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**AGREEMENT FOR THE MAINTENANCE AND DEVELOPMENT
OF AN INTEGRATED LAND MANAGEMENT SYSTEM**

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

I. PARTIES

A. Address

THIS AGREEMENT FOR THE MAINTENANCE AND DEVELOPMENT OF AN INTEGRATED LAND MANAGEMENT SYSTEM ("Agreement") is made on the Countersignature Date between the CITY OF HOUSTON, TEXAS ("City"), a hone-rule city, and GARTEK TECHNOLOGIES, INC. ("Contractor"), a Florida 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

Director, Public Works & Engineering
Department

City of Houston

P.O. Box 1562 Houston, Texas 77251

Contractor

Gartek Technologies, Inc.

1305 FM 359 RD Suite D

Richmond, Texas 77404

The Parties agree as follows:

2011 JUL 18 PM 4:16
CONTROLLER'S

B. Table of Contents

This Agreement consists of the following sections:

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EXHIBITS

- A. PROFESSIONAL SERVICES
- A-1 CONTRACTOR'S ESCROW AGREEMENT AND ESCROW ACCOUNT BENEFICIERY FORM FOR ENROLLING CITY
- B. Equal Employment Opportunity
- C. MWBE Subcontractor's Compliance
- D. Drug Policy Compliance Agreement
- E. Certification of No Safety Impact Positions
- F. Drug Policy Compliance Declaration
- G. Contractor Pay or Play

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.

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

ATTEST/SEAL:

By: *R. F. Hooper*

Name: Robert F. Hooper

Title: President

GARTEK TECHNOLOGIES, INC.

By: *R. F. Hooper*

Name: Robert F. Hooper

Title: President

Tax Identification No.: 59-3013044

ATTEST/SEAL:

Wendell Russell

City Secretary

CITY OF HOUSTON, TEXAS

Signed By:

Annise D. Parker

Mayor *Mark White*

APPROVED:

David W. K...
Director, Public Works & Engineering Department

amb

APPROVED:

L. Blair Swales
Purchasing Agent

COUNTERSIGNED BY:

Ronald C. G...
City Controller *Ch B. W...*

APPROVED AS TO FORM:

W.S.C.
Assistant City Attorney
L.D. No.0371000185001

DATE COUNTERSIGNED:

7/19/11

II. 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 and any written amendments authorized by City Council and Contractor.

"Business Days" mean all days when the City of Houston is open for regular business, excluding City holidays.

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

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

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

“CPI” means at the time of the calculation is required, the percentage increase in the United States Consumer Price Index for all Urban Consumers for the All Items, not seasonally adjusted, for the most recent twelve-month period ending prior to the Maintenance Term renewal invoice date.

“Data Dictionary” refers to a data dictionary defines the structure of the database itself (not that of the data held in the database) and is used in control and maintenance of large databases. Among other items of information, it records (1) what data is stored, (2) name, description, and characteristics of each data element, (3) types of relationships between data elements, (4) access rights and frequency access.

“Data Model” refers to data modeling which depicts the dataflow and logical interrelationships among different data elements contained within a schema.

"Director" means the Director of the Public Works and Engineering Department, or the person he or she designates.

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

"Documentation" means the manual provided by Contractor for each software program developed by Contractor according to the Technical Design Specifications, detailing the design, operation and instructions for using each software program to obtain the desired results from the operating system on which it is used.

"ILMS" means the City's Integrated Land Management System which is currently running on the HP-UX Operating System.

"ILMS System" refers to the entire software application and represents the various interacting or interdependent subsystems and modules that comprise the integrated whole.

"ILMS Subsystem" is defined as one or more program modules that conceptually comprise a system unto itself.

"PW&E IT" means the City of Houston's Public Works and Engineering Department's Management Team and Information Technology Staff who manage the City's ILMS system.

"Maintenance" means all work or effort required to keep programs, applications, sub-systems in good working order and normal remedial efforts to repair or fix programs to cause the application to work according to its Documentation.

"ILMS" means the City's Integrated Land Management System which shall operate on the LINUX Operating System.

"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.

"Project" means the maintenance and development of the City's current ILMS system to support the ILMS system under this Agreement.

"Reasonable Travel Expenses" mean the ordinary and reasonable cost of travel by Contractor's employees from out of town to Houston and back, up to a maximum of \$3,000.00 per year plus any additional funds allocated to cover amounts established under the City's then current travel reimbursement policy for its employees, to the extent such travel is reasonably necessary for the Contractor in its

performance of services under this Agreement. Reasonable Travel Expenses are expenses that do not exceed the amount established under the City's then current travel reimbursement policy for its employees, including automobile mileage reimbursement, common carrier coach or economy fares, ground transportation expenses, and, for overnight trips, the cost of lodging and meals if such travel is reasonably necessary to accomplish a task directly related to the Project, and if reservations are made as far in advance as feasible.

"System" means ILMS.

"System Diagram" refers to a model representation of the presentation layer of the system. This depicts the logical interrelationships of all graphical and non-graphical user and non-user interfaces.

"Technical Design Specifications" means the design specifications submitted by Contractor for PW&E IT approval at the beginning of a Project in which Contractor shall identify the software developed, custom applications, training to be provided, tests to be conducted and all other review functions detailed in Exhibit "A-2" of this Agreement for ILMS. The Technical Design Specification approved by the PW&E IT shall serve as the plan document for a Project.

III. DUTIES OF CONTRACTOR

A. Scope of Services

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to:

1) Develop the City's ILMS system to:

- a) As an open platform environment using, e.g., LINUX to Maintain and develop the ILMS system as outlined in the Technical Specifications;
- b) ILMS must operate on both 32 and 64 bit architecture relational database server environments;

- c) ILMS projects shall include the support of all current programs on the system and configuration of the system to be able to accommodate future applications and databases on the system and subsystems that the City expects ILMS to support.
- d) Contractor shall provide a project implementation plan to include:
 - i) Technical Review and Evaluation on ILMS
 - (1) Interview end-users of ILMS
 - (2) Review the applications on ILMS
 - (3) Identify software to be developed for ILMS
 - (4) Identify custom applications to be developed on ILMS
 - (5) Identify all training to be provided as part of development.
 - (6) Provide test plans/designs for all software developed/customized.
 - (7) Ten days from review, present technical plan for improving ILMS functions, providing for future enhancements.
 - (8) Plan will be reviewed by Director and Contractor shall implement the plan with changes if any, recommended by the Director and PW&E IT.
 - (9) Contractor shall present a plan with a set of milestones.
 - (10) Identify all data and sub-systems to be changed.
 - (11) Identify ILMS data that requires corrections and recommend method(s) for updating.
 - ii) Completion and Acceptance of software and applications
 - iii) Documentation and Training
 - (1) Provide Director with Manual and Documentation for all programs created.
 - (2) Provide City with a copy of the Manual and Documentation in CD ROM format and online versions for downloading by City staff.
 - (3) Provide online tutorials and help menus for ILMS.

(4) Provide training and instruction in the operation and system administration of the Equipment and Software for the City's personnel in accordance with the Statement of Work.

iv) Acceptance Testing.

(1) Contractor and Director shall develop tests and test all programs developed for the Project.

(2) Director shall accept the ILMS System in the manner set out in Section IV (G) of the Contract.

e) Contractor shall design, modify or build programs, subsystems and modules listed below to enhance the secure operation of the ILMS system:

i) Create a software program that provides a Security Matrix for ILMS and Security Screens.

ii) Develop an Application Program Interfaces to allow the external programs to securely interface with ILMS.

iii) Design the security for web permit issuing interface.

iv) Design security self service module for customers to add new projects and permits.

2) Maintain the ILMS System by providing:

a) Support during the operation hours 5:30 A.M. to 8:00 P.M., Central Time, Monday through Friday, excluding weekends and City holidays;

b) Basic service which shall include five business days of on-site application review service, and two after hours service calls for each annual maintenance cycle during the life of this Contract;

c) Basic service for all ILMS and ILMS programs, screens, Application Program Interface(s) and sub-systems;

- d) Emergency after hour services shall be billed by the contractor to the city at an hourly rate of \$150.00. Estimated number of hours to resolve emergency shall be agreed to by the City and Gartek prior to Gartek performing work activities.
- e) Contractor shall respond and resolve issue based on the following Priority Levels as described:

| Priority Level | Description | Response Time HRS | Minimum Resolution TIME HRS. | Maximum Resolution Time HRS. |
|---------------------|---|---|------------------------------|------------------------------|
| 1 = Critical | Software is down there is no immediate work around and user is unable to access systems or multiple user affected | 1 | 2 | 4 |
| 2 = High | Software is degrading user can access systems | 3 | 8 | 16 |
| 3 = Medium | Non-Critical software components down or degrading | 4 | 16 | 24 |
| 4 = Low | Non-Critical software components that has little or no impact on business operations | 8 | 24 | 48 |
| 5 = Special Project | Schedule requests for new software or relocation of software. | Within each Project, Scope, Timeline and Budget | | |
| Escalation | Upon failure to meet Response or Resolution Time | .75 | 2.5 | 4 |

- f) Repairs or fixes to currently installed applications, programs and support programs on the ILMS system;
- g) Releases, updates and patches on CD ROM, DVD, downloadable files or transferred files via file transfer protocol, internet or a Virtual Private Network (VPN) onto the designated server and into the appropriate directory, group or account, at no additional charge to the City
- h) Documentation for such releases, updates and patches explaining the contents of the release and instructions for the installation; and
- i) Support for all the release versions of any program on the ILMS system.

3) Software License

Contractor shall grant City a non-exclusive, non-transferable, irrevocable, perpetual license to all software programs developed and installed on the ILMS system.

4) ILMS System Software Programs Source Code

- a) Contractor shall provide the PW&E IT with at least one electronic copy of the most current version of the executable code and applicable documentation for all software modules installed, modified and tested on the ILMS system. Contractor shall at all times maintain a copy of the above object code for use in operating, maintaining, and developing the ILMS system during the term of this Agreement.
- b) Seven days from the Countersignature Date, Contractor shall enroll the City as a Beneficiary with rights to access the Source Codes of all programs and modules of software programs to be developed for ILMS which shall be deposited in escrow with Iron Mountain Intellectual Property Management, Inc., as set out in the Escrow Agreement, Account Number 38105.
- c) Contractor shall deposit the source codes of the programs and modules of software programs developed or modified for the ILMS System upon Acceptance of each such program as detailed in Section IV, (F) below. Contractor warrants that it has deposited the source codes for all existing programs and modules of programs customized or developed for the City's ILMS System and has enrolled the City as a Beneficiary in the Escrow Account identified in Exhibit "A".
- d) The Director has the right to audit and inspect all codes in escrow under the terms of this Agreement.
- e) City has the right to make one back up copy of all Software programs, scripts, executable codes and modules installed on City servers.
- f) Title to and ownership of all intellectual property rights in Contractor-developed or modified ILMS software and related documentation belongs to Contractor.

g) The City shall not distribute or provide access to any software and/or database related documentation to any third party without prior written consent from the Contractor.

B. Coordinate Performance

Contractor shall coordinate its performance with the Director, the PW&E IT and other persons that the Director designates. Contractor shall promptly inform the Director, the PW&E IT and other persons of all significant events relating to the performance of this Agreement.

C. Technical Design Specifications

Upon approval by PW&E IT, the Technical Design Specifications shall be subject to this Agreement, but fees for services identified in the Design shall start to accrue upon Acceptance of the final product by the Director. The Director has the right to add, delete or modify services, designs or plans contained in the Technical Design Specifications including test plans to test the software or System during project implementation. The Director has the right to change the order in which Project Phases are implemented and the deadlines for implementation of any Phase or services in the design. In the event the Director makes such changes, as of the effective date, the Technical Design Specifications with such changes incorporated in it shall be subject to this Agreement as if it had originally been a part of this Agreement, but fees for changed services incorporated into it shall start to accrue upon Acceptance of such services by the Director.

D. Payment of Subcontractors

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

E. RELEASE

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

F. INDEMNIFICATION

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

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

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

G. INDEMNIFICATION – PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT

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

H. INDEMNIFICATION – SUBCONTRACTOR’S INDEMNITY

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

I. INDEMNIFICATION – PROCEDURES

1) **Notice of Claims.** If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 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 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 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.

J. 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 coverage 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 policies 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 City before any of its policies are canceled, 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 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.

K. Warranties

- a) 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.
- b) Software Warranty. Contractor warrants that each software program or application it provides under the terms of this Agreement will be free of any defects in workmanship or materials for a period starting on the date of Acceptance and ending 90 days thereafter.

L. Confidentiality - Protection of City's Interest

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

M. Use of Work Products - City may use all documents

- a) The City may use all documents (already defined) that Contractor prepares or obtains under this Agreement.

b) Contractor warrants that it owns the copyright to the Documents.

c) 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.

N. 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.

O. Compliance with Laws

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

P. Compliance with Equal Opportunity Ordinance

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

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 14% 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 "C". 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. Drug Abuse Detection and Deterrence

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

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

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

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 "E." 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.

IV. DUTIES OF THE CITY

A. Payment Terms

1) Upon Acceptance (Section IV (G) below) of each approved design document or software program developed by Contractor the City shall pay and Contractor shall accept the cost for that deliverable quoted by Contractor in the Technical Design Specifications approved by PW&E IT. Contractor warrants that it can provide all software development services identified in the approved Technical Design Specifications for the ILMS Projects. Contractor warrants that it can provide all training identified in the Technical Design Specifications accepted by the PW&E IT as part of the total cost of ILMS the Project.

2) Upon completion of and Acceptance (Section IV (G) below) of each custom application developed for the ILMS System, City shall pay and Contractor shall accept the cost for that custom application quoted by Contractor in the Technical Design Specifications approved by PW&E IT. Contractor warrants that it can provide all custom applications services identified in the Technical Design Specifications accepted by PW&E IT. Contractor warrants that it can provide all training identified in the Technical Design Specifications accepted by the PW&E IT as part of the total cost of the ILMS Project.

3) Contractor warrants that the maintenance and development support services set out in Section III, A for the software developed, modified and migrated under this Agreement are included in the costs for the development, modification or migration of such software programs. Contractor shall identify the maintenance and development support services portion of the costs as a separate line item. Contractor and City agree that the maintenance and development support fees paid at the time of Acceptance of such software is an advance payment and such advance payment is being made to lock in the rate for the three-year maintenance period of this Agreement. The total of the annual payments for up to five years, including the two renewal years, shall not exceed as listed in payment schedule.

4) The City may audit all payments made to Contractor at a later date. Contractor shall refund any overpayments uncovered in the audit. If this Agreement is terminated before the end of a period for which payment has been made in advance, Contractor shall refund a percentage of the City's advance payment equal to the percentage of the prepaid period remaining after termination. This refund must be made within 30 days of termination of this Agreement.

5) Upon the Director's approval of Reimbursable Expenses submitted by Contractor, City shall reimburse Contractor's actual Reimbursable Expenses. In no event shall the City pay for travel related expenses for the ILMS maintenance and development in an amount not to exceed \$20,000.00.

B. Payment for Services added to ILMS Contract

If the Director desires services not listed under any Development Project, the Director shall request such services by means of a Change Order as described in § IV, (I) below. The Change Order shall not be issued until the City appropriates sufficient funds to pay for the Change Order. If the City does appropriate sufficient funds, then City shall pay and Contractor shall accept, as full compensation for the additional services described in this Section, the fees the parties agree upon before using the Change Order in writing.

As of the date of the Change Order, such additional services shall be subject to this Agreement as if they had originally been a part, but fees for such services shall start to accrue only as of the effective date. During the term of this Agreement, the cost of additional services approved by the Director by a single

change order shall not exceed \$110,000.00 and the total cost of all such change orders for additional services shall not increase the original contract amount by more than 25%.

(1) Pricing and Review of Charged and Service

On each anniversary of the Effective Date of this Agreement, Gartek may increase the annual charges by the percentage increase, over the year immediately preceding the anniversary date, in the Consumer Price Index (category “Other Goods and Services”) for the country in which the Customer is located, provided that the percentage increase shall be based on the most current Consumer Price Index information available before the anniversary date. Gartek shall give written notice to the Customer of any increase in the annual charges, at least sixty days before the desired effective date of the increase. Price increases related to maintenance of Third Party Software shall be included in the increase and shall occur at such time as determined by the manufacturer of such Third Party Software. New development related quotations will include a 7.5% maintenance component which will be assessed after the associated 12 month warranty period expires.

Payment Schedule

Annual Maintenance

| | |
|------------------------------|-----------------|
| First Year | \$110,000 |
| Year Two and Annual Fee | \$110,000 + CPI |
| Year Three and Annual Fee | Year 2 + CPI |
| Year 4 Annual Fee (optional) | Year 3 + CPI |
| Year 5 Annual Fee (optional) | Year 4 + CPI |

Payment will be made upon application acceptance.

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 invoices submitted by Contractor and approved by the Director. The City shall pay Contractor within 30 days of the receipt of an approved invoice.

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. Acceptance of Software Developed

Beginning promptly after installation of software programs identified in the Technical Design Specifications, the City shall operate each program for a 30-day Trial Period, with Contractor providing technical support services.

If during the Trial Period, the tests the City conducts indicate that the software program is not performing in accordance with Contractor's Documentation or the requirements of this Agreement Contractor will have 10 business days to correct the problems, at which time the City will have an additional 15 business days to retest the corrections.

The City shall notify Contractor of any non-conformity between a software program being tested and the Documentation and provide documentation of the non-conformity to Contractor as soon as practicable after discovery. The City shall accept each software program when: (i) the software program and related Documentation have been completely delivered and installed, and (ii) that software program has, by the end of the 30-day Trial Period, successfully operated in accordance with Contractor's Documentation and the requirements of this Agreement.

The City shall reject that software program if at the end of the 30-day Trial Period (plus any time the City provides to Contractor to correct defects), the software program being tested has not performed in accordance with Contractor's Documentation and Contractor is unable to correct the deficiency.

If the City rejects the software program being tested, it will be returned to Contractor at no cost to the City and City will not pay for the use of the software program being tested. Contractor shall return to the City any sum paid to it for that software program under this Agreement within 30 days of rejection of that software program. The City reserves all other available rights at law or in equity.

G. Acceptance of the ILMS System Changes

Upon Contractor's notice that installation and diagnostic testing have been completed, the City will subject the ILMS System and each component to performance trials. The PW&E IT and Contractor will design the performance trials to demonstrate conformity with the requirements of this Agreement and Contractor's Documentation. The City shall accept the ILMS System and Contractor's contract requirements for delivery and installation are met when (i) the System and related Documentation has been completely delivered and installed, and (ii) and each phase of the ILMS System has successfully completed performance testing for 30 consecutive business days.

The performance testing period is 30 consecutive business days, but the Director may extend the time if the City, a third party, or a Force Majeure has delayed successful completion of performance testing. Performance testing includes the designed performance testing exercises as well as routine work of customer service. If the ILMS System fails to pass performance testing, the City may pursue any of the remedies and rights available to a buyer, including but not limited to remedies and rights under Article 2 of the Texas Business and Commerce Code. The PW&E IT may approve a partial acceptance of one or more designated System components by making a determination that the components are of use and benefit to the City without the remainder of the System capabilities. The PW&E IT shall notify Contractor in writing as to the City's Acceptance, partial Acceptance, or rejection of the ILMS System and give the date of Acceptance or rejection.

H. 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 \$5,200,000.00 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:

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.

\$ _____."

City Council delegates to the Director the authority to approve up to \$100,000.00 in supplemental allocations for this Agreement without returning to Council.

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.

I. Changes

In the event the Director Request additional services set out in Section IV (B) above, the Director shall authorize such additional services by means of a Change Order in the manner set out below:

- 1) At any time during the Agreement Term, the 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.
- 2) The 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 Director]

- 3) The Director may issue more than one Change Order, subject to the following limitations:
 - a. Council expressly authorizes the Director to approve a Change Orders up to \$25,000. A Change Order of more than \$25,000 must be approved by the City Council.

- b. 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.
 - c. The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.
- 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 Director's decision regarding a time extension is final.
- 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) Change Orders are subject to the Allocated Funds provisions of this Agreement.

V. TERM AND TERMINATION

A. Contract Term

This Agreement is effective on the Countersignature Date and remains in effect for 3 years unless sooner terminated under this Agreement.

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 insufficient 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.

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. Contractor shall refund prorata advance computer software maintenance fees paid for the period remaining after the termination of this Agreement in the manner set out in Section IV. C.

TERMINATION OF THIS AGREEMENT IS CONTRACTOR'S ONLY REMEDY FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

D. Termination for Cause

Either party may terminate its performance under this Agreement if the other party defaults and fails to cure the default after receiving notice of it. Default occurs if a party fails to perform one or more of its material duties under this Agreement. If a default occurs, the injured party shall deliver a written notice to the defaulting party describing the default and the proposed termination date. The date must be at least 30 days after Contractor's receipt of the notice. The injured party, at its sole option, may extend the proposed termination date to a later date. If the defaulting party cures the default before the proposed termination date, the proposed termination is ineffective. If the defaulting party does not cure the default before the proposed termination date, the injured party may terminate its performance under this Agreement on the termination date. The Director shall act on behalf of the City to notify Contractor of a default and to effect termination. In the event the Director terminates this Agreement for Contractor's

failure to cure a default notified by the Director, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, promptly cancel all orders or subcontracts charged to this Agreement, and promptly refund pro-rata advance computer software maintenance fees for the period remaining after the termination of this Agreement in the manner set out in Section IV, C.

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. (J) 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. Parties In Interest

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

P. Successors and Assigns

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

Q. Business Structure and Assignments

Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. 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.

R. Remedies Cumulative

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

S. CONTRACTOR DEBT

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

T. Pay or Play

The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, 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 LABOR RATE SCHEDULE

For the life of this contract the contractor will adhere to the following hourly labor rate schedule

| | Hourly Rate | |
|---|-------------|------|
| | Low | High |
| Project Manager | 125 | 175 |
| Consultant | 90 | 135 |
| Systems Analyst | 75 | 125 |
| Web Developer | 80 | 125 |
| Data Base Administrator | 80 | 120 |
| Technical Writer | 55 | 75 |
| Senior Programmer/Analyst | 75 | 100 |
| Mainframe Programmer/Analyst | 85 | 125 |
| Client Server Programmer/Analyst | 75 | 125 |
| Trainer | 65 | 95 |
| Support Technician | 65 | 100 |
| Contracted 3 rd party Specialist | 150 | 300 |

EXHIBIT A – PROFESSIONAL SERVICES to be executed at the City’s discretion

- 1) Develop an ILMS interface with the TeleWork, Hand-Held Wireless Inspection System for real time exchange of inspection data between systems.
- 2) Develop an ILMS shopping cart allowing the purchase of multiple items under a single payment. Shopping cart shall be for use in the office and on the web. Shopping cart will be designed for use by multiple systems.
- 3) ILMS shall be designed to integrate the use of current web meeting and white board techniques for use between city staff and clients.
- 4) Contractor shall develop a process for the integration of banking transactions with the ILMS system. The bank for such transactions shall be chosen by the city and the system shall be designed for use of debit and credit cards. This process shall be available on ILMS, Kiosk’s and the web.
- 5) Contractor shall develop programs to exchange data between the current ILMS Oracle database and the TeleWork server, City GIS, E-Plus Image server, Infor EAM, 311 systems, Centerpoint system, Harris County Tax Assessor System, city SAP and the court computer system.
- 6) Contractor shall develop an ILMS software program that allows IVR, smart phones, palm devices, kiosks, Tablet PC’s or a combination of hand held computer devices to be used by ILMS for the completion of applications, entering registration information, entering inspection information and accessing ILMS data.
- 7) Contractor shall develop an interface with a future work flow product chosen by the city. The work flow product shall be accessed through ILMS and be interactive in real time with key data.
- 8) Redevelop the current Online Permit Application and Payment system to be fully integrated with ILMS in real time.
- 9) ILMS application shall be redesigned with intelligent auto fill capability giving the customer drop down choices in each field after a limited number of character entries.
- 10) Develop interface with the GIS system that will validate a new address when created on ILMS.

- 11) Develop ILMS in the current C sharp (C#) object-oriented programming language design for ILMS screens.
- 12) ILMS shall be enhanced to provide property and permit descriptions as dictated by the use codes and descriptions shall be standardized so that they produce appropriate use codes in correct fields.
- 13) Contractor shall develop ILMS to include City GIS within the ILMS desk top and web application.
- 14) ILMS investigation screen that integrates with the city 311 complaint systems so that building inspection complaints are logged in the ILMS system in real time. Complaints are sent from the 311 into ILMS will automatically be assigned to the correct investigator. The assignments are displayed on the supervisors management screen and do not required a project number. Results of the investigation are sent back to 311 from the field in real time and logged into ILMS.
- 15) Build an ILMS field screen for investigations allowing investigators to enter results from the field and set follow up inspections for sites that have no project numbers or Permits created.
- 16) Integration of a GPS enabled wireless device with the existing ILMS system allowing a supervisor to locate an inspector on the City GIS system. System will also notify supervisor by E-mail if inspector is out of zone or has not arrived at assigned Inspection. Notifies supervisor if inspector is at a non inspection site. New location map will be integrated with the new inspection management screen.
- 17) Inspection Information Location Map that will automatically produce the inspector a map showing the location of each assigned inspection for that day. System will be tied into the GIS Map Database and have the capability of display on laptop and wireless hand held devises.
- 18) Develop GPS capability with wireless devices that mark the location of the device in the GIS System. The marked locations in the field shall be used to locate items such as valves, hydrants, water meters, inspection photo, investigation photo and sewer taps.
- 19) New time and mileage Program Integrated into ILMS that allows field inspectors to enter time and mileage from the field directly into the system with wireless devices. Programs will Integrate GPS with ILMS to automatically determine when the inspector has arrived at and leaves a project site.

- Automatically transmits the time and mileage back to department computers for analysis. Allows Supervisor to print a daily city time sheet and mileage report for each inspector from the Management Screen.
- 20) Enhancements for ILMS users that will allow supervisors to create training slide shows on ILMS that can be accessed in the office and by wireless devices.
 - 21) ILMS shall be designed to interact with a new plan review software to be chosen by the city. The plan review software shall exchange key information in real time. Plan review software shall be accessed through the ILMS program.
 - 22) Produce a detailed data dictionary, in the system, for use by city programming staff.
 - 23) The ability to attach digital pictures to the ILMS 399 inspection screen in the office and wirelessly from the field. Personnel in the office could see images of the site construction in real time on ILMS. Images would be saved on the E-Plus image system for later reviewing and archive.
 - 24) Modification of ILMS to place a hold on a contractor's license, prohibit the issuance of permits, and place a hold on existing permits if the contractor has an excessive number of expired or lapsed permits. The system will automatically schedule an investigation of any lapsed or expired permit.
 - 25) Develop an ILMS System for E-mailing and mailing permits, certificates of occupancy, certificate of compliance, life safety certificates, elevator certificates, boiler certificates, licenses, notification letters, inspection letters, plan review letters and receipts. A transaction log shall be developed in ILMS as a function of this system.
 - 26) Develop Internet Applications for an ILMS Contractor Portal which will allow each registered contractor to customize their individual screen. The portal will include such capabilities as permit statistics globally and specific to the contractor, money account balances, license renewal notice and payment, history of permits purchased, status of permits, etc.
 - 27) Provide ILMS data base consulting for the correct design of web focus reports for ILMS users.
 - 28) Contractor shall provide data corrections, updates, data preparation for reports and system reports on an as needed basis.

- 29) Develop system in ILMS which will provide the results of an inspection and transmit the results to the contractor or owner by E-mail and text message. Provide a web page for the contractor or owner to list E-mail and cell phone numbers that the inspection results will be sent to.
- 30) Provide lap top and wireless handheld devices the ability to look up GIS map layers in the field. This will provide Inspectors and Contractors with current water, sewer and storm sewer location information.
- 31) Create an ILMS supervisors management screen for the inspection groups that will allow assignment or reassignment of inspections in real time for wire less inspection systems
- 32) Contractor shall develop a program to exchange ILMS data with the current City Security/Habitability web server
- 33) Contractor shall develop an application program that will allow access to the INFOR System from within ILMS.
- 34) Investigation and inspection notices shall be created on ILMS to auto fill standard templates and be capable of printing from any wireless device to mobile field printers.
- 35) Contractor shall develop an interface for customers to load digital plans with an application on line and in the office with the use of CD, DVD and USB media.
- 36) Develop program with the ILMS contractors registration to print and mail pocket license cards.
- 37) Create a secure web Site for Printing Certificates of Occupancy, Certificates of Compliance, Life Safety Certificates, Elevator Certificates, Boiler Certificates, permits and Contractor licenses containing security bar codes for verification of authenticity.
- 38) Design an ILMS program that will allow the inspector to scan a bar code to confirm authenticity of a permit, C.O. or set of plans. Bar codes would be printed by ILMS on all department issued documents and labels which can then be immediately confirmed and tracked in the system.
- 39) Web site that has an interactive calendar for use by contractors. The calendar shows what openings the assigned inspector has for that day. The amount of time given the appointment shall be statistically driven by historic time of similar permits

- 40) ILMS Program will integrate with GIS allowing areas to be defined geographically on the GIS system that will transfer attributes to the ILMS system. Attributes will be such items as Situs holds on properties, project holds, Situs comments, etc.
- 41) Develop Pre-paid account cards with pin codes. Contractors can use pre-paid cards to pay for permits. These can be used instead of a credit card by contractors with multiple crews. Each crew can be issued a card with a set amount. Customer service representative needs only swipe card and have customer enter the pin number to deduct the correct amount from prepaid accounts.
- 42) Integrate the Houston Electronic Building code into ILMS. Provide access to the current code in electronic form accessible from ILMS for office and wireless devices.
- 43) Develop a Web site for third party private inspectors, third party private plan reviewers and contractors for registration and automatic renewal of registration.
- 44) Provide a web site integrated with ILMS that allow a third party inspection organization to create projects, enter inspection results, and request payment of fees for inspection services.
- 45) A new touch screen version of the ILMS application screen shall be developed for use on lobby kiosk screens. The kiosk shall be used for customers to fill in require information fields prior to completing the transaction at a permit counter.

EXHIBIT A-1

**CONTRACTOR'S ESCROW AGREEMENT AND ESCROW ACCOUNT BENEFICIARY
FORM FOR ENROLLING CITY**

EXHIBIT B

EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No.

EXHIBIT VIII

Anti-Collusion Statement

The undersigned, as Proposer, certifies that the only person or parties interested in this proposal as principals are those named herein; that the Proposer has not, either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the award of this contract.

24 March 2011
Date

R. F. Hooper
Proposer Signature

11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

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

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

EXHIBIT C

MWBE SUBCONTRACT TERMS

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

1. _____ (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 inspection for at least 4 years after the end of its performance under this subcontract. Nothing in this provision shall change the time for bringing a cause of action.

3. Within 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. Any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 -- "the Act"). Arbitration shall be conducted according to the following procedures:
 - a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.

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

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

d. If 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 D
DRUG POLICY COMPLIANCE AGREEMENT

I, Robert F. Hooper President as an owner or officer of
(Name) (Print/Type) (Title)

Gartek Technologies, Inc. (Contractor)
(Name of Company)

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

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

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

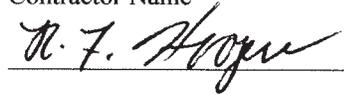
I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination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

25 March 2011

Date

Robert F. Hooper

Contractor Name



Signature

President

Title

EXHIBIT E

DRUG POLICY COMPLIANCE DECLARATION

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

_____ (Contractor)
(Name of Company)

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

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

_____ A written Drug Free Workplace Policy has been implemented and employees

Initials _____ notified. 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

Initials _____ Mayor's 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

Initials _____ Human Services (HHS) guidelines.

_____ Appropriate safety impact positions have been designated for employee

Initials _____ positions 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

Initials worksite consistent with the Mayor's Policy and Executive Order No. 1-31.

_____ I affirm that falsification or failure to submit this declaration timely in

Initials 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.

25 March 2011

Date

Not Applicable

Contractor Name

D. F. Hooper

Signature

President

Title

EXHIBIT F

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

I, Robert F. Hooper President

(Name - Print/Type) (Title)

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

25 March 2011

Date

Robert F. Hooper

Contractor Name



Signature

President

Title

ATTACHMENT C

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

I, Robert F Hooper President as an owner or officer of
(Name) (Print/Type) **(Title)**

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

18 March 2011
Date

Contractor Name Robert F Hooper

Signature

R. F. Hooper

Title

President

ATTACHMENT D

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

I, Robert R. Hooper President as an owner or officer of
(Name) (Print/Type) **(Title)**

Gartek Technologies, Inc. (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.

23 March 2011
Date

Contractor Name Robert F. Hooper

Signature

R. F. Hooper

Title

President
