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2010 - 0195

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

1. PARTIES

A. Address

THIS AGREEMENT FOR MAIL PROCESSING SERVICES ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a home rule city of the State of Texas, and ("Contractor"), a foreign 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 City of Houston P.O. Box 1562 Houston, Texas 77251	HOV Services, Inc. 11850 Hempstead Hwy, Suite 270 Houston, TX 77092 Phone: (713) 685 - 8211

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

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C. Parts Incorporated

The above described exhibits are incorporated into this Agreement.

D. Controlling Parts

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

E. Signatures

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

HOV SERVICES, INC.

By: _____
Name: JIM REYNOLDS
Title: CFO

ATTEST/SEAL (if a corporation)
WITNESS (if not a corporation)

By: _____
Name: GINA WALLAT
Title: CORPORATE COUNSEL

CITY OF HOUSTON, TEXAS
Signed by:

By: _____
Mayor

ATTEST/SEAL:

City Secretary

APPROVED:

City Purchasing Agent

Director, Municipal Courts & Administration Department

Director, Public Works & Engineering Department

Director, General Services Department

APPROVED AS TO FORM:

Assistant City Attorney
L.D. No. 0370900254001

COUNTERSIGNED BY:

City Controller

DATE COUNTERSIGNED

2-12-10

II. DEFINITIONS

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

"Acceptance" or "Accept" or "Accepted" means the Director's written approval of the particular Mail Processing Service for which an order was placed under this Agreement.

"Agreement" means this contract between the Parties, including all exhibits 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 Department(s)" means the City's Municipal Courts Administration (MCAD), General Services (GSD) and the Public Works & Engineering Departments (PWE).

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

"Correction" or "Correct" means the reperformance of a particular Mail Processing Service ordered by a City Department Director which was not Accepted by the Director as set out in Section III, J of this Agreement.

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

"Director" means the Director of the City's Municipal Courts and Administration, General Services, Public Works & Engineering Departments and the City Purchasing Agent, or the person they designate.

"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.

"Include" and "including", and words of similar import, shall be deemed to be followed by the words "without limitation".

"Installation Site(s)" means the Public Works and Engineering Department located at 3300 Main Street, 2nd Floor, Houston, TX 77002 and 2636 S. Loop West, Suite 675, Houston, TX 77002, the General Services Department located at Parking Management Division, George R. Brown Convention Center, 1001 Avenida de las Americas, 1st Floor, Houston, TX 77010, and the Municipal Courts and Administration Department located at 1400 Lubbock, Houston, TX 77002.

"Mail Processing Services" or "Mail-Outs" mean the services described in Exhibit "A."

"Notice to Proceed" means a written communication from the Director to Contractor instructing Contractor to begin performance.

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

III. DUTIES OF CONTRACTOR

A. Scope of Services

Services in General

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the services described in Exhibit "A".

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. 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. 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.

E. 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.

F. <u>INDEMNIFICATION - PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT</u>

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.

G. <u>INDEMNIFICATION - SUBCONTRACTOR'S INDEMNITY</u>

CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE

SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

H. 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 10 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 10 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 10 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.

I. Insurance

Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. 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:

(1) Commercial General Liability insurance including Contractual Liability insurance:

- $500,000 per occurrence; $1,000,000 aggregate

(2) Workers' Compensation including Broad Form All States endorsement:

- Statutory amount

(3) Professional Liability

- $1,000,000 per occurrence; $1,000,000 aggregate

(4) Automobile Liability insurance

- $1,000,000 combined single limit

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

All insurance polices must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City. 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 canceled, 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

(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.

J. Warranties

(1) Contractor's performance shall conform to the professional standards prevailing in Harris County, Texas with respect to the scope, quality, due diligence, and care of the services and products Contractor provides under this Agreement.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

K. Confidentiality - Protection of City's Interest

Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, data, including addresses provided to it by City under this Agreement, which it shall not sell or provide at no charge to anybody, and documents (collectively, "the Information") that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Contractor shall obtain written agreements from its agents,

employees, contractors, and subcontractors which bind them to the terms in this Section.

L. Use of Work Products - City May Use All Documents

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

(2) Contractor warrants that it owns the copyright to the Documents.

(3) Contractor shall deliver the original Documents to the Director on request. Within five working days after this Agreement terminates, Contractor shall deliver to the Director the original Documents, and all other files and materials Contractor produces or gathers during its performance under this Agreement.

M. 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.

N. Compliance with Laws

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

O. Compliance with Equal Opportunity Ordinance

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

P. 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 "F," 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 "H."

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.

(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.

Q. Minority and Women Business Enterprises

It is the City's policy to ensure that Minority and Women Business Enterprises ("MWBEs") have the full opportunity to compete for and participate in City contracts. The objectives of Chapter 15, Article V of the City of Houston Code of Ordinances, relating to City-wide Percentage Goals for contracting with MWBEs, are incorporated into this Agreement.

Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 11 % of the value of this Agreement to MWBEs. The City's policy does not require Contractor to in fact meet or exceed this goal, but it does require Contractor to objectively demonstrate that it has made good faith efforts to do so. To this end, Contractor shall maintain records showing

(1) subcontracts and supply agreements with Minority Business Enterprises,

(2) subcontracts and supply agreements with Women's Business Enterprises, and

(3) specific efforts to identify and award subcontracts and supply agreements to MWBEs. Contractor shall submit periodic reports of its efforts under this Section to the Affirmative Action Director in the form and at the times he or she prescribes.

Contractor shall require written subcontracts with all MWBE subcontractors and suppliers and shall submit all disputes with MWBE subcontractors to binding arbitration in Houston, Texas, if directed to do so by the Affirmative Action Director. All agreements must contain the terms set out in

Exhibit "E." 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, then the subcontract must also be signed by the attorneys of the respective parties.

R. Pay or Play

The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement. Contractor shall complete and submit to the Director Exhibit "I," POP-2 Form prior to the execution of this Agreement.

S. Personnel of Contractor

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

Contractor shall ensure that its employees possess a valid Texas driver's license for the type of vehicle or equipment they are operating while performing work under this Agreement.

IV. DUTIES OF THE CITY

A. Payment Terms

(i) City shall pay and Contractor shall accept fees at the unit prices set out in Exhibit "B" for various items used in City Mail-Outs in the manner detailed in Section IV, A (ii) below.

(ii) During the term of this Agreement, Contractor shall obtain the Director's prior

approval for any increase in paper costs for all City Mail-Outs. The Director has the authority to negotiate paper cost increases of up to 25% over unit costs established for paper rates listed in Exhibit "B," but, such paper cost increases shall not exceed 25% over the prior year's price established during the term of this Agreement.

(iii) In the event the United States Postal Service (USPS) adopts new postal rates, then, the postage for City Mail-Outs under this Agreement shall be adjusted according to the new USPS rate for such mail.

(iv) The fees and postal rates for all Mail-Outs under this Agreement must only be paid from Allocated Funds as set out in Section IV, G below.

(v) The Mail Processing Services described in this Agreement are the types of services City Departments may purchase under this Agreement. The City does not guarantee that it will either purchase any or all services described in this Agreement or that it will purchase such services in certain quantities or at certain frequencies. The City Departments will place orders for Mail Processing Services with Contractor based on the individual needs of their departments.

B. Additions and Deletions

At any time during the term of this Agreement, the Director may issue Contractor a written notice to add more City Departments to this Agreement. In the event the Director sends Contractor such a request, then Contractor shall provide Mail Processing Services to the City Department added on as set out in Exhibit "A" and this Agreement. For purposes of this section, the "Effective Date" means the date on which Contractor receives the written notice from Director. As of the Effective Date, each City Department added is subject to this Agreement, as if it had originally been a part of

this Agreement, but the charges for Mail Processing Services starts to accrue only when the Director of the newly added City Department places an order for Mail Processing Services after the Effective Date.

The total charges for additions to this Agreement must never exceed 25% of the original contract amount unless:

- the additions are exempt from the competitive bidding or proposal requirements, set forth in Tex. Local Govt. Code Chapter 252; or
- the City acquires the additions from Contractor through a competitive bid or competitive proposal.

At any time during the term of this Agreement, the Director may issue Contractor a written notice to delete a City Department from the list of City Departments where it provides services under this Agreement. On receiving the Director's written notice, Contractor shall discontinue providing Mail Processing Services at the City Department deleted by the Director effective the day Contractor receives the notice or the date stated in the notice. After Contractor submits an invoice to City for services provided at the deleted City Department prior to the Director's notice. Contractor shall exclude all charges for services at the deleted City Department from invoices submitted after such charges have been paid.

C. Taxes

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

D. Method of Payment

The City shall pay on the basis of monthly invoices submitted by Contractor in duplicate to the Director of the City Department placing the order and appoved by that City Department Director, showing the services performed and Accepted by the City Department, a copy of the order placed by the City Department, the contract name & number and the attendant fee according to the rates listed in Exhibit "B." The City shall pay Contractor within 30 days of the receipt and approval of the invoices.

E. Method of Payment - Disputed Payments

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.

F. Performance Requirements

Contractor is responsible for meeting the requirements set forth in Exhibit A, "Scope of Services." Contractor's compliance with the "Performance Requirements" set out in Exhibit "C" shall be the measure of whether it has met the requirements set out in Exhibits "A" and "C." If Contractor fails to comply with the Performance Requirements set out in Exhibit "C," then, the Director has the option to either schedule a meeting with Contractor's Project Manager to discuss plans to improve Contractor's performance or deliver a written notice giving Contractor 30 days to submit a plan to improve its performance to meet the requirements set out in Exhibit "C." Upon receipt of Contractor's plan, the Director may schedule a meeting with Contractor's Project

Manager to discuss Contractor's implementation of the plan or the Director may deliver a written letter to Contractor approving the plan submitted by Contractor. If Contractor fails to implement the plan to the satisfaction of the Director or fails to meet Performance Requirements at the end of the time period specified in the approved plan by the Director, then, the Director, at his or her sole discretion has the option to give notice to terminate this Agreement for default.

G. Limit of Appropriation

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

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of $252,000.00 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

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

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

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

$ _____

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

H. Access to Site

Contractor may enter and leave the premises at all reasonable times without charge. Contractor and its employees may use the common areas and roadways of the premises where it is to perform the services together with all facilities, equipment, improvements, and services provided in connection with the premises for common use. This excludes parking for Contractor's personnel. Contractor shall repair any damage caused by it or its employees as a result of its use of the common areas.

V. TERM AND TERMINATION

A. Contract Term

This Agreement is effective on the Countersignature Date and remains in effect for three years unless sooner terminated under this Agreement (the "Initial Term").

B. Renewals

If the Director, at his or her sole discretion, makes a written request for 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, this Agreement is renewed for two successive one-year terms upon the same terms and conditions.

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 or the City chooses not to renew this Agreement, the Director shall notify Contractor of non-renewal at least 30 days before the expiration of the then-current term.

At the end of the second successive one-year term, if the Director extends this Agreement to permit Contractor to complete its performance, then, the Director may in his or her sole discretion extend the time so long as such extension does not exceed 90 days. The 90-day extension of time does not require an amendment of the Agreement and Contractor is not entitled to damages for delay(s) regardless of the cause of such delay(s).

C. Termination for Convenience by City

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

On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services

actually performed, but not already paid for, in the same manner as prescribed in Section IV, A unless the fees exceed the allocated funds remaining under this Agreement.

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

D. 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 by Contractor.

If a default occurs, the Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The Director, at his or her sole option, may extend the termination date to a later date. If the Director allows Contractor to cure the default

and Contractor does so to the Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate this Agreement on the termination date, at no further obligation of the City.

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

VI. MISCELLANEOUS

A. Independent Contractor

Contractor is an independent contractor and shall perform the services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Contractor's performance under this Agreement. 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. The 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 superior 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 extra Reimbursable Expenses or payment.

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 a Force Majeure that directly impacts 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 10 days from the date performance is affected, the Director may terminate this Agreement by giving 7 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 required or permitted by this Agreement must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a United

States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out in the preamble of this Agreement or at such other address as the receiving party designates by proper notice to the sending party.

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 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.

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. Publicity

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

O. 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.

P. Parties In Interest

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

Q. Successors and Assigns

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

R. Business Structure and Assignments

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

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

S. 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.

T. 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, HE 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. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

EXHIBIT "A"
SCOPE OF SERVICES

1. Contractor warrants that it has the capacity to process monthly, between 35,000 to 80,000 court notices for MCAD, 11,000 to 14,000 parking notices for GSD and 5,000 to 8,000 letters of notification for PWE. Contractor shall

    a. process bulk mail at all three City Departments;

    b. print form letters provided by the City Department Director, affix labels with the correct addresses to envelopes, stuff the envelopes with the form letter and mail such letters using US Postal Bulk Mail;

    c. process time-sensitive mail involving court appearances, warrants, driver safety course approvals, notices, etc. for MCAD, GSD and PWE;

    d. pre-sort mail sent or received by the City Departments;

    e. retain on file all templates for "Notices" and other form documents mailed by MCAD, GSD and PWE;

    f. obtain final approval and authorization (in the form of a signature from the Director) before processing mail using a template or form document;

    g. customize notices or letters, submit such customized notices or letters and mail the approved notice or letter to the addresses supplied by the City Department; Contractor shall customize notices and letters from samples of notices and letter provided by the City Department in hard copy format as the form of likely notices and letters they will mail;

    h. provide double window envelopes for mailing documents from MCAD, GSD and PWE;

i. designate a Project Manager upon receipt of the Notice to Proceed letter from the City Purchasing Agent, to work with the Directors of the three City Departments on all mail processing projects assigned by MCAD, GSD and PWE;

j. ensure that the Project Manager it assigns to the City is a trained and experienced professional, capable of becoming knowledgeable about the City's mail processing requirements and is capable of assuming responsibility for ensuring the confidentiality of City data and mail-out schedules by limiting access of such information to Contractor's employees and agents on a need-to-know basis;

k. be responsible for assembling samples of Mail-Out packages, including, inserts, laser-printed materials and envelopes;

l. make its Project Manager responsible for producing a report that contains a total count for each City Department Mail-Out;

m. make its Project Manager responsible for providing a sample Mail-Out package to its mail staff for each Mail-Out and for furnishing a report that ensures the accuracy of each Mail-Out;

n. ensure that its Project Manager implements the following quality control measures:

    i. periodic pulls from each Mail-Out being processed at the rate of one pull every 15 minutes of the entire Mail-Out process;

    ii. records of all pieces pulled as part of the quality control process on each Mail-Out;

    iii. inspection of all mail pulled to ensure that a package is complete;

    iv. clearance of all mail inspected;

v. a check before and after each Mail-Out;

vi. a check of the laser prints to ensure impression quality;

vii. a check of all addresses to ensure completeness;

viii. a check of the metered date on the envelopes; and

ix. a check of envelope contents to ensure that all required pages are included in the package being mailed.

o. require its Project Manager to obtain contact information from the City Department Director for the person designated by that City Department for authorizing or approving Mail Processing Services under this Agreement;

p. ensure that its Project Manager establishes performance measures and quality control checkpoints for City Mail Processing Services, including:

i. reconciling the numbers of mailed pieces;

ii. production quality of laser printed forms mailed as inserts; and

iii. a review of samples of the final mail pieces sent, etc.

q. instruct its Project Manager to obtain the Director's approval of proofs to ensure that laser printed forms being mailed meet quality control measures such as the positioning of printed materials, confirmation of paper stock and quality, density and fusing of the laser printed image;

r. instruct its Project Manager to provide the Director with:

i. a total count of items ready for mailing;

ii. actual number of items mailed;

iii. total cost of postage for each Mail-Out.

s. use its employees or a bonded delivery service to deliver the final mailing pieces to one of the following United States Post Offices:

    i. Downtown Houston; or

    ii. North Houston Bulk Mailing Center.

t. ensure accuracy of delivered mail by using the Coding Accuracy Support System (CASS) and Certified Address Matching Software (CAMS) to verify addresses and zip codes;

u. use CASS to replace undeliverable addresses from the City-provided database and run a National Change of Address (NCOA) check to obtain the correct address for such undeliverable addresses;

v. have its Project Manager work with the Department Directors to develop a procedure for addressing issues related to items not found during an NCOA check;

w. use CASS Certified Address Matching Software to ensure that City Mail-Outs are eligible for presorting by the United States Postal Service;

x. use return codes to identify addresses of undeliverable mail and/or items that cannot be located in the CASS database;

y. ensure that all items not displaying a zip code are removed from the Mail-Out prior to final processing; and

z. follow the City's options of dealing with mail to addresses with inadequate zip codes and/or address codes as set out in this section: (1) Print and mail; (2) Print and return; or (3) purge file of such addresses and provide the purged file to the City Department that provided the file.

2. DISASTER RECOVERY

A. Contractor shall designate two alternate sites for receiving, processing, printing and mailing City mail: (1) one site in the Houston metro area; and (2) one site outside the city limits of Houston, but within Harris County;

B. Sixty days from the date its receives the Notice to Proceed letter under this Agreement, Contractor shall conduct a test from each alternative site and demonstrate to Director its ability to process City mail from each location;

C. Contractor shall maintain in stock a two-week supply of mail supplies at each designated site.

3. SUPPLIES AND BULK MAIL

A. Contractor shall utilize mail supplies provided by City and provide savings on postage through bulk mailings;

B. Contractor shall ensure that City mail is processed at the lowest postage rate permitted by United States Postal Service rules by:

i. processing documents of the same size at one time

ii. processing documents with addresses in the same format from an approved City Department template in the following quantities:

a. a minimum of 150 letters addressed to the same five digit zip code;

b. a minimum of 150 letters addressed to the same three digit zip code;

c. a mix of 150 letters addressed to two different three digit zip codes handled by the Area Distribution Centers (ADCs) located at the Downtown Houston Post Office (ADCs numbered 770 and 772); and

d. a mix of a minimum of 150 letters addressed to multiple three digit zip codes outside the Downtown ADC (mixed ADC) and letters not qualifying for the discounted rates will be metered at the mixed ADC rate and will be assessed an additional $0.01 processing fee.

C. Contractor shall process and mail important time-sensitive documents such as "Failure To Appear" and warrant letters within 12 hours of receipt of the electronic file from the City Department;

D. Other than time-sensitive documents as set out in Section C above, Contractor shall process and mail all electronic files on the next business day after receipt; and, in the event the Director sends the electronic file on the eve of a Postal holiday, Contractor shall ensure that the mail is processed the next business day;

E. Other than the types of mail identified in Sections A through D above, Contractor shall process and mail all other types of mail within 36 hours of receipt of an electronic file from a City Department; and

F. schedule the processing and mailing of Court documents ahead of all other City mail proofing orders issued under this Agreement.

4. PROBLEM RESOLUTION

i. Within 24 hours of discovering a problem that could prohibit Contractor from performing its duties regarding a Mail-Out under this Agreement, Contractor shall notify the Director about the same;

ii. Contractor's Project Manager shall contact the Director for instructions regarding a potential Mail-Out delay;

iii. Contractor's Project Manager shall schedule a meeting with the Director to

resolve any issue that could affect a Mail-Out under this Agreement; and

iv. Within 24 hours of discovery, the Director will inform Contractor's Project Manager about any problems that may affect a Mail-Out.

5. SITE INSPECTION

The City reserves the right to inspect Contractor's place of business to evaluate the condition of equipment in use, its capacity to provide Mail Processing Services, the experience of its staff, the training provided to its employees and storage capacity, as they relate to its performance under this Agreement.

6. PRE-PERFORMANCE MEETING

In the Notice to Proceed letter issued upon Countersignature of this Agreement, the Director shall require Contractor to attend a pre-performance meeting with the City Departments using Mail Processing Services under this Agreement to enable Contractor to introduce its Project Manager and employees providing services under this Agreement to City personnel, end users, contract compliance administrators and accounts payable staff.

7. CONTRACT COMPLIANCE

The City reserves the right to monitor this contract to ensure that Contractor is providing the goods and services under this Agreement in compliance with its terms, including, but not limited to:

i. inspection, testing and/or sampling of goods delivered or to be delivered;

ii. review of deliveries received for accuracy and timeliness;

iii. review of supplier's invoices for accuracy;

iv. review of certifications and licenses; and

v. site visits to Contractor's facilities where work under this Agreement is performed.

8. MAIL SCHEDULES

i. City Department Directors have the right to require Contractor to provide services during regular City business hours or during non-regular City business, including week-ends and City holidays.

ii. Contractor shall obtain an approved work schedule from the City Department Director prior to beginning any work under this Agreement, and, in the event Contractor fails to complete the work according to the approved schedule, then, the City Director may refuse to pay for services that were not provided according to the approved schedule.

EXHIBIT "B"

CONTRACTOR'S UNIT PRICES FOR MAIL PROCESSING SERVICES

EXHIBIT "C"

PERFORMANCE REQUIREMENTS

Contractor's performance in meeting the requirements of this Agreement shall be measured as detailed in this Exhibit "C:"

1. Contractor shall reduce the number of undeliverable mail by utilizing the CASS system for every Mail-Out as follows:

   Year One 3%

   Year Two 2%

   Year Three 1%

2. Contractor shall reduce the number of undeliverable mail for every Mail-Out by running an NCOA as follows:

   Year One 5%

   Year Two 3%

   Year Three 2%

4. Contractor shall ensure that 99.9% of all Mail-Outs meet the following printing standard:

   i. 600 DPI print resolution, clear of toner streaking and without any shading in the background; and

   ii. Paper shall be 24# white paper and of 88 brightness.

5. Contractor shall ensure that 99.9% of all packages it mails meet the following USPS standard requirements:

   i. Addresses with zip code and four digit delivery barcodes are placed in the required block; and

ii. packages for 1st Class Automation discounts shall pass the MERLIN acceptance test for accuracy.

6. Contractor shall ensure that 99.9% of all City Mail-Outs meet the following mailing schedule:

i. time-sensitive documents such as Failure to Appear and Warrant letters must be processed and mailed within 12 hours of receipt from the City Department Director; and

ii. all electronic files received from the City Directors must be processed and mailed on the business day following its receipt.

EXHIBIT "D"
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 "E"

MWBE SUBCONTRACT TERMS

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

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

2. _____ (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of 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 business days of execution of this subcontract, Engineer (prime engineer) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.

4. As concluded by the parties to this subcontract, and as evidenced by their signature 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 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 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 mediation or 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. Upon submittal of the matter to arbitration 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.

e. All arbitrations shall be conducted in Houston, Texas unless the parties agree to another location in writing.

EXHIBIT "F"

DRUG POLICY COMPLIANCE AGREEMENT

I, JIM REYNOLDS CFO as an owner or officer of
(Name) (Print/Type) (Title)

HW SERVICES, 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 Consultants (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.

2/24/2010
Date

HW SERVICES, INC.
Contractor Name

Signature

CFO
Title

EXHIBIT "G"
DRUG POLICY COMPLIANCE DECLARATION

I, Jim Reynolds CFO as an owner or officer of
(Name) (Print/Type) (Title)

HOU Services Inc. (Contractor)
(Name of Company)

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

This reporting period covers the preceding 6 months from 9/2009 to Feb., ~~19~~ 2010

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

Initials — Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

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

Initials — Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is 2.

Initials — From 9/2009 (Start date) to Feb. 2010 (End date) the following test has occurred

	Random	Reasonable Suspicion	Post Accident	Total
Number Employees Tested	150	0	0	150
Number Employees Positive	2	0	0	2
Percent Employees Positive	1.3%	0	0	1.3

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

Initials — I affirm that falsification or failure to submit this declaration timely in accordance with 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.

2/24/2010
(Date)

JIM REYNOLDS
(Typed or Printed Name)

(Signature)

CFD
(Title)

EXHIBIT "H"

CONTRACTOR'S CERTIFICATION
OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT

JIM REYNOLDS, CFO
(Name) (Title)

as an owner or officer of HOV SERVICES, INC (Contractor)
(Name of Company)

have authority to bind the Contractor with respect to its bid, and 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 _____.
(Project)

Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

2/24/2010
(Date)

JIM REYNOLDS
(Typed or Printed Name)

(Signature)

CFO
(Title)

EXHIBIT "I"

FORM POP 2
CERTIFICATION OF AGREEMENT TO COMPLY WITH
PAY OR PLAY PROGRAM

Available at http://www.houstontx.gov/aacc/payorplay/pop2.pdf