



CITY OF HOUSTON
FINANCE DEPARTMENT
Strategic Procurement Division

Annise D. Parker
Mayor

Carolyn Hanahan,
Acting Chief Procurement Officer
P.O. Box 1562
Houston, Texas 77251-1562
<https://purchasing.houstontx.gov>

December 02, 2015

MEMORANDUM FOR: ALL PROSPECTIVE PROPOSERS

FROM: Finance Department Strategic Procurement Division

SUBJECT: Clarification No. 1 to RFQ/P **S67-T25616 – RFQ/P for Professional Independent Internal Audit and Consulting Services**

1. Below are the questions and requests submitted by vendors for clarification in accordance with the instructions provided in the RFQ/P.

<i>Scope of Services Questions</i>	
Question:	On page 6 of the RFP where it discusses Special Projects, because the specific projects are currently unknown, does COH expect the proposer to provide fee estimates for these services in the proposal submitted, or will fee estimates be expected to be given when services for a special project is requested during the internal audit consulting term?
COH Response:	Total fee estimates for each project are to be provided at the time services for a project are requested. Total fee estimates would be based on the type and duration of the project.
Question:	Are the rate proposals that are to be submitted separately required to be sent in an electronic format as well?
COH Response:	Yes.
Question:	On page 8 of the RFP, it states that the proposals should be submitted to City Secretary's Office, City Hall Annex, Public Level, 900 Bagby St. In the paragraph below this information, it states that the proposals may be submitted to the Office of the Acting Procurement Officer, as the City of Houston will bear no responsibility for submitting responses on the behalf of any proposer. Is the Office of the Acting Procurement Officer the suggested place for Proposer to submit their proposals? Is that Office different from the Secretary's Office? If so, what is the address of the Office of the Acting Procurement Officer?
COH Response:	Proposals are advised to be submitted to the City Secretary's Office. The Office of the Acting Procurement Officer is not the same as the City Secretary's Office.

Question:	For the format, is it required that information is printed on both sides of the pages within the proposal? I see that it states to print on both sides "when appropriate." When would it be considered appropriate to print on both sides of the page?
COH Response:	The City of Houston supports efforts to conserve resources, so it is generally considered appropriate to print on both sides of the page. If information on a page would be illegible on a standard 8 ½ x 11 sheet, it would be inappropriate to print it on one side of that size page.
Question:	On page 9, part B. Submission Requirements, it states in the Executive Summary that the Proposer should provide a "rationale for software implementation at the City and to provide a proposed strategy to keep the system current as technology evolved and improves." Is this related to providing internal audit services that is being requested in this RFP?
COH Response:	No, it is not related to providing internal audit services. Any rationale would only be provided if the proposal includes a software implementation.
Question:	On page 9, part B. Submission Requirements, under the Proposed Plan of Action, can I get clarification on what is meant by "Submit a matrix summarizing how each of the requirements will be met and indicating the resources that the City must commit to ascertain successful services." Also, under A and B of the Proposed Plan of Action, is this referring to implementing software or providing internal audit services?
COH Response:	"Proposed Plan of Action" relates to the firm's overall approach or methodology when performing audit services or special projects.
Question:	Because my firm was established in 2013 and still in the business development stages, some of the references will be from former jobs/projects held in the past, but not all were clients of my firm. The qualifications of the Key Personnel will also be the same for the Qualification of the Proposer. Will this be acceptable in the proposal?
COH Response:	The firm's submission should include any relevant experience / qualifications for Key Personnel.
Question:	Because my firm is a MWBE, is it required to complete the request forms to subtract work to other MWBE firms? When completing the M/WBE Utilization Report, is it to be completing with my firm's information since my firm is the MWBE that will be performing the work, if selected?
COH Response:	All firms must complete the M/WBE Utilization Report and identify other M/WBE firms to meet the subcontract/sub-consulting participation goal.
Question:	On page 10, number 6 under financial stability, because my firm was recently established in 2013, there will only be tax returns filed for 2013 and 2014 with minimal activity. At a minimum, the RFP is requesting that proposers provide a letter of opinion, balance sheet, schedules, and related auditor's notes. For clarification, is the COH requesting to provide audited financial statements with those requested documents? I am trying to see if I am supposed to get another CPA firm to provide a letter of opinion on my CPA firm's financial information.
COH Response:	Audit financial statements or Federal Tax Forms may be submitted. If Federal Tax Forms filed to the Internal Revenue Service (IRS) are submitted they do not need to be audited.

Question:	How Many projects are planned / anticipated each year? How many hours per project?
COH Response:	The current Audit Plan (FY 2016) has 21 audits and special projects. Projects performed by contracted firms will generally come from the Audit Plan although they may also come from special requests made by City Council or the Controller. The number of hours planned and budgeted for each project will vary.
Question:	In the RFP no mention of the commencement date?
COH Response:	Firms submitting successful RFP's are awarded a contract with an effective date. As projects slated for outsource or co-source are planned, firms are provided an opportunity to propose on the project(s). Each internal audit / special project will have a unique commencement / project start date.
Question:	Will the Project be awarded to a single or multiple firms? Will the IA Services be performed in conjunction with IA department or separately?
COH Response:	Contracts are generally awarded to multiple firms. Individual projects that occur during the term of the contract are awarded to a single firm. Some projects are performed with the Audit Division however expectations regarding roles for each project are part of proposal and planning communication and included in the engagement letter for each individual project.
Question:	If you are a MBE are you required to obtain a MWBE sub for 24% of the contract also?
COH Response:	All firms must complete the M/WBE Utilization Report and identify other M/WBE firms to meet the subcontract/sub-consulting participation goal.
Question:	If the MWBE that we would like to use is undergoing the certification process can we put them on the proposal for 24% participation and note that the certification is pending.
COH Response:	Yes.
Question:	Is there an audit plan in place that estimate what the resource staffing needs will be for the duration of the contract?
COH Response	No, audit plans are submitted and released by the Controller's Office on an annual basis. The contract term is for three (3) years with two (2) one year options.

Question:	Will there be any travel required to perform audit work?
COH Response:	No travel outside of the Houston area is required.
Question:	Is all work expected to be performed onsite?
COH Response:	It may be necessary that some work be performed at auditee locations but it is not a requirement that 100% of the work performed be done in the Audit Division offices or at the auditee offices.
Question:	Is the Proposer expected to use the internal audit software/programs of the COH, or does the proposer need to maintain the documents/information on its internal audit software and databases?
COH Response:	There is no requirement that firms use the Audit Division's audit software. We require that firms provide any electronic and/or hard copy workpapers and supporting documentation related each the engagement to the Audit Division. This requirement ensures the Controller's Office has sufficient and appropriate evidence to ensure engagement workpapers to support any findings and the overall conclusions reached based on the project objectives.
Question:	There were no T&C's attached to the document yet you state that if we are taking exceptions, we need to summarize by paragraph in the t&c's. Can we get a word document of your most current t&c's? I have been out to your website and don't see a way to pull this down.
COH Response:	The vendor may go log in online and download the document, they can convert a pdf into a word document... This helps us to see how many vendors have visited the site.
Question:	On page 9 of the document you refer to software and implementation....we are wondering if this could be a mistake since the RFQ/P is for Internal Audit services. We will not be implementing any software. Please advise.
COH Response:	There is no software implementation required for this project.
Question:	How much staff time from the City of Houston's Audit Division Organization will be provided for each internal audit?
COH Response:	Staff time from the City of Houston's Audit Division will vary according to the project. Staff time requirements / expectations for both Audit Division staff and the firm's staff will be discussed during statement of work development for each project.
Question:	Do you currently use any other third party provider for co-sourced Internal Audit Assurance and Consulting Services?
COH Response:	There are currently 6 vendors that are under contract to bid on specific service requests that expire March 2016.

Question:	As we consider the skills of the team and key personnel who we will propose to serve the City of Houston, please describe the key skill sets and level of experience required or anticipated.
COH Response:	Areas of experience and competencies in a firm's proposal may include but are not limited to Information Technology audit, financial audit, performance audit, contract compliance audit, construction contract audit, vendor audit, and attestation engagements.
Question:	We understand that IA services encompass many different areas of specialization and required skill set. Please describe the specific scope of IA related work which bidders are to use as a point of reference in describing a bidder's understanding of the scope of work and technical requirements and, furthermore, in identifying the key personnel to perform the scope of work.
COH Response:	<p>The Audit Division of the Office of the City Controller has undertaken a wide variety of internal audits and special projects with varying scopes and objectives. Broad scopes and objectives are stated in the Audit Plan but may also come from special requests including requests from the City Controller or City Council. Areas of experience and competencies in a firm's proposal may include but are not limited to Information Technology audit, financial audit, performance audit, contract compliance audit, construction contract audit, vendor audit, and attestation engagements.</p> <p>Audit plans are found at www.houstontx.gov/controller/audit/auditplan.html. Audit reports are found at www.houstontx.gov/controller/audit/auditreports.html.</p>
Question:	Please clarify the relevance of a software implementation to the IA services requested via this RFQ. Should bidders expect to receive an addendum with revised Submission requirements?
COH Response:	There is no software implementation required for this project.
Question:	Please clarify if 3 references are required for each key personnel proposed or if 3 references in total are required to represent all key personnel
COH Response:	Three references in total may be presented for all key personnel.
Question:	Is it permissible to submit hourly rate ranges for each level of personnel and for each unique specialization in the Rate Form?
COH Response:	Yes.
Question:	Please describe the various roles (staff, manager, senior manager, partner-level), years of experience and areas of specialty that the City seeks from the selected provider?
COH Response:	Key personnel descriptions in the proposal should include their role and areas of experience. If the inclusion of other personnel is needed to demonstrate areas of expertise the proposing firm may include that information. Areas of experience and competencies in a firm's proposal may include but are not limited to Information Technology audit, financial audit, performance audit, contract compliance audit, construction contract audit, vendor audit, and attestation engagements.

Question:	Part II; Section A; I - Basic Audit Services - The RFQ/P indicates the Proposer will conduct internal audits and/or consulting services, and be requested to perform financial audits; attestation engagements; contract compliance; and performance audits. Our company is not a licensed/registered public accounting firm, so can offer all services except attestation engagements. Will not being able to perform attestation engagements inhibit the firm from being recommended to City Officials for awarding of the contract?
COH Response:	No.
Question:	Part V; Section A; 5., Packaging and Labelling - Indicates a Rate Proposal should be submitted in a separate sealed envelope. For the submission of the RFQ/P response, isn't there going to be one response for all the information requested, including a rate schedule within Exhibit I – Rate Form, so a separate Rate Proposal is not needed?
COH Response:	A separate Rate Proposal is not needed.
Question:	Part V; Section B; 2. - Submission Requirements – Paragraph talks about providing a rationale for proposing software for implementation at the City. On that note, does the City have a software that is already being used, or are they open to using, and implementing, a third-party software addressing the needs of Internal Audit project work? If open to third-party software, should the proposal include a section for pricing of the software, licensing, periodic updates, and the technical installation?
COH Response:	There is no software implementation required for this project.
Question:	Part V; Section B; 3.a. – Proposed Plan of Action – Schedule – Reference is made that the proposed plan of action shall include a detailed implementation schedule, including any critical path items that may cause delay if the schedule is not met. Since projects have not been assigned within the RFQ, what specifically is the COH looking for in this section other than the ability to provide independent internal audit and consulting services?
COH Response:	Proposers should provide and address in detail their overall approach to internal audit services and / or special projects.
Question:	Part V; Section B; 7 – Standard Contract – to ensure we have the current version of the Standard Contract, can you include the most current version of the Standard Contract with the answers to the questions, or provide a link that will access the current version of the Standard Contract?
COH Response:	Any updates to the Standard Contract or responses to questions are posted to the website.
Question:	Part V, section B of the RFP contains several references to system implementation services. Are these services part of the RFP or are these references listed in error?
COH Response:	There is no software implementation required for this project.
Question:	Part V, section B.7 of the RFP references a Standard Contract. Can this be provided?

COH Response:	Any updates to the Standard Contract or responses to questions are posted to the website.
Question:	What is the range of hours and the number of projects you expect to utilize Contractors for on an annual basis?
COH Response:	The range of hours and the number of projects will vary based on Department/Division budget and the Annual Audit Plan.
Question:	Please confirm the internal audit reports would be prepared by the Contractor utilizing the City of Houston Audit Division standard reporting format and issued directly by the Audit Division and Controller.
COH Response:	Internal audit reports related to work performed under contract with firms will be issued by the Controller.
Question:	Also, we want to be clear on the scope. This appears to be an RFQ/P for internal audit services; however, items B-2 and B-3-b on page 9 make reference to software assessment and implementation, e.g, for Enterprise Resource Planning. Please clarify whether this is also intended to be part of the scope.
COH Response:	There is no software implementation required for this project.
Question:	It appears the items under Submission Requirements (beginning on page 9) are numbered incorrectly (two item no. 3's). Would you like us to retain the published numbering for our response, or would you like us to renumber "Qualification of the proposer" as item #4, and change the header numbering thereafter?
COH Response:	If you are numbering the headings please renumber "Qualification of the Proposer" and change the header number thereafter.
Question:	Finally, we note the MWBE goal of 24% on the RFQP title page. Reading Chapter 15, Article V, it appears this may not apply since this contract is for professional services, not "construction work" or "for the supply of goods or nonpersonal or nonprofessional services in excess of \$100,000.00." If the goal is 24% for this professional services contract, is that 24% goal to apply to each tasked project, or does it apply to the sum total of all tasked projects completed for projects assigned under S67-T25616. This makes a difference because each of the projects may result in a contract fee lower than \$100,000, but the sum total may exceed the \$100,000 threshold.
COH Response:	All firms must complete the M/WBE Utilization Report and identify other M/WBE firms to meet the subcontract/sub-consulting participation goal. Firms should be prepared to make a good faith effort to meet the participation goal for each project.
Question:	Has the Controller's Office prepared an Enterprise Risk Assessment to identify the financial, regulatory and operational audits that create the most exposure to the City? If not, does the Controller's Office expect respondents to include this activity in their proposals?
COH Response:	An Enterprise Risk Assessment (ERA) was performed for FY2010 and is available for review on the City Controller's Audit Division website as Report 2011-02. In addition, ERAs have been performed for FY2011 (Report 2012-02), FY2012 (Report 2013-02), FY2013 (Report 2014-05) FY2014 (Report 2015-08) and FY2015 (Report 2016-04).

Question:	Has the Controller's Office developed an Internal Audit plan for the 3-year term?
COH Response:	No, audit plans are submitted and released by the Controller's Office on an annual basis.
Question:	Will this contract be awarded to a single firm or multiple firms?
COH Response:	Contracts are generally awarded to multiple firms.
Question:	Will the Internal Audit services be performed independently or in conjunction with the City of Houston's Internal Audit department?
COH Response:	Some projects are performed with the Audit Division however expectations regarding roles for each project are part of proposal and planning communication and included in the engagement letter for each individual project.
Question:	Who will be responsible for coordinating the Internal Audit activity?
COH Response:	The Audit Division will be responsible for coordinating internal audit activity.
Question:	The RFQ refers to financial and attestation engagements, which we assume will be in addition to/conjunction with the financial statement audit currently performed by McConnell Jones. Can you provide additional information regarding the anticipated nature of these engagements?
COH Response:	<p>We adhere to both Government Auditing Standards (Yellow Book) and Institute of Internal Auditors Standards and Guidance (Red Book) and utilize the definitions for financial and attestation engagements as shown below:</p> <p>GAGAS - 1.22 Financial audits provide an independent assessment of and reasonable assurance about whether an entity's reported financial condition, results, and use of resources are presented fairly in accordance with recognized criteria. Reporting on financial audits performed in accordance with GAGAS also includes reports on internal control, compliance with laws and regulations, and provisions of contracts and grant agreements as they relate to financial transactions, systems, and processes.</p> <p>GAGAS - 1.23 Attestation engagements can cover a broad range of financial or nonfinancial objectives and may provide different levels of assurance about the subject matter or assertion depending on the users' needs. Attestation engagements result in an examination, a review, or an agreed-upon procedures report on a subject matter or on an assertion about a subject matter that is the responsibility of another party. The three types of attestation engagements are:</p> <p>a. Examination: Consists of obtaining sufficient, appropriate evidence to express an opinion on whether the subject matter is based on (or in conformity with) the criteria in all material respects or the assertion is presented (or fairly stated), in all material respects, based on the criteria.</p> <p>b. Review: Consists of sufficient testing to express a conclusion about whether any information came to the auditors' attention on the basis of the work performed that indicates the subject matter is not based on (or not in conformity with) the criteria or the assertion is not presented (or not fairly stated) in all material respects based on the criteria. As stated in the AICPA SSAE, auditors should not perform review-level work for reporting on internal control or compliance with laws and regulations.</p> <p>c. Agreed-Upon Procedures: Consists of specific procedures performed on a subject matter.</p>

Question:	
COH Response:	
Question:	
COH Response:	
Question:	
COH Response:	

2. All other terms and conditions remain unchanged.

Council Members: Brenda Stardig Jerry Davis Ellen R. Cohen Dwight A. Boykins Dave Martin Richard Nguyen Oliver Pennington Edward Gonzalez
Robert Gallegos Mike Laster Larry V. Green Stephen C. Costello David W. Robinson Michael Kubosh C.O. "Brad" Bradford Jack Christie
Controller: Ronald C. Green

THE STATE OF TEXAS

BID # _____

COUNTY OF HARRIS

ORDINANCE # _____

CONTRACT # _____

I. PARTIES

1.0 ADDRESS:

THIS AGREEMENT FOR **??????????SERVICES** ("Agreement") is made on the Countersignature Date between the CITY OF HOUSTON, TEXAS ("City"), a Texas Home-Rule City and **CONTRACTOR NAME** ("Contractor or Vendor"), a corporation doing business in Texas.

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

City

Contractor

City Purchasing Agent for **Director(s)**
of Various Department(s)
City of Houston
P.O. Box 1562
Houston, Texas 77251

Phone: _____
Fax: _____

The Parties agree as follows:

2.0 TABLE OF CONTENTS:

2.1 This Agreement consists of the following sections:

TABLE OF CONTENTS

Page No.

I. PARTIES.....	1
1.0 ADDRESS:.....	1
2.0 TABLE OF CONTENTS:.....	1
3.0 PARTS INCORPORATED:.....	3
4.0 CONTROLLING PARTS:.....	3
5.0 DEFINITIONS:.....	3
6.0 SIGNATURES:.....	4
II. DUTIES OF CONTRACTOR.....	5
1.0 SCOPE OF SERVICES:.....	5
2.0 INDEMNITY AND RELEASE:.....	5
3.0 INDEMNIFICATION PROCEDURES:.....	6
4.0 INSURANCE:.....	6
5.0 WARRANTIES:.....	7
6.0 LICENSES AND PERMITS:.....	8
7.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE:.....	8
8.0 MWBE COMPLIANCE:.....	8
9.0 DRUG ABUSE DETECTION AND DETERRENCE:.....	8
10.0 ENVIRONMENTAL LAWS:.....	9
11.0 CONTRACTOR'S PERFORMANCE:.....	9
12.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS:.....	9
13.0 CONTRACTOR PAY OR PLAY PROGRAM.....	9
III. DUTIES OF CITY.....	10
1.0 PAYMENT TERMS:.....	10
2.0 TAXES:.....	10
3.0 METHOD OF PAYMENT:.....	10
4.0 METHOD OF PAYMENT - DISPUTED PAYMENTS:.....	10
5.0 LIMIT OF APPROPRIATION:.....	11
6.0 CHANGES:.....	11
IV. TERM AND TERMINATION.....	12
1.0 CONTRACT TERM:.....	12
2.0 NOTICE TO PROCEED:.....	12
3.0 RENEWALS:.....	12
4.0 TIME EXTENSIONS:.....	13
5.0 TERMINATION FOR CONVENIENCE BY THE CITY:.....	13
6.0 TERMINATION FOR CAUSE BY CITY:.....	13
7.0 TERMINATION FOR CAUSE BY CONTRACTOR:.....	14
8.0 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS:.....	14
V. MISCELLANEOUS.....	14
1.0 INDEPENDENT CONTRACTOR:.....	14
2.0 FORCE MAJEURE:.....	14
3.0 SEVERABILITY:.....	15
4.0 ENTIRE AGREEMENT:.....	15
5.0 WRITTEN AMENDMENT:.....	15
6.0 APPLICABLE LAWS:.....	15
7.0 NOTICES:.....	15

8.0	NON-WAIVER:.....	15
9.0	INSPECTIONS AND AUDITS:	16
10.0	ENFORCEMENT:	16
11.0	AMBIGUITIES:.....	16
12.0	SURVIVAL:	16
13.0	PARTIES IN INTEREST:.....	16
14.0	SUCCESSORS AND ASSIGNS:.....	16
15.0	BUSINESS STRUCTURE AND ASSIGNMENTS:.....	16
16.0	REMEDIES CUMULATIVE:	17
17.0	CONTRACTOR DEBT:	17

EXHIBITS

- A. DEFINITIONS
- B. SCOPE OF SERVICES
- BB. LOCATIONS & EQUIPMENT**
- C. EQUAL EMPLOYMENT OPPORTUNITY
- D. MWBE SUBCONTRACT TERMS
- E. DRUG POLICY COMPLIANCE AGREEMENT
- F. CERTIFICATION OF NO SAFETY IMPACT POSITIONS
- G. DRUG POLICY COMPLIANCE DECLARATION
- H. FEES AND COSTS
- I. CONTRACTOR PAY OR PLAY

3.0 PARTS INCORPORATED:

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

4.0 CONTROLLING PARTS:

4.1 If a conflict among the sections or exhibits arises the Exhibits control over the Sections.

5.0 DEFINITIONS:

5.1 Certain terms used in this Agreement are defined in Exhibit "A".

6.0 SIGNATURES:

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

ATTEST/SEAL (if a corporation):

CONTRACTOR NAME OF COMPANY

WITNESS (if not a corporation):

By: _____

Name:

Title:

By: _____

Name:

Title:

Federal Tax ID Number: _____

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS

Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

City Purchasing Agent

City Controller

DATE COUNTERSIGNED:

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

Date

Legal Assistant

II. DUTIES OF CONTRACTOR

1.0 SCOPE OF SERVICES:

- 1.1 In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, equipment, transportation and supervision necessary to perform the services described in Exhibit "B" & "C."

2.0 INDEMNITY AND RELEASE:

2.1 RELEASE

PRIME CONTRACTOR/SUPPLIER 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.

2.2 INDEMNIFICATION:

PRIME CONTRACTOR/SUPPLIER 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, ATTORNEY'S 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:

- 2.2.1 PRIME CONTRACTOR/SUPPLIERS AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 2.1-2.3, "PRIME CONTRACTOR/SUPPLIER") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- 2.2.2 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER PRIME CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT; AND
- 2.2.3 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER PRIME CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT.
- 2.2.4 PRIME CONTRACTOR/SUPPLIER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. PRIME CONTRACTOR/SUPPLIER'S INDEMNIFICATION IS LIMITED TO \$500,000.00 PER OCCURRENCE. PRIME CONTRACTOR/SUPPLIER SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

2.3 INDEMNIFICATION:

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

3.0 INDEMNIFICATION PROCEDURES:

3.1 Notice of Claims. If the City or Prime Contractor/Supplier 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 10 days. The notice must include the following:

3.1.1 a description of the indemnification event in reasonable detail,

3.1.2 the basis on which indemnification may be due, and

3.1.3 the anticipated amount of the indemnified loss.

3.2 This notice does not stop 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 10 day period, it does not waive any right to indemnification except to the extent that Prime Contractor/Supplier is prejudiced, suffers loss, or incurs expense because of the delay.

3.3 Defense of Claims

3.3.1 Assumption of Defense. Prime Contractor/Supplier may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Prime Contractor/Supplier shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Prime Contractor/Supplier must advise the City as to whether or not it will defend the claim. If Prime Contractor/Supplier does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

3.3.2 Continued Participation. If Prime Contractor/Supplier 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. Prime Contractor/Supplier 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 Prime Contractor/Supplier 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.

4.0 INSURANCE:

4.1 Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI

or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

- 4.1.1 Commercial General Liability insurance including Contractual Liability insurance:
\$500,000 per occurrence; \$1,000,000 aggregate
- 4.1.2 Workers' Compensation including Broad Form All States endorsement:
Statutory amount
- 4.1.3 Automobile Liability insurance
\$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.
- 4.1.4 Employer's Liability
Bodily injury by accident \$100,000 (each accident)
Bodily injury by disease \$100,000 (policy limit)
Bodily injury by disease \$100,000 (each employee)
- 4.2 All insurance policies must require by endorsement, that the insurance carrier waives any rights of subrogation against the City, Contractor shall give 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 canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or sole discretion, may:
 - 4.2.1 immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
 - 4.2.2 purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.
 - 4.2.3 All certificates of insurance submitted by Contractor shall be accompanied by endorsements for additional insured coverage in favor of the City for Commercial General Liability and Automobile Liability policies; and waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and Worker's Compensation/Employers' Liability policies. For a list of pre-approved endorsement forms see <http://purchasing.houstontx.gov/forms.shtml>. The Director will consider all other forms on a case-by-case basis.

5.0 WARRANTIES:

- 5.1 Contractor represents and 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.
- 5.2 With respect to any parts and goods furnished by it, Contractor warrants:
 - 5.2.1 that all items are free of defects in title, material, and workmanship,
 - 5.2.2 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,
 - 5.2.3 that each replacement item is new in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it

replaces (when the replaced item was new), and

5.2.4 that no item or its use infringes any patent, copyright, or proprietary right.

6.0 LICENSES AND PERMITS:

6.1 Contractor shall obtain and pay for all licenses, permits, and certificates required by any statute, ordinance, rule, or regulation.

7.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE:

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

8.0 MWBE COMPLIANCE:

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

8.2 M/WBE subcontracts must contain the Terms set out in Exhibit D.

9.0 DRUG ABUSE DETECTION AND DETERRENCE:

9.1 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.

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

9.2.1 a copy of its drug-free workplace policy,

9.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "E," together with a written designation of all safety impact positions and,

9.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F."

9.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "G." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-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.

9.4 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.

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

10.0 ENVIRONMENTAL LAWS:

- 10.1 Contractor shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), the Texas Commission on Environmental Quality ("TCEQ"), and any other governmental agency with the authority to promulgate environmental rules and regulations ("Environmental Laws"). Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply.
- 10.2 Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Regulations. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City Property in violation of the Environmental Laws.

11.0 CONTRACTOR'S PERFORMANCE:

- 11.1 Contractor shall make citizen satisfaction a priority in providing services under this Agreement. Contractor shall train its employees to be customer service-oriented and to positively and politely interact with citizens when performing contract services. Contractor's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the Director's opinion, Contractor is not interacting in a positive and polite manner with citizens, he or she shall direct Contractor to take all remedial steps to conform to these standards.

12.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS:

- 12.1 Contractor shall make timely payments in accordance with applicable state and federal law to all persons and entities supplying labor, materials or equipment for the performance of this Agreement including Contractor's employees.
- 12.2 Failure of Contractor to pay its employees as required by law shall constitute a default under this contract for which the Contractor and its surety shall be liable on Contractor's performance bond if Contractor fails to cure the default as provided under this Agreement.
- 12.3 Contractor shall defend and indemnify the City from any claims or liability arising out of Contractor's failure to pay its subcontractors as required by law. Contractor shall submit disputes relating to payment of M/WBE subcontractors to arbitration in the same manner as any other disputes under the M/WBE subcontract.

13.0 CONTRACTOR PAY OR PLAY PROGRAM:

- 13.1 The requirement and terms of the City of Houston Pay or Play Policy, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement. Exhibit "I".

- 13.2 The Pay or Play Program for various departments will be administered by the City of Houston Affirmative Action Division's designee and for a Department specific contract; the Department's designated contract administrator will administer the Pay or Play Program.

III. DUTIES OF CITY

1.0 PAYMENT TERMS:

- 1.1 The City shall pay and Contractor shall accept fees at the unit prices provided in Exhibit H for all services rendered and the Deliverables furnished by Contractor. The fees must only be paid from Allocated Funds, as provided below.
- 1.2 Any quantities of services or Deliverables shown in any part of this contract or its exhibits are estimated only and are not any guarantee that the City will not purchase more or less of those services or Deliverables. The City will pay only for the services or Deliverables actually ordered and only at the unit prices set out.
- 1.3 The City of Houston's standard payment term is to pay 30 days after receipt of invoice or of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Tx. Gov't Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from vendor as follows:
- Payment Time - 10 Days: 2% Discount
 - Payment Time - 20 Days: 1% Discount
- 1.4 If the City fails to make a payment according to the early payment schedule above, but does make the payment within the time specified by the Prompt Payment Act, the City shall not receive the discount, but shall pay no other penalty. When the payment date falls on a Saturday, Sunday, or official holiday when City offices are closed and City business is not expected to be conducted, payment may be made on the following business day.

2.0 TAXES:

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

3.0 METHOD OF PAYMENT:

- 3.1 The City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Director, showing the specific tasks completed in the preceding month and the corresponding prices. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

4.0 METHOD OF PAYMENT - DISPUTED PAYMENTS:

- 4.1 If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

5.0 LIMIT OF APPROPRIATION:

- 5.1 The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.
- 5.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$ [REDACTED] to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:
- 5.3 The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

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

\$ _____

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

6.0 CHANGES:

- 6.1 At any time during the Agreement Term, the City Purchasing Agent or Director may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.
- 6.2 The City Purchasing Agent or Director will issue the Change Order in substantially the following form:

CHANGE ORDER

TO: [Name of Contractor]
FROM: City of Houston, Texas (the "City")
DATE: [Date of Notice]
SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:

[Signature of City Purchasing Agent or Director]

- 6.3 The City Purchasing Agent or Director may issue more than one Change Order, subject to the following limitations:
- 6.3.1 Council expressly authorizes the City Purchasing Agent or Director to approve a Change Order of up to \$50,000. A Change Order of more than \$50,000 over the approved contract amount must be approved by the City Council.
 - 6.3.2 If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.
 - 6.3.3 The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.
- 6.4 Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The City Purchasing Agent's or Director's decision regarding a time extension is final.
- 6.5 A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.
- 6.6 Change Orders are subject to the Allocated Funds provisions of this Agreement.

IV. TERM AND TERMINATION

1.0 CONTRACT TERM:

- 1.1 This Agreement is effective on the Countersignature Date and expires three (3) years after the date specified in the Notice to Proceed unless sooner terminated according to the terms of this Agreement.

2.0 NOTICE TO PROCEED:

- 2.1 Contractor shall begin performance under this Agreement on the date specified in a Notice to Proceed from the City Purchasing Agent.

3.0 RENEWALS:

- 3.1 Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two successive one-year terms on the same terms and conditions. If the Director of the City Department elects not to renew this Agreement, the City Purchasing shall notify Contractor in writing of non-renewal at least 30 days

before the expiration of the then-current term.

4.0 TIME EXTENSIONS:

- 4.1 If the Department requests an extension of time to complete its performance, then the City Purchasing Agent may, in his or her sole discretion, extend the time so long as the extension does not exceed 180 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).

5.0 TERMINATION FOR CONVENIENCE BY THE CITY:

- 5.1 The City Purchasing Agent or 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.
- 5.2 On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section III unless the fees exceed the allocated funds remaining under this Agreement.
- 5.3 TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

6.0 TERMINATION FOR CAUSE BY CITY:

- 6.1 If Contractor defaults under this Agreement, the City Purchasing Agent or 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:
- 6.1.1 Contractor fails to perform any of its duties under this Agreement;
- 6.1.2 Contractor becomes insolvent;
- 6.1.3 all or a substantial part of Contractor's assets are assigned for the benefit of its creditors;
or
- 6.1.4 a receiver or trustee is appointed for Contractor.
- 6.2 If a default occurs, the City Purchasing Agent or Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent or Director at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent or Director allows Contractor to cure the default and Contractor does so to the City Purchasing Agent's or 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 City Purchasing Agent or Director may terminate this

Agreement on the termination date, at no further obligation of the City.

- 6.3 To effect final termination, the City Purchasing Agent or 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.

7.0 TERMINATION FOR CAUSE BY CONTRACTOR:

- 7.1 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.
- 7.2 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.

8.0 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS:

- 8.1 Upon expiration, or termination of this Agreement, Contractor is permitted ten (10) days within which to remove contractor-owned material and equipment from the City's premises. The City shall make such material and equipment readily available to Contractor. The time period may be extended upon approval by the Director. The City reserves the right to deny any extension of time.

V. MISCELLANEOUS

1.0 INDEPENDENT CONTRACTOR:

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

2.0 FORCE MAJEURE:

- 2.1 Timely performance by both parties is essential to this Agreement. However, neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.
- 2.2 This relief is not applicable unless the affected party does the following:
- 2.2.1 uses due diligence to remove the Force Majeure as quickly as possible; and
- 2.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.
- 2.3 The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by the City.

2.4 If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director may terminate this Agreement by giving 30 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 AT THE TIME OF THE TERMINATION.

3.0 SEVERABILITY:

3.1 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.

4.0 ENTIRE AGREEMENT:

4.1 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.

5.0 WRITTEN AMENDMENT:

5.1 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 duly 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.

6.0 APPLICABLE LAWS:

6.1 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.

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

7.0 NOTICES:

7.1 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.

8.0 NON-WAIVER:

8.1 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.

8.2 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.

9.0 INSPECTIONS AND AUDITS:

9.1 City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 4 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

10.0 ENFORCEMENT:

10.1 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.

11.0 AMBIGUITIES:

11.1 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.

12.0 SURVIVAL:

12.1 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.

13.0 PARTIES IN INTEREST:

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

14.0 SUCCESSORS AND ASSIGNS:

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

15.0 BUSINESS STRUCTURE AND ASSIGNMENTS:

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

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

16.0 REMEDIES CUMULATIVE:

16.1 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.

17.0 CONTRACTOR DEBT:

17.1 If Contractor, at any time during the term of this agreement, incurs a debt, as the word is defined in Section 15-122 of the Houston City Code of Ordinances, it shall immediately notify the City Controller in writing. If the City Controller becomes aware that Contractor has incurred a debt, she shall immediately notify contractor in writing. If Contractor does not pay the debt within 30 days of either such notification, the City Controller may deduct funds in an amount equal to the debt from any payments owed to Contractor under this agreement, and Contractor waives any recourse therefor.

EXHIBIT "A" **DEFINITIONS**

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

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

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

"City Purchasing Agent" is defined as the person or duly authorized successor, authorized in writing to act for the City. The term includes, except as otherwise provided in this Contract, the authorized representative of the City Purchasing Agent acting within the limits of delegated authority.

"Contractor Administrator" means the representative of the Department who is responsible for the administration for the Contract.

"Contract Award Notice" means the official notification substantiated by the Notice to Proceed issued by the City Purchasing Agent to the Contractor.

"Contract Charges" means charges that accrue during a given month as defined in Article III.

"Contract Term" is defined in Article IV.

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

"Countersignature Date" means the date this agreement is countersigned by the City Controller.

"Director" mean the Directors/Chiefs of each of the Departments or the City Purchasing Agent for the City, or the person he or she designates.

"Effective Date" is defined as date contract is countersigned by the City Controller.

"Governing Body" means the Mayor and City Council of the City of Houston.

"Hazardous Materials" is defined in Article II (Environmental Laws).

"Notice to Proceed" means a written communication from the City Purchasing Agent to Contractor instructing Contractor to begin performance.

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

EXHIBIT "B"
SCOPE OF WORK

EXHIBIT "C"
EQUAL EMPLOYMENT OPPORTUNITY

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

EXHIBIT "D"
MWBE REQUIREMENTS

ATTACHMENT "C"

CITY OF HOUSTON CERTIFIED MWSBE SUBCONTRACT TERMS

Contractor shall ensure that all subcontracts with M/WSBE subcontractors and suppliers are clearly labeled "**THIS CONTRACT IS SUBJECT TO MEDIATION**" and contain the following terms:

1. _____ (M/WSBE 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 Office of Business Opportunity Director ("the Director").
2. _____ (M/WSBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform 1) audits of the books and records of the subcontractor, and 2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action or the applicable statute of limitations.
3. Within five (5) business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.

These provisions apply to goal-oriented contracts. A goal-oriented contract means any contract for the supply of goods or non-professional services in excess of \$100,000.00 for which competitive proposals are required by law; not within the scope of the MBE/WBE/SBE 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 MWSBE subcontracting potential in fields which there are an adequate number of known MBEs , WBE's, and or SBE's (if applicable) to compete for City contracts.

The MWSBE policy of the City of Houston will be discussed during the pre-proposal conference. For information, assistance, and/or to receive a copy of the City's Affirmative Action Policy and/or Ordinance, contact the Office of Business Opportunity Division at 832.393.0600, 611 Walker Street, 7th Floor, Houston, Texas 77002.

ATTACHMENT "D"

**CITY OF HOUSTON
MAYOR'S OFFICE OF BUSINESS OPPORTUNITY & CONTRACT COMPLIANCE
M/WBE UTILIZATION REPORT**

Report Period _____

PROJECT NAME & NUMBER: _____ AWARD DATE: _____

PRIME CONTRACTOR: _____ CONTRACT No.: _____

ADDRESS: _____ CONTRACT AMOUNT: _____

LIAISON/PHONE No.: _____ M/WBE GOAL: _____

M/WBE SUB/VENDOR NAME	DATE OF MOBO CERTIFICATION	DATE OF SUBCONTRACT	SUBCONTRACT AMOUNT	% OF TOTAL CONTRACT	AMOUNT PAID TO DATE	% OF CONTRACT TO DATE
Use additional pages if needed. Submit by the 15th day of the following month. Provide support documentation, on all revenues paid to end of the report period to: M/WBEs to reflect up/down variances on contract amount						
MOBO ATTN: Carlecia D. Wright, 832-393-0600 611 Walker, 7 th Floor Houston, Texas 77002						

EXHIBIT "E"
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 "F"
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

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

I, _____
(NAME) **(PRINT/TYPE)**

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

DATE

CONTRACTOR NAME

SIGNATURE

TITLE

**EXHIBIT "G"
DRUG POLICY COMPLIANCE DECLARATION**

I, _____ as an owner or officer of

 (Name) (Print/Type) (Title)
 _____ (Contractor or Vendor)
 (Name of Company)

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

This reporting period covers the preceding 6 months from _____ to _____, 20_____.

_____ A written Drug Free Workplace Policy has been implemented and employees notified.
 Initials The policy 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
 Initials Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

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

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

_____ From _____ to _____ the following test has occurred
 Initials (Start date) (End date)

	Random	Reasonable Suspicion	Post Accident	Total
Number Employees Tested				
Number Employees Positive				
Percent Employees Positive				

_____ Any employee who tested positive was immediately removed from the City worksite
 Initials consistent 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)

 (Typed or Printed Name)

 (Signature)

 (Title)

**EXHIBIT "H"
FEES AND COSTS**

BID ITEM	DESCRIPTION	UNIT	UNIT PRICE				
			Yr. 1	Yr. 2	Yr. 3	Yr. 4, Opt. 1	Yr. 5, Opt. 2
1							
2							
3							

EXHIBIT "I"
PAY OR PLAY PROGRAM

