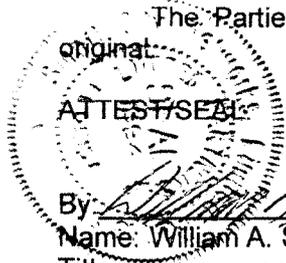
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- G. M/WBE Subcontract Terms
- H. Equal Employment Opportunity

C. Controlling Parts

If a conflict among the sections of this Agreement and the exhibits to this Agreement arises, the sections shall control over the exhibits.

D. Signatures

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



By: [Signature]  
Name: William A. Suszko  
Title: V.P., Finance, Administration & West Region Operations

ATTEST/SEAL:

\_\_\_\_\_  
City Secretary

APPROVED:

\_\_\_\_\_  
Director, Convention and Entertainment  
Facilities Department

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney  
L.D. File No. 025-1000022-001

SMART CITY ELECTRIC, INC.

By: [Signature]  
Name: Mark M. Haley  
Title: President, Smart City Networks, LP

CITY OF HOUSTON, TEXAS  
Signed by:

\_\_\_\_\_  
Mayor

COUNTERSIGNED BY:

\_\_\_\_\_  
City Controller

DATE COUNTERSIGNED:

\_\_\_\_\_

D. Signatures

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

ATTEST/SEAL:

SMART CITY ELECTRIC, INC.

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS  
Signed by:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Mayor

APPROVED:

COUNTERSIGNED BY:

\_\_\_\_\_  
Director, Convention and Entertainment  
Facilities Department

\_\_\_\_\_  
City Controller

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

\_\_\_\_\_  
Assistant City Attorney  
L.D. File No. 025-1000022-001

\_\_\_\_\_

## II. DEFINITIONS

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

**"Acceptance," "Accept," "Acceptable," or "Accepted"** means the Director's written approval of the particular item or service specified herein.

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

**"Applicable Percentage"** means the percentage of Contractor's Gross Revenues payable to the City as defined in **Exhibit "B"**.

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

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

**"Correction" or "Correct"** means the re-performance of the services identified in the Director's written notice to Contractor for failure to meet the requirements of this Agreement as set out in Article III, Sections A and K below. "Correction" or "Correct" means the re-performance of the services identified in the Director's written notice to Contractor for failure to meet the requirements of this Agreement as set out in Article III, Section K below.

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

**"Department"** means the City's Convention and Entertainment Facilities Department or its successor department.

**"Director"** means the Director of the Convention and Entertainment Facilities Department, or the person he or she designates.

**"Documents"** mean notes, manuals, notebooks, plans, computations, databases, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Agreement.

**"Event Period"** means installation, show period, and dismantling of a Licensee's event.

**"Facility" or "GRBCC"** means the George R. Brown Convention Center.

**"Gross Revenue" or "Gross Receipts"** means the aggregate amount of gross billing, less taxes and less any billings to the City as specifically provided for herein, for all Utility Services sales rendered, whether collected or uncollected.

**"Licensee"** means an association, organization, group, company or individual licensing any portion of the Facility.

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

"Utility Services" means labor and material for temporary installation, operation, and removal of electricity, water, compressed air, and gas for exhibits, displays, meeting rooms, and registration as may be needed for a Licensee, its exhibitors, contractors, assignees and other related needs, and is more fully described in **Exhibit "A"**, except as may be impractical to perform given the confines of the Facility.

"Value-Added Services" means Facility and/or equipment enhancements, electrical upgrades, or other items or services Contractor shall provide in order to benefit Facility operations and revenues.

### III. DUTIES OF CONTRACTOR

#### A. License

City hereby grants to Contractor an exclusive license to provide Utility Services (the "License") in the Facility. For and in consideration of the License granted herein, Contractor shall provide all labor, material, equipment and supervision necessary to perform the services described in **Exhibit "A"** and shall remit all amounts due to the City as specified in **Exhibit "B"**.

#### B. Coordinate Performance

Contractor shall coordinate its performance with the Director and other persons that the Director designates. Contractor shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

#### C. Prompt Payment of Subcontractors

Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.** Contractor shall submit disputes relating to payment of MWBE subcontractors to arbitration in the same manner as any other disputes under the MWBE subcontract.

#### D. Personnel of the Contractor

Contractor shall replace any of its personnel or subcontractors whose work performance is deemed unsatisfactory by the Director.

#### E. RELEASE

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

**F. INDEMNIFICATION**

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

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

**G. INDEMNIFICATION – SUBCONTRACTOR'S INDEMNITY**

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

**H. INDEMNIFICATION - PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT**

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

**CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.**

**WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.**

**I. INDEMNIFICATION PROCEDURES**

(1) Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 30 days. The notice must include the following:

- (a) a description of the indemnification event in reasonable detail,
- (b) the basis on which indemnification may be due, and
- (c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 30 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

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

(b) Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

**J. INSURANCE**

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

- (1) Minimum Insurance Requirements. Contractor shall maintain the following insurance coverage in the following amounts:

<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: Including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations	Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence and \$2,000,000 aggregate
Automobile Liability Insurance (for vehicles Contractor uses in performing under this Agreement, including Employer's Non-Owned and Hired Auto Coverage)	\$1,000,000 combined single limit per occurrence

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 Contractor from its duties to provide the required coverage under this Agreement. The Director's actions or inactions do not waive the City's rights under this Agreement.
- (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 of Best's Key Rating Guide.
- (4) Insured Parties. Each policy, except those for Workers' Compensation, and Employer's Liability, must name the City as Additional Insured on the original policy and all renewals or replacements.
- (5) Deductibles. Contractor shall be responsible for and bear 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. CONTRACTOR SHALL GIVE 30 DAYS' WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELLED, MATERIALLY CHANGED OR NON-RENEWED. Within the 30 day period,

Contractor shall provide other suitable policies in lieu of those about to be cancelled, materially changed, or nonrenewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may

- (a) immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
  - (b) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.
- (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, 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 Agreement.
- (9) Liability for Premium. Contractor shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.
- (10) Subcontractors. Contractor 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. Contractor shall provide copies of insurance certificates to the Director upon request.
- (11) Proof of Insurance.
- (a) Prior to execution of this Agreement, Contractor shall furnish the Director with certificates of insurance. If requested by Director, Contractor shall provide an Affidavit confirming that the Certificates accurately reflect the insurance coverage maintained. If requested in writing by the Director, Contractor shall furnish the City with certified copies of Contractor's actual insurance policies.
  - (b) Contractor shall continuously and without interruption, maintain in force the required insurance coverages specified in this Section. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may
    - (1) immediately suspend Contractor from any further performance under this Agreement 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 Contractor under this Agreement.

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

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

**K. WARRANTIES**

Contractor warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement as more fully described in Exhibit "A."

- (1) With respect to any parts and goods it furnishes, Contractor warrants:
  - (a) that all items are free of defects in title, design, material, and workmanship,
  - (b) that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,
  - (c) that each replacement item is new, or like new (Contractor will make reasonable efforts, whenever commercially and financially reasonable, to make replacements with new parts and goods), in accordance with original equipment manufacturer's specifications, of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and will not cause any manufacturer's warranties to lapse or become invalid, and
  - (d) that no item or its use infringes any patent, copyright, or proprietary right.
- (2) Contractor shall enforce all warranties on behalf of the City and shall promptly repair or replace any part or equipment that fails in normal use and service.
  - (a) Contractor warrants that all services it performs under this Agreement will, at the time of Acceptance, be free from defects in workmanship for a period of one year and conform to the requirements of this Agreement.
  - (b) The Director will give written notice of any defect or nonconformance to Contractor within one year from the date of Acceptance by the City. In the written notice, the Director will either require (1) Contractor to Correct the services to conform to the Agreement or (2) state that the City does not require Correction of services identified in the written notice.
  - (c) In the event the Director requires Contractor to Correct services already provided to City, then, Contractor shall do so at no cost to City and such services are subject to this Section to the same extent as was the work

initially performed by Contractor under this Agreement. If Contractor fails to or refuses to Correct services as requested by the Director, then, the Director may have a third-party vendor correct or replace services initially performed by Contractor at Contractor's cost or make equitable adjustments to the contract price.

- (d) The Director has the option either to require Contractor to Correct services as set out above, or to make an equitable adjustment to the contract price for the services initially performed by Contractor and later found to be incorrect or not Acceptable by the Director under this Agreement.

**L. LICENSES AND PERMITS**

Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Contractor shall immediately notify the Director of any suspension, revocation, or other detrimental action against his or her license.

**M. COMPLIANCE WITH LAWS**

Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.

**N. COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE**

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

**O. M/WBE COMPLIANCE**

Contractor shall comply with the City's Minority and Women Business Enterprise ("M/WBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least **12%** of the Gross Revenues less amounts payable to the City by Contractor, payroll costs and overhead costs, to M/WBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Affirmative Action Division and will comply with them.

Contractor shall require written subcontracts with all M/WBE subcontractors and shall submit all disputes with M/WBEs to binding arbitration if directed to do so by the Affirmative Action Division Director. M/WBE subcontracts must contain the terms set out in **Exhibit "G"**. If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

**P. PERFORMANCE BOND**

Contractor shall furnish a performance bond or a clean irrevocable Letter of Credit for **\$100,000.00**, renewable each year of the Agreement Term including extension terms, conditioned on Contractor's full and timely performance of the Agreement. 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. Any clean irrevocable Letter of Credit must be in a form approved by the City Attorney. 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. If the City receives notice that the Performance Bond is cancelled, then the City may not make a claim against the surety for failure to renew the Performance Bond, so long as the Contractor is performing all aspects of this Agreement without default, or for Contractor's default in not obtaining a new Performance Bond, but the City may terminate the Contractor under this Agreement for default for its failure to provide a replacement bond.

**Q. DRUG ABUSE DETECTION AND DETERRENCE**

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

(2) Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

- (a) a copy of its drug-free workplace policy,
- (b) the Drug Policy Compliance Agreement substantially in the form set forth in **Exhibit "D"**, together with a written designation of all safety impact positions and,
- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in **Exhibit "E"**.

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six months during the performance of this Agreement or on completion of this Agreement if performance is less than six months, a Drug Policy Compliance Declaration in a form substantially similar to **Exhibit "F"**. Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each six-month period of performance and within 30 days of completion of this Agreement. The first six-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

(3) Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

(4) Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

**R. SUBMITTAL OF A RATE SCHEDULE**

1. Contractor shall implement its rate schedule at the Facility, which was included in its proposal dated June 25, 2010, on file in the Director's office, for a minimum of two years

following commencement of this Agreement for Utility Services to be charged Licensees and exhibitors using these services unless the Director approves an interim increase of rates. These rates initially are designed in accordance with the average standard rates (and shall never exceed by more than ten percent of the highest standard rate) charged for similar services in the Houston Reliant Center, the Dallas Convention Center, the New Orleans Convention Center, and the Georgia World Congress Center. The Director shall resolve any disagreement regarding Utility Services pricing, and the decision of the Director shall be final. All revisions to the rate schedule require the Director's pre-approval which shall not be unreasonably withheld or denied.

2. In determining standard electrical rates, charges shall include the cost of bringing the power into the booth and connecting to a single terminal location, provided the equipment has the proper plugs, caps, or terminals to conform to incoming cable lines. The rate schedule shall include other anticipated services not mentioned above, such as electrical sign hanging, and liquid pumping units.

3. Any additional work required in the booth area and not included in the rate schedule shall be charged on the basis of prevailing material prices and labor at a rate mutually agreed upon by Contractor and the Director.

4. Special power rates will apply to all concerts and galas in the Facility, as approved by the Director.

**S. REPAIRS TO FACILITY**

The Contractor hereby represents that before entering into this Agreement it has inspected the Facility and accepts the Facility made available by the City in its present condition. However, if any repairs are needed which the City desires the Contractor to make, such repairs shall be made at the expense of the City (unless otherwise provided in this Agreement) and only upon the Director's approval.

**T. GRAPHICS AND SIGNAGE**

All graphics and signage identifying the Contractor anywhere in the Facility must be approved in writing by the Director prior to installation. The Contractor shall comply with all rules promulgated by the Director and the City's sign Ordinances regarding the placement of signs in the Facility.

**U. MAINTENANCE AND REPAIR**

At the Contractor's sole cost and expense, the Contractor shall promptly repair all damage to the exhibit area(s) or other City property at the Facility caused by the Contractor, its employees, agents, or subcontractors. Any such repair shall be made to the reasonable satisfaction of the Director.

If the Contractor fails to perform the maintenance and repair specified in this Section, after reasonable notice with respect thereto from the City to Contractor, the City may perform the needed maintenance or repair and charge the Contractor the City's cost plus 15%.

**V. QUALITY OF OPERATION**

All services and goods provided by the Contractor shall be of a quality consistent with the quality for such services generally provided across the United States and shall conform in all respects to Federal, State and City laws, ordinances, rules and regulations, specifically including but not limited to, Facility regulations promulgated by the Director.

**W. LEED STANDARDS**

The City is committed to buying products with recycled content or environmentally sustainable alternatives that meet Leadership in Energy and Environmental Design (LEED) compliance standards. Contractor shall use reasonable efforts to utilize approved LEED certified or Green Certified equipment, methods and applications whenever commercially and financially feasible.

**IV. DUTIES OF CITY**

**A. Taxes**

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's statements to the City must not contain assessments of any of these taxes unless required by law. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

**B. Disputed Payments**

If the City disputes any items in a statement Contractor submits for any reason, including lack of supporting documentation, the Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount, if any, on a subsequent regularly scheduled statement.

**C. Additions and Deletions**

The Director, by means of a written authorization to Contractor, may add or delete Facilities from this Agreement and any items or services provided by Contractor that are reasonably related to the scope of this Agreement. Written notification of the added or deleted Facilities, items or services shall take effect upon the Contractor's receipt of such notice or on such other day as specified therein.

**V. PAYMENT**

In consideration for the License granted hereunder, Contractor shall pay to the City those amounts as described in **Exhibit "B"** attached hereto. Additionally, Contractor shall comply with the reporting and records requirements set forth in **Exhibit "B"**.

## VI. TERM AND TERMINATION

### A. Contract Term

This Agreement is effective at 12:01 a.m. October 1, 2010 and remains in effect for two years (the "Initial Term"), unless sooner terminated as provided for in this Agreement. Upon inception of this Agreement, the previous contract between the Parties will terminate.

### B. Renewals

If the Director sends written notice of renewal to Contractor at least 30 days before expiration of the then-current term and if sufficient funds are allocated, then, upon expiration of the Initial Term, or a Renewal Term, as applicable, this Agreement will be renewed for an additional one-year term (a "Renewal Term") upon the same terms and conditions, but not to exceed three such one-year Renewal Terms.

### C. Time Extensions

If Contractor requests an extension of time to complete its performance, then the Director may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

### D. Termination for Convenience by City

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

On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. Within 30 days after the termination, Contractor shall pay to the City all remaining amounts due under **Exhibit "B"**.

TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE. SHOULD THE CITY TERMINATE THIS AGREEMENT FOR CONVENIENCE, CONTRACTOR SHALL BE PAID FOR ANY AND ALL VALUE ADDED ENHANCEMENTS REFERENCED IN THIS AGREEMENT THAT HAVE BEEN PAID FOR BY CONTRACTOR, BUT NOT YET DEDUCTED FROM GROSS REVENUES, BY DEDUCTING SUCH AMOUNT FROM THE REVENUES OTHERWISE OWED TO THE CITY.

### E. Termination for Cause

If Contractor defaults under this Agreement, the Director may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to

terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:

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

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

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

#### **F. Termination for Cause by Contractor**

Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date. The date must be at least 30 days after the Director receives notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date.

#### **G. Removal of Property**

1. Upon the expiration or termination of this Agreement, the Contractor shall remove all its removable property from the Facility within ten working days of the expiration or termination. If Contractor fails to remove its property from the Facility within this time, City may remove same at Contractor's expense without being liable for damages for such removal. If Contractor is indebted to the City, the City shall have a right to sell such property at public or private auction (with reasonable notice to Contractor) and retain any or all sums recovered from such sales which are then due the City under the terms of the Agreement and pay any balance to Contractor.

2. At the end of the Agreement Term or any Renewal Term, the Contractor shall remove all of its property from the Facility pursuant to Section (1) above, and deliver possession

of the Facility peaceably to the City. Unless an extension of time is authorized in writing by the Director, Contractor shall completely vacate the Facility in accordance with the provisions of this Section by midnight on the tenth working day after the last day of the Agreement Term or any Renewal Term.

## VII. MISCELLANEOUS

### A. Independent Contractor

Contractor is an independent contractor and shall perform the services provided for in this Agreement in that capacity. All personnel Contractor uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all workers' compensation benefits coverage.

### B. Force Majeure

1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. An event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, strikes, court orders, and the acts of governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to deductions from the Applicable Percentage.

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 to continue performance notwithstanding the Force Majeure; and
- (b) provides the other party with prompt written notice of the cause and its anticipated effect.

3. The Director will review claims that an event of Force Majeure directly impacting the City or Contractor has occurred and render a written decision within 14 days. The decision of the Director is final.

4. 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 Agreement by the City.

5. If the Force Majeure continues for more than 60 days from the date performance is affected, the Director may terminate this Agreement by giving seven days' written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR**

**WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

**C. Severability**

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

**D. Entire Agreement**

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

**E. Written Amendment**

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

**F. Applicable Laws**

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

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

**G. Notices**

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

**H. Captions**

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

**I. Non-Waiver**

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

waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

**J. Inspections and Audits**

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

**K. Enforcement**

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

**L. Ambiguities**

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

**M. Survival**

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

**N. Risk of Loss**

Unless otherwise specified elsewhere in this Agreement, risk of loss or damage for each Product passes from Contractor to the City upon acceptance by the City.

**O. Parties In Interest**

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

**P. Successors and Assigns**

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. The City shall have the right and option to assign this Agreement in its sole discretion to any successor entity to the Department by providing

Contractor with written notice of such assignment. This Agreement does not create any personal liability on the part of any officer or agent of the City.

**Q. Business Structure and Assignments**

Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent which shall not be unreasonably withheld or denied. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest under §9.318(c) of the Texas Business & Commerce Code. In the case of such an assignment, under Section 9.102 of the Code, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

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

**R. Remedies Cumulative**

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

**S. Contractor Debt**

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

**T. Pay or Play**

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

**U. Publicity**

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

## EXHIBIT A

### LICENSE AND SCOPE OF SERVICES

#### 1.0 Scope of Service

Contractor shall provide all labor, materials, equipment, and services necessary for the provision of Utility Services in the Facility.

#### 2.0 Labor

- 2.1 Contractor shall provide licensed electricians, plumbers, and other craft workers as needed to professionally and successfully provide Utility Services.
- 2.2 Contractor shall require all its personnel to wear uniforms at the Contractor's expense and carry photo identification badges. The City will provide identification badges but Contractor will be responsible for the cost of replacing lost badges, at the prevailing replacement cost for lost badges (\$10 per badge as of the beginning of this Agreement). Additionally, Contractor must provide ESCA-WIS (Exhibitor Service Contract Association Worker Identification System) badges for all full-time and temporary employees, who must wear the badges. All uniform shirts and jackets must have the GRBCC logo affixed to them. Uniforms and badges must be approved by Director prior to being used. Employees shall be clean, courteous, efficient, and neat in appearance at all times.
- 2.3 All personnel are required to be properly trained in the operation of the Facility and shall adhere to the Facility Rules and Regulations without exception. The City will deliver to Contractor a copy of such rules and regulations and any amendments thereto.
- 2.4 At all times during the Agreement Term and any Renewal Term, Contractor shall employ an active, qualified, competent, and experienced manager or supervisor ("Project Manager") who will be in the Facility office daily, available to supervise the operations and to represent and act for Contractor in matters pertaining to day-to-day operations under this Agreement. The Project Manager shall be dedicated solely to the services required by this Agreement and shall not work at any of Contractor's other project locations unless otherwise approved by the Director. Any change of Project Manager is subject to the prior written approval of the Director.
- 2.5 A Master Electrician with a valid State of Texas Master Electrician's license must be on site each business day. All other electricians employed by the Contractor must have a valid State of Texas Journeyman's License. Any electrician apprentices used must have a valid State of Texas Apprentice Electrical License. The Contractor shall staff the Facility at all times during normal business hours. At the discretion of Facility Management, electricians may be requested to be on site prior to their normal work schedule due to event based activity in the building, and Contractor shall accommodate such requests. Contractor shall advise the Director in writing as to the identity and 24-hour telephone number of its manager in charge of and on 24-hour call for Facility operations before the commencement of its operations under this Agreement. Contractor shall provide prior written notice to the Director concerning any change of this information.
- 2.6 All plumbers employed by Contractor shall have a valid State of Texas Journeyman Plumber's License. Any plumbing apprentices employed must possess a valid State of

Texas Plumbing Apprentice License and work under the direction of a Journeyman Plumber.

- 2.7 Contractor must submit its safety policy and program, which is subject to Director's approval. Contractor must ensure that the facilities and equipment will be used in a safe manner, creating no hazards or safety violations.
- 2.8 Contractor is responsible for all actions of its full-time, part time, or temporary personnel, invitees, and guests, including subcontractors.

### **3.0 Criminal Background Check**

At its sole expense, Contractor shall conduct national and local background checks on all temporary and permanent employees, including subcontractor employees, before they are assigned to work at any of the Facilities. Background checks shall include a thorough criminal history check, including registered sex offender status, prior employment history check, inclusive of reasons for dismissals, if any, and level of education. Upon request by the Director, Contractor shall provide evidence that the background checks have been conducted, both at the beginning of the Agreement and at any other time as reasonably deemed necessary by the Director throughout the term of the Agreement. Failure to strictly comply with this requirement is grounds for immediate termination of the Contract.

The Contractor shall be responsible for all costs associated with the background checks.

Additionally, all of Contractor's employees and subcontractor employees must:

- a. Not have been convicted in any jurisdiction of any felony unless a full pardon has been granted;
- b. Not have been convicted in any jurisdiction of a Class A misdemeanor during the last ten years;
- c. Not have been convicted in any jurisdiction of a misdemeanor involving moral turpitude during the seven-year period preceding the date of application unless a full pardon has been granted for the conviction;
- d. Not have any pending, unresolved, or unadjudicated felony or Class A misdemeanor charges or indictments in this or any other jurisdiction. Not be on probation or parole for any felony or Class A misdemeanor;
- e. Not be required to register in this or any other state as a sex offender;
- f. Have no outstanding warrants;
- g. Not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease without having been restored;
- h. Not be suffering from intoxication, alcohol dependency, or from narcotics addiction or dependence. Prior to employment, all personnel hired shall be drug tested at Contractor's expense. Subsequent drug testing, whether at random or for reasonable suspicion, shall also be conducted at Contractor's expense. Any employee or applicant

testing positive for drugs shall be dismissed and shall not be permitted to work at any City Facility;

- i. Not have been discharged from the armed services of the United States under other than honorable conditions;
- j. Be skilled in effectively and tactfully communicating with a wide variety of people in sensitive situations. All personnel must be skilled in establishing and maintaining effective working relationships with City employees and the general public.

The City reserves the right to conduct additional background checks as deemed advisable for special events.

#### **4.0 Equipment**

- 4.1 Contractor will purchase, build, or otherwise obtain, high quality equipment necessary to satisfy these specifications including but not limited to, electrical wire, receptacles, floodlights, rubber hoses, pumps, faucets, attachments, portable transformers and generators, electrical distribution panels, platform trucks, personnel carts, air hoses, and water hoses. Contractor must use flat cable, which, when placed under carpet, creates no lumps or trip hazards in the aisles or booths.
- 4.2 Only with the Director's prior written approval, and at Contractor's sole cost and expense, the Contractor may be required to construct or install non-removable fixtures or permanent improvements within the Facility. All such fixtures and improvements shall in all respects conform to and comply with all applicable statutes, ordinances, rules and regulations of the City. Title to all non-removable fixtures and permanent improvements shall vest in the City upon the termination or expiration of the Agreement.
- 4.3 Contractor will be provided lockable office space and equipment storage space within the Facility, at no expense to Contractor. However, space is limited and Director has final determination of space allocations.
- 4.4 Contractor will be provided parking for full-time and part-time staff as necessary, subject to availability, at no expense to the Contractor.
- 4.5 Contractor shall have a sufficient number (as reasonably determined by the Director) of radios, cell phones, and telephones to communicate with the Facility staff and clients. Contractor shall pay for its own telephone bills and office supplies. Contractor's radio frequencies must be compatible with the Facility's radio frequencies.
- 4.6 Contractor, by the commencement date of this Agreement, must have on hand equipment as described above in a quantity to satisfy a minimum of 2,500 (10'x10') booths, and provide services for events such as, but not limited to, Heli Expo, Wind Energy, American Welding Society, SME Machine and Tool Shows, and Pool and Spa Shows. Events are held in all exhibit halls, meeting rooms, ballrooms, the General Assembly Hall, parking lots, Registration areas, and in such other areas as may be reasonably directed by the Director in the Facility.
- 4.7 Contractor shall maintain its storage area and work area in a clean, safe and orderly fashion.

4.8 Contractor shall supply furniture and supplies for its own office/storage area as per its own requirements and per the approval of the Director. Title to all furniture, furnishings, computers, removable fixtures and supplies purchased or supplied by Contractor pertaining to the providing of Utility Services shall remain the property of the Contractor. However, any data pertaining to the Agreement, the GRBCC, or the Licensees or exhibitors, which is contained in Contractor owned computers shall belong to the City and shall be transferred by the Contractor to the City upon request by the Director.

4.9 Contractor's detailed equipment listing for and in support of Facility operations is attached as **Exhibit "C"**.

## **5.0 Services**

5.1 Contractor will be required to provide Utility Services to all Licensees and their exhibitors as they appropriately request it.

5.2 Contractor shall provide Licensee and/or exhibitor order forms and will manage, at Contractor's expense, the system by which the orders are presented to Licensees and their exhibitors, and how these forms are obtained, serviced and billed. Director must give approval of this system before and during its implementation, which shall not be unreasonably withheld or denied.

5.3 Contractor will professionally staff a "service desk" with knowledgeable personnel during all Facility Event Periods at times designated by Licensee without any additional charges.

5.4 Contractor will police all Licensee and exhibitor installations during the Event Period to ensure there are no unsafe or hazardous connections made by Contractor, Licensees, or exhibitors. If such connections are noticed, Contractor will be responsible for resolving the unsafe situation with the assistance of Facility staff if necessary.

5.5 Contractor will timely remove all temporary equipment following its disconnection at the conclusion of each Event Period.

5.6 Contractor shall keep all such records as will enable the City as well as the Contractor to ascertain and determine, accurately and clearly, the amount of money payable to the City hereunder. These records shall be available for inspection at any time during regular business hours.

5.7 The Contractor shall provide the Director with a description of the Contractor's cash and sales record system. The Contractor's event records shall record each and every transaction, and shall be accessible to, and subject to, periodic audit by City representatives.

5.8 Contractor shall be responsible for maintaining and repairing utility boxes and temporary disconnect panels throughout the Facility. This includes, but is not limited to, the monitoring of utility box covers, elimination of debris caused by Contractor's staff, and the repair or replacements of problems or damages such as blown fuses, defective or inoperable valves, broken terminal blocks, etc., (excludes replacement of lost or damaged exhibit hall floor box cover plates and the repair of compartment D - communications).

## **6.0 Service Enhancement Plan**

Upon request from the Director, annually or less frequently, Contractor shall provide a Service Enhancement Plan, a detailed summary of specific steps and actions to improve service levels and/or reduce expenses associated with delivering Utility Services. Contractor's strategies for eliminating any current, inefficient processes must be included within the Service Enhancement Plan, along with proposed plans to assist the City with implementing enhanced services.

## **7.0 Customer Service and Marketing**

7.1 Contractor has provided an operations and marketing plan in its proposal, on file in the Director's office, for the Director's approval. Changes or additions to the plan will be subject to the Director's approval, which will not be unreasonably withheld. Contractor shall include telemarketing personnel in its staff to ensure a high level of Licensee and exhibitor purchases of Utility Services. The marketing staff should work in conjunction with Facility management and its marketing staff to secure new business at the Facility. Contractor's marketing and customer service personnel shall:

- a. Provide utility contracts to the decorators and show management companies for distribution in exhibitor kits. Any collateral marketing materials must be approved in advance by the Director.
- b. Attend all pre-conference meetings.
- c. Telemarket electrical services available to Licensees and exhibitors.
- d. Process all orders received and provide confirmation letters/invoices to each customer to ensure that they receive the service they require.
- e. Schedule staff as required to meet fluctuating hours of the event schedules.
- f. Maintain a website that services customer orders on-line. Also maintain a link to the Facility's website. The website content, including branding, is subject to the Director's prior approval.
- g. Be available by main telephone, to be answered 24 hours per day, with key personnel accessible at all times.
- h. Exhibitor and Licensee information such as exhibitor lists must be kept confidential.

7.2 There may also be a joint sales effort, at the Director's discretion, whereby the City and the Contractor may reduce their costs to allow special pricing for a national convention, industry related events that may assist the convention center to promote the City, such as but not limited to: IAAM, IEE, PCMA, MPI, or major sporting events, based on the event's economic impact on the City. Such price reductions would be derived by the City waiving all or a portion of its commission from the Contractor, at which time the Contractor shall provide its services at cost. All marketing materials must be approved by the Director in advance.

- 7.3 Contractor shall not use any Contractor's or any other company brand logos on collateral marketing materials, printed documents, order forms, websites (as commercially and financially feasible and mutually agreeable within twelve months of Countersignature Date), badges, or uniforms unless approved by the Director. Contractor shall use the GRBCC logo. In addition, Contractor shall not share any of the data collected from Licensees or exhibitors with any other companies, including parent companies or other affiliated companies, nor shall Contractor solicit business for or on behalf of other companies to provide services in the Facility.
- 7.4 Contractor shall conduct customer satisfaction surveys on the last day of events and shall provide the results to the Director if requested.

## **8.0 Special Services**

### **8.1 Special Services Fund**

On occasion, the City may require that an electrical work order or work projects be performed ("Special Services"). Contractor shall provide such services through use of a Special Services Fund. The Fund will be an accrual account that will accrue at the rate of 2% of the total Gross Revenues that Contractor collects per month. The Gross Revenues collected in the Special Services Fund is in addition to the Revenue Share that Contractor shall pay to the City every month. If the Special Services Fund does not have sufficient money to cover the cost of a project, Contractor shall advance up to \$50,000 to the Fund against future Fund payments by Contractor.

The Special Services Fund can be used at the Director's discretion for special repairs, improvements, or to cover the costs of electrical needs. Any charges against the account will be levied at the Contractor's actual cost. Contractor shall be responsible for providing a monthly report tracking usage of the Fund. At the expiration or termination of this Agreement, any funds remaining in the Special Services Fund will belong to the City.

Contractor shall provide such services based on the following:

- a. The work order has a reasonable time frame for completion.
  - b. Contractor shall charge its labor and materials against the Special Services Fund at cost for Special Services requests. If Contractor's work force is already on duty, Contractor shall not charge the Facility for work performed by its in-house staff. Such work shall not interfere with Contractor's services to Licensees and exhibitors, staffing levels, work hours, or other work in the Facility.
  - c. Contractor shall provide engineering expertise for such projects at no charge to the City.
  - d. At no cost for Utility Services, the City shall pay for materials provided to the City.
  - e. Contractor shall provide emergency utility repair service to the Facility if this service is required or requested in writing by the Director. *Emergency* is defined as a threat to the health, safety, and welfare of individuals.
- 8.2 Special Projects With the Director's prior written approval, Contractor shall complete the special projects a. through e. described in this subsection 8.2 ("Special Projects") using its full-time labor during off-peak times during the first 12 months of the Agreement

Term. The Contractor shall not charge the City for the labor or material cost of the following Special Projects:

- a. Add additional 208v five-wire receptacles in each breakout section of Meeting Rooms 310, 320, 332, 342. This addition will enable delivery of high power capacity with less lead times required for installation and without the necessity of bringing in cables from outside the area.
- b. Add additional 208v five-wire receptacles in General Assembly B. With this infrastructure enhancement, power can be available at all times, eliminating the need to run temporary power through seating and across aisles, providing a cleaner and more timely installation.
- c. Exhibit Halls A, B, C, D, E, A3 and B3: Upgrade 20 columns (every other column) with new 208v five-wire receptacles. This addition will assist the cleaning crews by providing accessible power for cleaning booths, and allowing for cleaner and more timely installations on the exhibit floor.
- d. Relocate three unsightly transformers located in the back of General Assembly to the electrical closet or mechanical rooms and install disconnect receptacles for reduced footprint.
- e. Exhibit Halls B, C, and D: Install natural gas connections at six columns. This installation will eliminate the need for unsightly temporary installation during high profile events.

Estimated labor and material value of Special Projects listed above: \$132,000 (includes \$68,310 Special Projects labor).

- f. Additionally, as a Special Project, Contractor shall replace each of the electrical floor boxes in Exhibit Halls B, C, D, and B3 over the entire Agreement Term (up to 90 floor boxes per Agreement Year). Contractor agrees to commit an estimated \$13,600 in labor costs per Agreement Year to this floor box replacement Special Project (Estimated value of labor and materials: \$42,400 x 5 yrs. = \$212,500. Estimated value of labor = \$13,600 x 5 = \$68,000). However, if this Agreement is not renewed or is terminated by either party prior to the expiration of the entire Agreement Term, this obligation shall expire upon the termination date of the Agreement, and Contractor will not be required to make any monetary contribution to the City for such unused services.

### 8.3 Complimentary Utility Services

Upon request from the Director, Contractor shall provide complimentary Utility Services for selected events over the term of the Agreement, valued at \$25,000 per Agreement Year (not to exceed \$125,000 over the entire term of the Agreement, including the Renewal Terms). Complimentary Services are for services rendered to show management and/or exhibitors only and the rates shall be based on Contractor's proposed pricing structure. This is in addition to the labor costs for Special Projects described in Section 8.2 above. The complimentary services should be shown on Contractor's monthly statements to the City. The obligation to provide complimentary Utility Services shall expire upon the expiration or termination of this Agreement, and Contractor will not be required to make any monetary contribution to the City for such unused services.

#### 8.4 Value-Added Services

To benefit Facility operations and revenues, Contractor shall provide the following Value-Added Services:

- a. One full-time IBEW journeyman electrician shall be assigned to the Facility's operations for use as the Department's management staff determines for needed repairs, Special Projects, and installations, at no charge to the City. The assigned electrician shall be available during standard business hours, Monday through Friday, excluding approved holidays, vacation and sick days.
  - i. Contractor shall assist with prioritizing activities, monitoring performance of assignments and work with the City for permits as required.
  - ii. If the journeyman electrician assigned to Facility operations is assigned, with mutual agreement of GRBCC management and the Contractor, to provide Utility Services to clients, then Contractor shall reimburse the City for each hour used for support of event services at the rate of \$30 per hour.
  - iii. If GRBCC management requests repairs, Special Projects, or installations in which additional electricians are needed, billable rates for the additional electricians shall be \$50 per hour during the initial term of the Agreement.
- b. Contractor shall invest \$190,000 in capital expenditures to replace equipment used in the delivery of services on the show floor, such as 175 streamers (30'), 25 panel boxes, 25 mini panel boxes, 150 quad boxes, 40 bus switches, transformer repairs, new storage room shelving, and miscellaneous wire, parts, and supplies.

#### 8.5 Increased Marketing Efforts

Contractor shall provide \$25,000 per Agreement year, not to exceed \$125,000 over the entire term of the Agreement including renewal terms, for increased marketing efforts and/or additions to its marketing staff for the Facility. Any unused portions of the marketing funds accrued through the end of the fourth (4<sup>th</sup>) Agreement year shall expire and will not carry over to the final year of the Agreement, leaving only the \$25,000 to accrue during the final year for fifth Agreement year marketing efforts. The obligation to increase marketing efforts will expire at the expiration or termination of this Agreement, and Contractor will not be required to make any monetary contribution to the City for such unused services.

#### 9.0 Special Service Authorization

- 9.1 At any time during the Agreement Term, the Director may issue a Special Service Authorization ("SSA") referred to and synonymous with "Add Notice" or "Drop Notice," to increase, decrease, change, or clarify the scope of work set forth herein. Contractor shall perform special services required by an SSA in accordance with all terms and conditions of this Agreement. Should a conflict arise between the terms and conditions of a SSA and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control.
- 9.2 To be effective, the SSA prepared by the Director will be in substantially the following form:

SPECIAL SERVICE AUTHORIZATION

To: (Name of Contractor [the "Contractor"])  
From: City of Houston, Texas (the "City")  
Date: (Effective date of SSA)  
Subject: SSA pursuant to Contract No. \_\_\_\_\_  
("Contract") for \_\_\_\_\_  
between the City and Contractor effective on (Effective Date)

"Subject to all terms and conditions of the Agreement, and the conditions and requirements set forth herein, the City requests:

(Description of the increase, decrease, change or refinement to the scope of services and the corresponding adjustment, if any, to the City's Revenue Share.)

Signed: (Signature of Director)

9.3 Fees paid for such additional work shall be at the unit prices set forth herein or for work for which no special rates are specified, at a rate agreed to by the parties.

9.4 More than one SSA may be given, subject to the following limitations:

a. Any Special Services Authorization is subject to the provisions of this Agreement. Special Services requiring additional work not described in this Agreement shall be charged against the Applicable Percentage of Gross Receipts otherwise due to the City.

b. Any SSA which purports to describe an increase in work to be performed by Contractor but which in fact describes work already required to be performed by Contractor under the terms of this Agreement shall not entitle Contractor to any additional compensation. If a dispute arises because of an issue of this nature, the parties shall conduct a meeting within five days of the date of the disputed SSA. Failure to request a meeting during this time frame constitutes waiver of any right to protect the terms of the SSA in this regard. Failing a resolution to the issue at the meeting, a mediator will be hired by both parties (subject to an allocation of sufficient funds by the Director), the cost of which to be evenly divided between the parties. The decision reached by the mediator relating to the issue of whether the work is already required under this Agreement or whether it is additional work shall be final. Upon this determination, the Director may elect to withdraw the SSA with no additional credit or obligation to Contractor or may proceed with the SSA.

9.5 Contractor shall provide all labor, materials, tools, insurance, and incidentals necessary to perform under a SSA. Special Services work, if any, shall be completed within the time prescribed in the particular SSA; however, if no time for completion is prescribed, such work shall be completed within a reasonable time. If the work described in a SSA causes an unavoidable delay in any other work the Contractor is required to perform under this Agreement, Contractor shall be entitled to request a time extension for the completion of any such work. The Director, in his or her sole discretion, shall have the absolute right to grant or deny such a request. Contractor shall not be entitled to damages for such delay.

## **10.0 Phase-Out Services**

Contractor recognizes that the services provided by the Agreement are vital to the City's efforts to provide convenient Utility Services; that continuity thereof must be maintained at a consistently high level without interruption; that upon expiration of the Agreement a successor may continue these services; that its successor Contractor shall need Phase-in training; and that Contractor must cooperate in order to effect an orderly and efficient transition.

Accordingly, Contractor shall be required to provide Phase-out services for up to 30 days prior to Agreement expiration to its successor Contractor at no extra charge to the City. Phase-out orientation shall comprise a maximum of 30 working days, eight hours per day. Orientation may include system operations procedures, record keeping, reports, and procurement procedures, etc. Contractor shall be totally responsible for providing the services called for by the Agreement during its Phase-out period. Contractor agrees to cooperate with its successor Contractor in allowing as many personnel as practical to remain on the job in order to enhance the continuity and consistency of the services in the Agreement. Contractor agrees to disclose necessary personnel records and allow its successor to conduct on-site interviews with its employees, provided Contractor obtains the consent of said employees to disclose their records and to conduct such interviews and provided such disclosure and interviews are conducted in accord with all applicable laws, statutes, rules, regulations, and ordinances which have been passed, enacted or promulgated by any governmental body having jurisdiction over such matters.

**EXHIBIT "B"**

**CONCESSION PAYMENTS**

**A. Compensation to City**

1. In consideration of the rights and benefits conferred upon Contractor in this Agreement, Contractor shall pay to the City, in the manner described below, the Applicable Percentage for all Utility Services provided each month during the Agreement Term and any Renewal Term.

<b>Annual Gross Revenues</b>	<b>Applicable Percentage</b>
< \$2,000,000	50%
≥ \$2,000,000 but < \$2,500,000	51%
≥ \$2,500,000 but < \$3,000,000	52%
≥ \$3,000,000	53%

2. On or before the 20th day of each month that the Agreement is in effect, Contractor shall submit to the City a detailed statement showing all Gross Receipts attributable to the preceding calendar month. Such report shall be submitted on forms approved by the Director and shall be accompanied by payment to the City of an amount equal to the Applicable Percentage for the preceding month.

3. In any Agreement Year, including Renewal Terms, Contractor shall base its monthly payments to the City on the Applicable Percentage corresponding to the total Annual Gross Revenues accumulated over the preceding months of that Agreement Year. If, at the end of any Agreement Year, including Renewal Terms, there is a disparity between the Applicable Percentage paid to the City and what should have been paid, based on the Annual Gross Revenues parameters outlined above, Contractor shall calculate and remit to the City the difference within 30 days following the end of that Agreement Year.

4. If the Agreement Term does not coincide with whole calendar months, payments due to the City for any fractional portion of a month shall be the pro rata Applicable Percentage of the Gross Receipts for the particular fraction of a month.

5. Any payment owed to the City remaining past due for a period of 30 days or more shall bear interest at the lesser of 18% or the highest rate allowed by law from the date the payment was due.

6. Failure to make payment as required by this Section is a material breach of this Agreement and the City shall have the right to terminate this Agreement upon ten days written notice to Contractor with opportunity to cure.

7. From time to time the Contractor shall be requested to offer Utility Services for a specific event (e.g., concerts and galas) at rates lower than the standard published contract. Such cases will be called "Special Events." Special Event rates will be mutually agreed upon in writing by the Director and Contractor and at a reduced Applicable Percentage on an event by event basis.

8. Contractor shall account for the Special Services Fund, Special Projects, and Complimentary Services for Special Events in its monthly statements to City.

9. For each Agreement Year or Renewal Term in which Contractor's Gross Receipts equal or exceed \$2,500,000, Contractor shall pay a Bonus Payment of \$25,000 to the City within 30 days following the end of such year. The total of all Bonus Payments will not exceed \$125,000 over the term of the entire Agreement. Contractor's payment of the Bonus Payments shall be in addition to the payment of the Applicable Percentage.

**B. Reports and Records**

1. The Contractor shall, on or before October 31 of each year during the Agreement Term or any Renewal Term, submit to the City a certified public accountant's statement showing Gross Receipts during the City's most recently ended fiscal year, which runs from July 1 to June 30, or, if for a partial year, that part of the applicable fiscal year during which this Agreement was in effect, to be used to confirm that payments were properly reported, collected, and remitted to the City. The statement shall be prepared in accordance with generally accepted accounting principles without exceptions. In the event that the Contractor has made an erroneous payment, that amount shall be debited from, or credited to the Contractor's account to be added to, or applied against, one or more of the next succeeding monthly payments as approved by the Director. In no event shall the City be liable for interest if there has been an overpayment by the Contractor.

2. The Contractor shall provide any financial or statistical reports that the Director may reasonably request by written notice.

3. Contractor shall ensure that a duplicate service invoice, serially numbered, is issued for each service provided to a Licensee or exhibitor at the Facility, whether for cash or credit, without regard to whether paid or not. In the alternative, Contractor may document each transaction in a manner approved in writing by the Director. In addition, at all times during the Agreement Term and any Renewal Term, and for three years after the expiration or termination of this Agreement or until all claims of the City for payments hereunder shall have been fully ascertained, fixed and paid, whichever is later, the Contractor shall make available, at a location within the City of Houston, Texas, in accordance with generally accepted accounting principles, if applicable, separate and accurate daily records of Gross Receipts as herein defined, showing in detail all business done or transacted in, on, about, from, or pertaining to, the Facility. The Contractor shall maintain records for inspection or auditing purposes, and all entries in any records or books shall be made at or about the time the transaction respectively occurs. The Contractor shall make available to the City all such records or books including the duplicate service invoices or approved alternative required above, so that the City may audit the records to determine the amount of money payable to City hereunder and the rates being charged to Licensees and exhibitors, and the Contractor shall permit City to inspect or audit such records or books at any time during regular business hours upon reasonable advance notice.

4. Upon written notice any time during the Agreement Term or any Renewal Term or within three years after the expiration or termination of this Agreement, representatives of the City may cause, without initial cost to Contractor, an inspection and audit to be made of the books and records of Contractor relating to its operations. Such audit shall be made to determine the correctness of the computation of fees paid and reported in the annual statements for the preceding year or years.

If, as a result of such inspection and audit, it is established that additional fees are due the City, the Contractor shall, upon written notice from the City, pay such additional fees plus a five percent late charge within 30 days of such written notice. If the audit reveals a difference of

more than five percent between Gross Receipts reported by Contractor and Gross Receipts as determined by the audit, the cost of the audit shall be borne by Contractor.

**EXHIBIT "C"**  
**CONTRACTOR PROVIDED EQUIPMENT**

Contractor's inventory of equipment is listed below. Contractor must keep a sufficient quantity of necessary tools on hand to perform Utility Services concurrently at all locations requiring services (the ballroom, general assembly room, and all seven Exhibit Halls).

<b>Equipment Inventory</b>	
<b>Equipment Item(s)</b>	<b>Minimum Quantity</b>
<b><i>Electrical Material</i></b>	
<b>Transformers</b>	
75 KVA Show Ready	12
75 KVA Show Ready w/ Cam Locks	4
150 KVA Show Ready	6
150 KVA Show Ready/ w Cam Locks	4
300 KVA Show Ready	1
45 KVA Show Ready	1
225 KVA Show Ready	2
75 KVA Show Ready (Isolated) w/ Cam Locks	4
30 KVA Show Ready	1
112.5 KVS Show Ready	1
<b>Distribution Panels</b>	
Ericson W/ (4) L21-20 (UL Approved)	150
100 Amp Disconnect (w/ 100 Amp Pin & Sleeve)	20
<b>Buss Switches (Show Ready)</b>	
100 Amp Square D	34
200 Amp Square D	34
400 Amp Square D	4
100 Amp Siemens	24
200 Amp Siemens	34
400 Amp Siemens	4
<b>Branch Circuit Services</b>	
Portable Outlet Strings 60' U/L Approved	500
Portable Outlet Strings 30' U/L Approved	350
Quad 5-Wire	350

Extension Cords (25 feet)	750
Extension Cords (50 feet)	100
12/5 Round Extensions	50
12/5 Flat Extension (various lengths)	250
Power Strips	500
Tri Taps	500
<b>Disconnects (Show Ready)</b>	
60 Amp 600 Volt	23
30 Amp 600 Volt	24
600 Amp 600 Volt	3
200 Amp 600 Volt	5
60 Amp 250 Volt	10
<b>Floor box upgrades (each box)</b>	
Cutler-Hammer Breaker 30A 120V 1 Pole	6
Cutler-Hammer 12 Circuit Panel	1
P&S 5 Wire 208v Receptacles	2
Custom fabricated panel box and plates	1
<b>Lighting</b>	
Flood Light Stands (Show Ready)	800
Flood Light Bases	900
150 Watt R40	600
300 Watt R40	900
<b>Wire (Per Feet)</b>	
12/5 Flat	1500
6/5 Flat	1000
12/5 SO Cord	5000
10/5 SO Cord	7200
8/5 SO Cord	4000
6/5 Tray Cable	4000
#2 SE Cable	6500
4/0 SE Cable	6500
<b>Plumbing Material</b>	
<b>Hoses</b>	
Drain	500
Potable	500
Air 3/8"	500

Air 1/2"	500
Gas	500
<b>Fittings</b>	
Air, Gas, Water	Various
Water Heater	8
Sinks	8
Grease Traps	6
<b>Regulators</b>	
Gas	10
Air	10

**EXHIBIT D**  
**DRUG DETECTION AND DETERRENCE PROCEDURE**  
**AND**  
**DRUG POLICY COMPLIANCE AGREEMENT**

**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 "A" 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 "C" 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 months during the performance of this Contract or upon the completion of this Contract if performance is less than six months, a Drug Policy Compliance Declaration in a form substantially similar to Attachment "B" 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 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.

**DRUG POLICY COMPLIANCE AGREEMENT**

I, Mark M. Haley, President, Smart City Networks, LP as an owner or officer of  
**(Name) (Print/Type) (Title)**

Smart City Electric, Inc. (Contractor)  
**(Name of Company)**

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed.

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results, and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

09/22/2010  
**Date**

Smart City Electric, Inc.  
**Contractor Name**

  
**Signature**

President, Smart City Networks, LP  
**Title**

## DRUG POLICY COMPLIANCE AGREEMENT

I, \_\_\_\_\_ as an owner or officer of  
**(Name) (Print/Type) (Title)**

\_\_\_\_\_  
**(Name of Company)** (Contractor)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed.

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results, and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Contractor Name**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Title**

**EXHIBIT E**

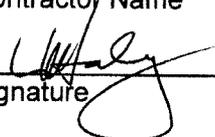
**Contractor's Certification of No Safety Impact Positions  
In Performance of a City Contract**

I, Mark M. Haley, President, Smart City Networks, LP  
(Name) (Print/Type) (Title)

as an owner or officer of Smart City Electric, Inc. (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.

09/22/2010  
Date

Smart City Electric, Inc.  
Contractor Name

  
Signature

President, Smart City Networks, LP  
Title

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

I \_\_\_\_\_ as an owner or officer of  
(NAME) (PRINT/TYPE)

\_\_\_\_\_ (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'S NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

**EXHIBIT E**

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

I, \_\_\_\_\_  
(Name) (Print/Type) (Title)

as an owner or officer of \_\_\_\_\_ (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

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

I \_\_\_\_\_ as an owner or officer of  
(NAME) (PRINT/TYPE)

\_\_\_\_\_ (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'S NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

**EXHIBIT F  
DRUG POLICY COMPLIANCE DECLARATION**

I, \_\_\_\_\_ as an owner or officer of  
**(Name) (Print/Type) (Title)**  
 \_\_\_\_\_ (Contractor)  
**(Name of Company)**

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding six months from \_\_\_\_\_ to \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_ A written Drug Free Workplace Policy has been implemented and employees notified. The policy  
**Initials** meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence  
 (Mayor's Policy).

\_\_\_\_\_ Written drug testing procedures have been implemented in conformity with the Mayor's Drug  
**Initials** Detection and Deterrence Procedures for Contractors, Executive Order 1-31. Employees have been  
 notified of such procedures.

\_\_\_\_\_ Collection/testing has been conducted in compliance with federal Health and Human Services  
**Initials** (HHS) guidelines.

\_\_\_\_\_ Appropriate safety impact positions have been designated for employee positions performing on  
**Initials** the City of Houston contract. The number of employees on safety impact positions during this  
 reporting period is \_\_\_\_\_.

\_\_\_\_\_ From \_\_\_\_\_ to \_\_\_\_\_ the following testing has occurred:  
**Initials** (start date) (end date)

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number of Employees Tested	_____	_____	_____	_____
Number of Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

\_\_\_\_\_ Any employee who tested positive was immediately removed from the City worksite consistent  
**Initials** with the Mayor's Policy and Executive Order No. 1-31.

\_\_\_\_\_ I affirm that falsification or failure to submit this declaration timely in accordance with  
**Initials** established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this  
 declaration are within my personal knowledge and are true and correct.

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Contractor Name**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Title**

## EXHIBIT G

### CITY OF HOUSTON CERTIFIED M/WBE SUBCONTRACT TERMS

Contractor shall ensure that all subcontracts with M/WBE 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 nor 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 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 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 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-personal 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 M/WBE subcontracting potential in fields which there are an adequate number on known MBEs and/or WBE’s to compete for City contracts.

The M/WBE policy of the City of Houston will 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, 7<sup>th</sup> Floor, Houston, Texas 77002.

Section 4.0

**ATTACHMENT "A"  
CITY OF HOUSTON  
SCHEDULE OF M/WBE PARTICIPATION**

DATE OF REPORT: June 25, 2010

BID NO.: S10-T23536

FORMAL BID TITLE: UTILITY SERVICES CONCESSION FOR THE CITY OF HOUSTON

NAME OF MINORITY/ WOMEN SUBCONTRACTOR	AFFIRMATIVE ACTION DIVISION CERTIFICATION NO.	STREET ADDRESS AND CITY, STATE, ZIP CODE	TELEPHONE NO.	SCOPE OF WORK	AGREE PRICE
EDH Plumbing Contractors, LLC	09 - 11 - 9792	7025 W. Tidwell, Suite H108 Houston, TX 77092	713-460-0666	Plumbing services and labor	149,500
Medina Supply, Inc.,	09 - 05 - 8143	13823 Perthshire Houston, TX 77079	281-496-4801	Wholesale distributor of electrical supplies	604,900
KJH Consultant Services	09 - 09 - 10396	10333 Northwest Freeway, Suite 101 Houston, TX 77092	713 957-9932	Uniforms, Printing, Graphic Design and Promotional Items	5,390
Tejas Office Products, Inc	09 - 08 - 1091	1225 W. 20 <sup>th</sup> St. Houston, TX 77008	713 864-6004	Off ice Products and Supplies	7,600
Scent of a Flower	09 - 11 - 10695	7110 AVE. C Houston, TX 77011	713-208-8023	Promotional and Floral Items	2,200
TOTAL.....\$					\$ 769,590
MWBE PARTICIPATION AMOUNT.....					23% %
TOTAL BID AMOUNT.....\$					\$ 769,590

Section 4.0

**FORM "B"**  
**SAMPLE LETTER OF INTENT**

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

TO: **City of Houston**  
**City Purchasing Agent**

**MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE) AND SUPPLIER**

**LETTER OF INTENT**

Contract Bid Number: S10-T23536

Bid Title: UTILITY SERVICES CONCESSION FOR THE CITY OF HOUSTON

Bid Amount: \_\_\_\_\_

M/WBE Participation Amount: \$ 2200- **M/WBE GOAL** 0.3 %

1. Scent of a Flower Name of Minority/Women Business Enterprise agrees to perform work/supply goods and/or services in connection with the above-named contract and Smart City Electric, Inc. as: Name of Prime Contractor
  - (a) \_\_\_\_\_ An Individual
  - (b) \_\_\_\_\_ A Partnership
  - (c) X \_\_\_\_\_ A Corporation
  - (d) \_\_\_\_\_ A Joint Venture

2. Scent of a Flower Name of Minority/Women Business Enterprise status is confirmed by M/WBE Directory made available through the City of Houston Affirmative Action Division. Certificate No.: 09-11-10695

3. Smart City Electric, Inc. Name of Prime Contractor and Scent of a Flower Minority/Women Business Enterprise intend to work on the above-named contract in accordance with the M/WBE Participation Section of the City of Houston Contract Bid Provision.

The terms and conditions of Attachment "C" attached hereto are incorporated into this Letter of Intent for all purposes.

[Signature]  
Signed-Prime Contractor

PRESIDENT  
Title

9/22/10  
Date

[Signature]  
Signed-Minority/Women Business Enterprise

OWNER  
Title

6/8/10  
Date

**FORM "B"**  
**SAMPLE LETTER OF INTENT**

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

TO: **City of Houston**  
**City Purchasing Agent**

**MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE) AND SUPPLIER**

**LETTER OF INTENT**

Contract Bid Number: S10-T23536

Bid Title: UTILITY SERVICES CONCESSION FOR THE CITY OF HOUSTON

Bid Amount: \_\_\_\_\_

M/WBE Participation Amount: \$ 5390- M/WBE GOAL 0.7 %

1. K/JH Consultant Services agrees to perform work/supply goods  
Name of Minority/Women Business Enterprise  
and/or services in connection with the above-named contract and Smart City Electric, Inc. as:  
Name of Prime Contractor

- (a) \_\_\_\_\_ An Individual
- (b) \_\_\_\_\_ A Partnership
- (c) X \_\_\_\_\_ A Corporation
- (d) \_\_\_\_\_ A Joint Venture

*We offer:*  
\* Decals  
\* Embroidery \* Graphic Design  
\* Screen Printing  
\* WORK UNIFORMS  
\* Promotional items

2. K/JH Consultant Services  
Name of Minority/Women Business Enterprise  
status is confirmed by M/WBE Directory made available through the City of Houston Affirmative Action Division. Certificate No.: 09-09-10396

3. Smart City Electric, Inc. and K/JH Consultant Services  
Name of Prime Contractor Minority/Women Business Enterprise  
Intend to work on the above-named contract in accordance with the M/WBE Participation Section of the City of Houston Contract Bid Provision.

The terms and conditions of Attachment "C" attached hereto are incorporated into this Letter of Intent for all purposes.

[Signature]  
Signed Prime Contractor  
President

Title  
Date 9/22/10

[Signature]  
Signed Minority/Women Business Enterprise  
President/CEO

Title  
Date 6/9/10

certification #09-09-10396

Section 4.0

FORM "B"  
SAMPLE LETTER OF INTENT

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

TO: City of Houston  
City Purchasing Agent

MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE) AND SUPPLIER

LETTER OF INTENT

Contract Bid Number: S10-T23536

Bid Title: UTILITY SERVICES CONCESSION FOR THE CITY OF HOUSTON

Bid Amount: \_\_\_\_\_

M/WBE Participation Amount: \$ 149,500- M/WBE GOAL 19.4 %

1. EDH Plumbing Contractors, LLC agrees to perform work/supply goods  
Name of Minority/Women Business Enterprise  
and/or services in connection with the above-named contract and Smart City Electric, Inc. as:  
Name of Prime Contractor

- (a) \_\_\_\_\_ An Individual
- (b) \_\_\_\_\_ A Partnership
- (c) X \_\_\_\_\_ A Corporation
- (d) \_\_\_\_\_ A Joint Venture

2. EDH Plumbing Contractors, LLC  
Name of Minority/Women Business Enterprise  
status is confirmed by M/WBE Directory made available through the City of Houston Affirmative Action  
Division. Certificate No.: 09-11-9792

3. Smart City Electric, Inc. and EDH Plumbing Contractors, LLC  
Name of Prime Contractor Minority/Women Business Enterprise  
intend to work on the above-named contract in accordance with the M/WBE Participation Section of  
the City of Houston Contract Bid Provision.

The terms and conditions of Attachment "C" attached hereto are incorporated into this Letter of Intent for all purposes.

[Signature]  
Signed-Prime Contractor  
President  
Title  
9/22/10  
Date

[Signature]  
Signed-Minority/Women Business Enterprise  
President  
Title  
6/7/10  
Date

FORM "B"
SAMPLE LETTER OF INTENT

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

TO: City of Houston
City Purchasing Agent

MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE) AND SUPPLIER

LETTER OF INTENT

Contract Bid Number: 610-T23538

Bid Title: UTILITY SERVICES CONCESSION FOR THE CITY OF HOUSTON

Bid Amount:

M/WBE Participation Amount: \$ 604,900 M/WBE GOAL 78.6%

- 1. Medina Supply, Inc. agrees to perform work/supply goods and/or services in connection with the above-named contract and Smart City Electric, Inc. as:
(a) An Individual
(b) A Partnership
(c) X A Corporation
(d) A Joint Venture

2. Medina Supply, Inc. status is confirmed by M/WBE Directory made available through the City of Houston Affirmative Action Division. Certificate No.: 200 04 456

3. Smart City Electric, Inc. and Medina Supply, Inc. intend to work on the above-named contract in accordance with the M/WBE Participation Section of the City of Houston Contract Bid Provision.

The terms and conditions of Attachment "C" attached hereto are incorporated into this Letter of Intent for all purposes.

Signed Prime Contractor: [Signature]
Title: PRESIDENT
Date: 9/22/10

Signed Minority/Women Business Enterprise: [Signature]
Title: Secretary
Date: 6/24/10

FORM "B"  
SAMPLE LETTER OF INTENT

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

TO: City of Houston  
City Purchasing Agent

MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE) AND SUPPLIER

LETTER OF INTENT

Contract Bid Number: S10-T23536

Bid Title: UTILITY SERVICES CONCESSION FOR THE CITY OF HOUSTON

Bid Amount: \_\_\_\_\_

M/WBE Participation Amount: \$ 7600- M/WBE GOAL 1.0 %

1. Tejas Office Products, Inc. agrees to perform work/supply goods  
Name of Minority/Women Business Enterprise  
and/or services in connection with the above-named contract and Smart City Electric, Inc. as:  
Name of Prime Contractor

- (a) \_\_\_\_\_ An Individual
- (b) \_\_\_\_\_ A Partnership
- (c) X \_\_\_\_\_ A Corporation
- (d) \_\_\_\_\_ A Joint Venture

2. Tejas Office Products, Inc.  
Name of Minority/Women Business Enterprise  
status is confirmed by M/WBE Directory made available through the City of Houston Affirmative Action  
Division. Certificate No.: 09-08-1091

3. Smart City Electric, Inc. and Tejas Office Products, Inc.  
Name of Prime Contractor Minority/Women Business Enterprise  
intend to work on the above-named contract in accordance with the M/WBE Participation Section of  
the City of Houston Contract Bid Provision.

The terms and conditions of Attachment "C" attached hereto are incorporated into this Letter of Intent for all purposes.

Signed Prime Contractor

Title

Date

[Signature]  
PRESIDENT

9/22/10

Signed Minority/Women Business Enterprise

Title

Date

[Signature]  
PRESIDENT

JUNE 9, 2010

## Section 4.0

### **M/WBE Utilization**

*Our commitment to diversity will exceed your expectations*

Smart City's track record for diversity in employment is unmatched. We continually strive to maximize the opportunities we offer to minority and women owned businesses or enterprises in the Houston area:

- Nationwide, 72% of Smart City's team members are held by women or minorities with 60% in management or key positions within our operations.
- Smart City subscribes to a written policy of non-discrimination on the basis of sex, sexual orientation, age or physical handicap
- Our current contract to date with the George R. Brown Convention Center reflects 18.4% of spending toward minority businesses.
- Attachments include letters of support from our M/WBE partners that will demonstrate our commitment to diversity and providing the very best service to GRBCC customers.
- Smart City fully expects to meet or exceed M/WBE targets set in this proposal.

## EXHIBIT "H"

### EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.