Bid No E24014
Contract # 4600011214
Ordinance # 2011-0877

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

1. PARTIES

1.1. Parties

THIS AGREEMENT FOR THE DEVELOPMENT AND MAINTENANCE OF THE ECLIPS DATA SYSTEM ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a Texas home-rule city, and **NOVASYS TECHNOLOGIES, INC.** ("Contractor" and/or "Novasys"), a corporation doing business in Texas.

1.2. Address

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

City

Director of Administration and Regulatory Affairs Or Designee
City of Houston
P.O. Box 1562
Houston, Texas 77251

Contractor

Novasys Technologies, Inc.
12337 Jones Road, Ste. 432
Houston, TX 77070

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1.3. Table of Contents

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H. HIPPA Business Associate Agreement
I. Notice of Award

1.4. Parts Incorporated

The above described exhibits are incorporated into this Agreement.

1.5. Controlling Parts

If a conflict among the Sections and Exhibits arises, the Sections control over the Exhibits.

1.6. Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original, as of the date of countersignature by the City Controller of the City of Houston.

CONTRACTOR:
NOVASYS TECHNOLOGIES, INC.

By: _____
Name: Ram Tackett
Title: President

ATTEST/SEAL:

By: _____
Corporate Secretary

Tax Identification 753049856

CITY:
THE CITY OF HOUSTON, TEXAS

By: _____
Mayor Annise D. Parker

ATTEST/SEAL:

By: _____
City Secretary

APPROVED:

_____
Director, Department of Administration and Regulatory Affairs

APPROVED AS TO FORM:

_____
Assistant City Attorney
L.D. File No. 0371100181001

COUNTERSIGNED

_____
City Controller

DATE COUNTERSIGNED
10-14-11

2. DEFINITIONS

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

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

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

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

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

2.5. **"Deliverables"** is defined in Exhibit A of this Agreement.

2.6. **"Director"** means the Director of the Department of Administration and Regulatory Affairs, or the person he or she designates.

2.7. **"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.

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

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

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

2.11. **"System"** is defined in Exhibit A of this Agreement.

3. DUTIES OF CONTRACTOR

3.1. Scope of Services

In consideration of the payment specified in this Agreement, Contractor shall provide all labor, materials, and supervision necessary to perform the services described in Exhibit A – Scope of Services.

The City has developed a more detailed work plan (a "Statement of Work") for implementing the Scope of Services. This Statement of Work shall not be part of this

Agreement or alter any terms hereof without an amendment to this Agreement. Such amendment shall be in writing and agreed to by both parties as legally appropriate.

3.2. 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.

3.3. Reports

Contractor shall submit all reports and progress updates required by the Director.

3.4. Prompt Payment of Subcontractors

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

3.5. 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.

3.6. 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.

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

CONTRACTOR AGREES TO AND SHALL RELEASE AND 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 BY ANY PARTY, INCLUDING CONTRACTOR, 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.

3.8. INDEMNIFICATION – SUBCINTRACTOR'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.

3.9. 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 Worker's Compensation must name

the City as an additional insured. (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. Worker's 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, and that it shall give 30 days written notice to the City before they may be canceled, materially changed, or nonrenewed. 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.

3.10. Warranties

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.

3.11. Confidentiality – Protection of City's Interests

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

3.12. Use of Work Products

3.12.1. Contractor conveys and assigns to the City its entire interest and full ownership worldwide in and to any work, invention, notes, plans, computations, software, databases, tabulations, exhibits, reports, underlying data, photographs and other work products, and the System, and any modifications or improvements to them (collectively "Works"), and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively "Proprietary Rights") that Contractor, its agents, employees, contractors, and subcontractors (collectively "Authors") develop, write, or produce under this Agreement. The System includes computer programs, source code, object code, enhancements and modifications, files, input and output materials, media on which these computer programs, files, and documentation are located (including tapes, disks, and other storage media), and all related material and documentation.

3.12.2. The Authors shall not claim or exercise any Proprietary Rights related to the Works. If requested by the Director, Contractor shall place a conspicuous notation on any Works which indicates that the City owns the Proprietary Rights.

3.12.3. Contractor shall execute all documents required by the Director to further evidence this assignment and ownership. Contractor shall cooperate with the City in registering, creating, and enforcing Proprietary Rights arising under this Agreement. If Contractor's assistance is requested and rendered under this Section, the City shall reimburse Contractor for all out-of-pocket expenses it incurs in rendering assistance, subject to the availability of funds.

3.12.4. The Works and all rights are being sold in their entirety to the City and do not constitute a mere license or franchise to the City. On termination of this Agreement, and without regard to whether the Works are completed, Contractor shall deliver all Works to the City.

3.12.5. All Works developed, written, or produced under this Agreement for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, are "works" made for hire.

3.12.6. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors performing work under this Agreement which bind them to the terms in this Section.

3.13. Compliance with Laws

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

3.14. Compliance with Equal Opportunity Ordinance

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

3.15. Drug Abuse Detection and Deterrence

3.15.1. 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.

3.15.2. 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.

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

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

1. a copy of its drug-free workplace policy,
2. 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,
3. if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit F.

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.

3.16. 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 G, POP-2 Form prior to the execution of this Agreement.

3.17. HIPAA Business Associate Agreement

The parties acknowledge that Contractor will be exposed to protected health information as that term is defined in the Health Insurance Portability and Accountability Act of

1996 ("HIPAA") and Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, as amended ("HITECH Act"), in performing its duties under this Agreement. Therefore, Contractor shall execute a Business Associate Agreement as Exhibit B with Contractor's execution of this Agreement.

Due to the highly sensitive nature of HIV/AIDS data collection, all personnel utilized by Contractor in conjunction with this project must be approved in advance by HDHHS/Houston HIV Prevention Program. The Houston HIV Prevention Program shall reserve the right to require Contractor to provide alternative individuals to support activities described herein if, in the sole determination of HDHHS/Houston HIV Prevention Program, the needs of project so indicate.

3.18. Grant Requirements

3.18.1. Contractor understands that funding for the services contemplated under this Agreement have been provided by to the City by the Centers for Disease Control and Prevention. Consequently, Contractor:

3.18.1.1. Represents that Contractor has reviewed and shall comply with the terms and conditions as set out in:

i. the Notice of Award for Grant Number: 1U65PS003278-01, from the Centers for Disease Control and Prevention to the City of Houston (the "Notice of Award"), attached hereto as Exhibit I.

3.18.1.2. Agrees to adhere and comply with any additional requirements related to this Agreement that may be imposed by the granting agency or the City including but not limited to reporting requirements, records inspection requirements, compliance with laws, and compliance with Inspector General/Controller general requests.

4. DUTIES OF CITY

4.1. Payment Terms

The City shall pay Contractor for its services at the hourly rates set forth in Exhibit B up to the maximum amount as set out in Exhibit B. The hourly rates for the various job classifications stated in Exhibit B remain in effect for 4 years following the effective date of this Agreement.

4.2. 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.

4.3. Method of Payment

The City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Director showing the hours worked in the preceding month and the corresponding hourly rates. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

4.4. Limit of Appropriation

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

4.4.2. 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 $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:

4.4.3. 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.

$ _____

4.4.4. 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.

4.5. Changes

4.5.1. 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.

4.5.2. 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]

4.5.3. The Director may issue more than one Change Order, subject to the following limitations:

4.5.3.1. Council expressly authorizes the Director to approve a Change Orders up to $50,000. A Change Order of more than $50,000 must be approved by the City Council.

4.5.3.2. If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.

4.5.3.3. The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.

4.5.4. 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.

4.5.5. 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.

4.5.6. Change Orders are subject to the Allocated Funds provisions of this Agreement.

4.6. 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 [the Installation Sites are located] [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.

4.7. Access to Data

The City shall, to the extent permitted by law, allow Contractor to access and make copies of documents in the possession or control of the City or available to it that are reasonably necessary for Contractor to perform under this Agreement.

The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for Contractor's use.

4.8. Acceptance

4.8.1. Upon Contractor's notice that installation and diagnostic testing of each phase have been completed, the City will subject the System and each component to performance trials. The Director and Contractor will design the performance trials to demonstrate conformity with the requirements of this Agreement. The City shall accept the System and Contractor's contract requirements for delivery and installation are met when (i) the System has been completely delivered and installed, and (ii) each phase of the 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 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 Commercial Code.

4.8.2. The Director 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 Director shall notify Contractor in writing as to the City's Acceptance, partial Acceptance, or rejection of the System and give the date of Acceptance or rejection.

4.9. Limit of Liability – Obligation of City

The City's obligation for payment under this Agreement, if any, is limited to funds received from Grants Management Officer, Centers for Disease Control and Prevention under the terms of the Notice of Award; unless adequate funds are received, the City shall have no obligation to pay Contractor/Subcontractor. Contractor/Subcontractor must look to these designated funds only and to no other funds for the City's payment under this Agreement.

City will notify Contractor within 72 hours of any cancellation of grant funds that pertain

to this Agreement. Such notification shall also serve as City's notice of termination of this Agreement and the parties agree that in such event this Agreement shall be terminated and the termination date shall be the termination date of the Notice of Award, as provided by the Grants Management Officer, Centers for Disease Control and Prevention to the City. On receiving the notice of termination, Contractor shall, unless the notice directs otherwise, follow the termination procedures as stated in Section 5.3.

5. TERM AND TERMINATION

5.1. Contract Term

This Agreement is effective on the Countersignature Date and remains in effect for two (2) years unless sooner terminated under this Agreement ("Initial Term").

5.2. 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 (2) successive one-year terms upon the same terms and conditions.

5.3. Termination for Convenience by City

5.3.1. 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.

5.3.2. On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section 4.1 unless the fees exceed the allocated funds remaining under this Agreement. Contractor shall refund pro rata any advance fees paid in accordance with Exhibit B for the period remaining after the termination of this Agreement.

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

5.4. Termination for Cause

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

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

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

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

To effect final termination, the Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement. Contractor shall refund pro rata any advance fees paid in accordance with Exhibit B for the period remaining after the termination of this Agreement.

6. MISCELLANEOUS

6.1. 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 worker's compensation benefits coverage.

6.2. Force Majeure

6.2.1. 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, 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.

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

6.2.2.1. uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and

6.2.2.2. provides the other party with prompt written notice of the cause and its anticipated effect.

6.2.3. 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.

6.2.4. 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.

6.2.5. If the Force Majeure continues for more than 14 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.**

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

6.3. 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.

6.4. 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.

6.5. 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.

6.6. 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.

6.7. Notices

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

6.8. 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.

6.9. 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.

6.10. 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.

6.11. 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.

6.12. 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.

6.13. 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.

EXHIBIT A

SCOPE OF SERVICES

1. **Project**

   i. NOVASYS shall build, deploy, update/modify, and maintain the Electronic Client-Level Integrated Prevention System (ECLIPS), a new HIV Client-Level Data Management System (the "SYSTEM") for the Houston Department of Health and Human Services (HDHHS) Bureau of HIV/STD and Viral Hepatitis Prevention (the "BUREAU").

   ii. This Scope of Services provides an outline of expected services, work products, and responsibilities for the HDHHS, Houston HIV Prevention Program, and Contractor in building, deploying, updating/modifying, and maintenance of the SYSTEM.

   iii. Upon Contractor's completion of the SYSTEM:

      1. The Houston HIV Prevention Program will be able to input data into the SYSTEM by various means.
      2. The SYSTEM will have a web interface allowing the Houston HIV Prevention Program to capture and view Counseling Testing and Referral Data ("CTR"), Health Education and Risk Reduction Data ("HE/RR"), Comprehensive Risk Counseling Service Data ("CRCS"), Outreach Data, Training Data, Budget Data, Billing Data and Client Data.
      3. HIV test data will be imported into the SYSTEM from Cyberlab and Rhapsody Connect, the department's electronic lab reporting system.
      4. The SYSTEM will interface directly with Harris County Public Health & Environmental Services ("HCPHES"), Centralized Patient Care Data Management System ("CPCDMS") to refer HIV positive clients to primary care.
      5. The SYSTEM will be responsible for exporting data to the Centers of Disease Control and Prevention ("CDC") to meet reporting requirements, including the export of CTR and HE/RR data.
      6. The SYSTEM will also include a Reporting module to provide access to critical data.

   iv. The HIV Client-Level Data System project is a full life cycle development project. The project phases will include the following: Requirement Elaboration; Detailed Design; Project Documentation (to include, but not limited to, Table Definitions, Risks and Critical Success Factors, Use and Test Cases, and Knowledge Transfer); Technical Architecture; and System Development, Testing, and Implementation.

2. **Project Deliverables and Timelines**

The table below describes the Project Deliverables to be provided by the Contractor to the City and the timeline for delivering the Project Deliverables. Contractor shall furnish all labor, materials, and supervision necessary and perform all work required for the delivery and set-up of the Project Deliverables.

Timeline
Novasys Contract for ECLIPS
July 17, 2011 thru July 17, 2013

	Year 1 – July 2011 – June 2012												Year 2 – July 2012 – June 2013											
Project Deliverables	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J
Ensure that ECLIPS will interface with CPCDMS																								
User Acceptance Testing																								
Deploy and Implement ECLIPS in HDHHS contracted Agencies																								
Develop a structure within the ECLIPS to import expanded HIV testing data																								
Incorporate 10 new required variables into the ECLIPS from the CDC for counseling and testing																								
Develop an informational dashboard for generating queries with visual results																								
Incorporate Testing4Tickets database as one of the modules in the ECLIPS																								
Ensure that ECLIPS will work in tandem with Rhapsody Connect, MAVEN, and other newly identified data systems within or outside HDHHS																								
ECLIPS maintenance and troubleshooting																								
Update/Modify and expand the ECLIPS																								
Provide designated HDHHS project staff with weekly updates concerning progress of contracted services: maintenance, development, and support services for the ECLIPS																								

3. **Novasys Responsibilities**

Novasys shall:

i. Continue to work with HDHHS to ensure that ECLIPS is deployed and implemented in community-based organizations (CBOs) contracted with HDHHS to perform HIV prevention services.

ii. Ensure that ECLIPS will interface with the Centralized Patient Care Data Management System (CPCDMS) housed at the Harris County Public Health and Environmental Services Department, the only data system outside HDHHS currently developed and ready to communicate with ECLIPS.

iii. develop a structure within the ECLIPS to import expanded HIV testing data on a monthly basis from a location on the HDHHS HIV/STD server.

iv. incorporate 10 new required variables into the ECLIPS from the Centers for Disease Control and Prevention ("CDC") for counseling and testing. These new variables need to be incorporated in to the ECLIPS database, and added to the appropriate data entry screens. These variables will also need to be incorporated into the xml export file.

v. develop an informational dashboard for generating queries with visual results. The informational dashboard will be configured to access data associated with the ECLIPS, i.e., Rhapsody Connect, MAVEN, CPCDMS, and additional data system identified while expanding collaboration with HIV prevention, care, and treatment service providers in the Houston-Sugarland-Baytown MSA.

vi. provide maintenance, development, and support services for the ECLIPS and ECLIPS users, in addition to developing a structure within the ECLIPS to import expanded HIV testing data; incorporating variables for counseling and testing and incorporating these variables into the xml export file; and development of an informational dashboard into the ECLIPS, as mentioned above.

vii. in terms of additional maintenance, development, and support services for the ECLIPS, be required to provide 24 hour-a-day, 7-day-a-week, 365-day-per-year response to HDHHS requests for development, maintenance and support. When remote trouble shooting and maintenance capabilities are unable to resolve problems, NOVASYS will work with City of Houston Information Technology (IT) Department and the HDHHS IT Division during normal, evening or weekend hours in order to maintain system assets as requested by HDHHS. NOVASYS will respond to and begin work on, any ad-hoc development and maintenance requests from designated HDHHS project staff within two days unless the service need relates to a down Server, which then, response time will be within two hours of the request.

viii. when requested by HDHHS, provide development and support services to the ECLIPS to interface with data systems from HIV prevention, care, and treatment service providers in the Houston-Sugarland-Baytown MSA. As required, NOVASYS will work with City of Houston Information Technology (IT) Department and the HDHHS IT Division, to expand the ECLIPS interface capability with other HDHHS approved data systems within the Houston-Sugarland-Baytown MSA.

ix. provide designated HDHHS project staff with weekly updates concerning progress of contracted services: maintenance, development, and support services for the ECLIPS.

x. shall uphold the policies, rules, and regulations pertaining to the following:

- City of Houston Department of Health and Human Services (HDHHS)
- Health Insurance Portability and Accountability Act (HIPAA)
- Protected Health Information (PHI)
- Communicable Disease

- Confidentiality, Security, and Privacy of collected and shared data

xi. will uphold all contracts and signed agreements, made by HDHHS, with all organizations needed to carry out each of the project phases.

xii. ensure that ECLIPS will work in tandem with Rhapsody Connect, MAVEN, and other newly identified data systems within or outside HDHHS, to further expand data sharing capabilities with all Houston-Sugarland-Baytown MSA HIV prevention, care, and treatment service providers.

4. **City of Houston Department of Health and Human Services Responsibilities**

i. For the Initial Term of this Agreement, HDHHS shall be responsible for infrastructure development; out of scope acquisitions and maintenance; data cleansing; issue resolution through a central help desk; and creation of training manual and user level systems training. HDHHS will also be responsible for and will maintain the source code for the CPCDMS (the "Software Code") in the SYSTEM application. Additionally, HDHHS will uphold all contracts and signed agreements made with all organizations needed to deploy, implement, upgrade/modify, and maintenance ECLIPS. ECLIPS will be owned and hosted by HDHHS and managed by the BUREAU.

ii. The BUREAU will work closely with HDHHS IT Division, ensuring that system requirements and specifications are sufficient to allow the ECLIPS to successfully function as envisioned. Hardware and software outside NOVASYS' scope of services will be purchased and managed by the HDHHS with consultation from the IT Division. Issues relating to data sharing; Internet connectivity; security; and policies, rules, and regulations regarding protected health information will be addressed by the BUREAU in consultation with the HDHHS IT Division.

iii. HDHHS will work with HCPHES to manage, coordinate, and ensure good data systems to monitor and evaluate HIV prevention, care, and treatment services within the Houston-Sugarland-Baytown MSA.

5. **Out of Scope**

For clarity, the following items are considered Out of Scope for this project and will not be included in estimating project costs.

- Cyberlab changes. While the scope includes the SYSTEM accepting data from Cyberlab it does not account for how Cyberlab will provide the data.
- Reengineering of the Budget and Billing formulas and calculations. The existing Excel formulas and calculations will be reused in the development of the billing and budget modules.
- SAP integration. The Billing and Budget modules listed in scope will not interface with SAP.
- Production support of the system. NOVASYS will work with the HDHHS/Houston HIV Prevention Program and their IT resources to develop and execute a transition plan, so that knowledge of the system is transferred prior to and during implementation.
- Mileage is not included in the budget or contract for this project.

EXHIBIT B

PAYMENT AND PAYMENT SCHEDULE FOR SERVICES

- For and in consideration of the services rendered by Contractor under this Agreement, City shall pay Contractor an hourly rate of $145.00 up to a maximum contract amount of $263,030.00. Said hourly rate is intended to compensate Contractor for all time and expenses. All tools and supplies necessary in the provision of services under this Agreement shall be supplied by the Contractor at his own expense. In no event will the City be obliged hereunder to compensate Contractor more than $263,030.00, nor shall the Contractor be required to provide services hereunder which would entitle Contractor to compensation in excess of $263,030.00.

- For the first year of the contract that corresponds with the Scope of Services, HDHHS will pay a lump sum amount of $200,000.00 and Contractor shall invoice the City for ____ hours, and subsequently, $63,030.00 in the second year of the contract and Contractor shall invoice the City for ____ hours. Total hours to be invoiced by NOVASYS over the two-year contractual period will be 1,814 hours.

  Year 1 – HDHHS will pay Contractor a lump sum amount of $200,000.00

  Year 2 – HDHHS will pay Contractor a lump sum amount of $63,030.00

  Total Hours over the two-year contractual period - 1,814 hours

- Novasys shall spend at least ten percent (10%) of project time on-site at HDHHS or at one of the Houston HIV Prevention Program contractor sites within Houston/Harris County, as determined by the City. No minimum on-site charges or hour requirements are allowable (i.e., if the on-site service call involves only 15 minutes of billable work, then only 15 minutes may be billed).

EXHIBIT C

EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.

2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.

3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.

5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.

6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

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

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

EXHIBIT D

DRUG POLICY COMPLIANCE AGREEMENT

I, _____ as an officer or officer o f
(Name) (Print/Type) (Title)

_____ (Engineer)
(Name of Company)

Have authority to bind Engineer 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 Engineer 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 Engineer 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 Engineers (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 Engineer that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

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

_____
Date

_____
Engineer Name

_____
Signature

_____
Title

EXHIBIT E

DRUG POLICY COMPLIANCE DECLARATION

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

_____
(Engineer)

_____
(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____.

_____ 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 Engineers, 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_____.

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

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

_____ 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.

_____
(Date)

_____
(Typed or Printed Name)

_____
(Signature)

_____
(Title)

EXHIBIT F

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

_____, _____
(Name) (Title)

as an owner or officer of _____ (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.

_____ _____
(Date) (Typed or Printed Name)

_____
(Signature)

_____
(Title)

EXHIBIT G

FORM POP2 CERTIFICATION OF AGREEMENT TO COMPLY WITH PAY OF PLAY PROGRAM

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

EXHIBIT H

HIPAA BUSINESS ASSOCIATE AGREEMENT

This **HIPAA BUSINESS ASSOCIATE AGREEMENT** (the "BAA") is made and entered into by and between _____ ("Business Associate" or "Contractor") and the **CITY OF HOUSTON, TEXAS**, a home rule city of the State of Texas ("Covered Entity" or the "City"). This BAA supersedes and replaces any existing Business Associate Agreement between Covered Entity and Business Associate.

The purpose of this BAA is to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (codified at 45 C.F.R. Parts 160 and 164), as amended ("HIPAA"); privacy and security regulations promulgated by the United States Department of Health and Human Services ("DHHS"); Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, as amended ("HITECH Act"); and TEX. HEALTH & SAFETY CODE ANN. §§ 81.046, as amended, 181.001 *et seq.*, as amended, 241.151 *et seq.*, as amended, and 611.001 *et seq.*, as amended (collectively referred to herein as the "Privacy and Security Requirements").

A. Definitions.

1. "Confidential Information" is information that has been deemed or designated confidential by law (*i.e.*, constitutional, statutory, regulatory, or by judicial decision).

2. "Protected Health Information" ("PHI") is defined in 45 C.F.R. § 164.501 and is limited to information created or received by Contractor (*each party)* from or on behalf of the City *(the other party)*.

3. "Electronic Protected Health Information" ("EPHI") shall mean individually identifiable health information that is transmitted by or maintained in electronic media.

4. "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of Confidential Information, including, but not limited to, PHI and EPHI, or interference with the systems operations in an information system, including, but not limited to, information systems containing EPHI. This definition includes, but is not limited to, lost or stolen transportable media devices (*e.g.*, flash drives, CDs, PDAs, cell phones, and cameras), desktop and laptop computers, photographs, and paper files containing Confidential Information, including, but not limited to, PHI and EPHI.

B. General.

1. Contractor agrees to hold all PHI and EPHI confidential except to the extent that disclosure is required by Federal or State law, including the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended.

2. Contractor agrees to be bound by and comply with all applicable Federal and State of Texas licensing authorities' laws, rules, and regulations regarding records and governmental records, including the Privacy and Security Requirements. Compliance with this paragraph is at Contractor's own expense.

3. Contractor agrees to cooperate with state and federal agencies and to make appropriate personnel available for interviews, consultation, grand jury proceedings, pre-trial conferences, hearings, trials, and any other process, including investigations, required as a result of Contractor's services to the City. Compliance with this paragraph is at Contractor's own expense.

4. The terms used in this BAA shall have the same meaning as those terms in the Privacy and Security Requirements.

C. Representation. Contractor represents that it is familiar with and is in compliance with the Privacy and Security Requirements, which include Federal and State of Texas requirements governing information relating to _____ (*list applicable health subjects)*.

D. Business Associate. Contractor is a "Business Associate" of the City as that term is defined under the

Privacy and Security Requirements. Contractor specifically agrees to abide by all requirements of the Privacy Rule and Security Rule made applicable to Business Associate under HITECH as if Business Associate were a covered entity under HIPAA.

1. *Nondisclosure of PHI and EPHI.* Contractor agrees not to use or disclose PHI and EPHI received from or on behalf of the City or created, compiled, or used by Contractor pursuant to this Agreement other than as permitted or required by this BAA, or as otherwise required by law.

2. *Limitation on Further Use or Disclosure.* Contractor agrees not to further use or disclose PHI or EPHI received from or on behalf of the City or created, compiled, or used by Contractor pursuant to this BAA in a manner that would be prohibited by the Privacy and Security Requirements if disclosure was made by the City, or if either Contractor or the City is otherwise prohibited from making such disclosure by any present or future State or Federal law, regulation, or rule.

3. *Safeguarding PHI.* Contractor agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this BAA or as required by State or Federal law, regulation, or rule.

4. *Safeguarding EPHI.* Contractor agrees to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains, or transmits on behalf of the City. These safeguards shall include the following:

   a) Encryption of EPHI that Contractor stores and transmits;

   b) Implementation of strong access controls, including physical locks, firewalls, and strong passwords;

   c) Use of updated antivirus software;

   d) Adoption of contingency planning policies and procedures, including data backup and disaster recovery plans; and

   e) Conduct of periodic security training.

5. *Reporting Security Incidents.* Contractor agrees to report to the City any Security Incident **immediately** upon becoming aware of such. Contractor further agrees to provide the City with the following information regarding the Security Incident as soon as possible, but no more than five (5) business days after becoming aware of the Security Incident: (1) a brief description of what happened, including the dates the Security Incident occurred and was discovered; (2) a reproduction of the PHI or EPHI involved in the Security Incident; and (3) a description of whether and how the PHI or EPHI involved in the Security Incident was rendered unusable, unreadable, or indecipherable to unauthorized individuals either by encryption or otherwise destroying the PHI or EPHI prior to disposal. If Contractor determines that it is infeasible to reproduce the PHI or EPHI involved in the Security Incident, the Contractor agrees to notify the City in writing of the conditions that make reproduction infeasible and any information the Contractor has regarding the PHI or EPHI involved.

   Contractor agrees to cooperate in a timely fashion with the City regarding all Security Incidents reported to the City.

   The City will review all Security Incidents reported by Contractor.

   Contractor will take the following steps in response, to the extent necessary or required by law, including, but not limited to, (1) notifying the individual(s) whose PHI or EPHI was involved in the Security Incident, either in writing, via telephone, through the media, or by posting a notice on the City's website, or through a combination of those methods, of the Security Incident; and (2) providing the individual(s) whose PHI or EPHI was involved in the Security Incident with credit monitoring services for a period of time to be determined by the City, at no cost to the individuals.

   The City, to the extent necessary or required by law, will provide notice of the Security Incident, as required by law, to the Secretary of the United States Department of Health and Human Services

("HHS").

Contractor agrees to reimburse the City for all expenses incurred as a result of Contractor's Security Incidents, including, but not limited to, expenses related to the activities described above. Contractor agrees that the City will select the Contractors and negotiate the contracts related to said expenses.

6. *EPHI and Subcontractors.* Contractor shall require any agent to whom it provides PHI or EPHI, including a subcontractor, to agree to implement reasonable and appropriate safeguards to protect such PHI or EPHI. Further, Contractor agrees to give the City at least sixty (60) days advance notice of its intent to provide PHI or EPHI to an agent located outside of the United States.

7. *Subcontractors and Agents.* Contractor shall require any subcontractor or agent to whom Contractor provides PHI or EPHI received from or on behalf of the City or created, compiled, or used by Contractor pursuant to this BAA, to agree to the same restrictions and conditions that apply to Contractor with respect to such PHI and EPHI.

8. *Reciprocal Disclosures.* The Parties agree that the Parties may reciprocally disclose and use PHI or EPHI for initial and continuing eligibility and compliance determinations related to the provision of benefits, for auditing and legal compliance purposes, and for compliance with laws, regulations, and rules related to the provision of medical or drug benefits to persons who may be eligible for such benefits under the Medicare Prescription Drug Benefit Program, Part D, or other federal or State of Texas programs. The City agrees:

   a) to be bound by these provisions with regard to PHI or EPHI received from Contractor;

   b) to take disciplinary action against any employee whose willful act violates these provisions and results in an unlawful disclosure of PHI or EPHI.

9. *Mitigation.* Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI or EPHI by Contractor, or by a subcontractor or agent of Contractor, resulting from a violation of this BAA, including violations of the Privacy and Security Requirements stated herein. Contractor also agrees to inform the City in advance of its actual mitigation and of the details of its mitigation plan, unless doing so would cause additional harm.

10. *Notice – Access by Individual.* Contractor agrees to notify the City in writing within three (3) business days of any request by an individual for access to the individual's PHI or EPHI and, upon receipt of such request, direct the individual to contact the City to obtain access to the individual's PHI. Upon request by the City, Contractor agrees to make available PHI and EPHI to the City or, as directed by the City, to an individual in accordance with 45 C.F.R. § 164.524.

11. *Notice – Request for Amendment.* Contractor agrees to notify the City in writing within three (3) business days of any request by an individual for an amendment to the individual's PHI or EPHI and, upon receipt of such request from the individual, direct the individual to the City to request an amendment of the individual's PHI or EPHI. Contractor agrees to make available upon request PHI and EPHI for amendment and to incorporate any amendments to PHI and EPHI agreed to or directed by the City in accordance with 45 C.F.R. § 164.526.

12. *Notice – Request for Accounting.* Upon receipt of any request from an individual for an accounting of disclosures made of the individual's PHI or EPHI, Contractor agrees to notify the City in writing within three (3) business days of any such request, and upon receipt of such request from the individual, direct the individual to the City for an accounting of the disclosures of the individual's PHI or EPHI. Contractor agrees to make available upon request the information required to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528. Pursuant to 45 C.F.R. § 164.528(a), an individual has a right to receive an accounting of certain disclosures of PHI or EPHI in the six (6) years prior to the date on which the accounting is requested.

13. *HHS Inspection.* Upon written request, Contractor agrees to make available to HHS or its designee, Contractor's internal practices, books, and records relating to the use and disclosure of PHI and EPHI received from, or created or received on behalf of, the City in a time or manner designated by HHS for purposes of HHS determining the City's compliance with the Privacy and Security Requirements.

14. *City Inspection.* Upon written request, Contractor agrees to make available to the City and its duly authorized representatives during normal business hours Contractor's internal practices, books, records and documents relating to the use and disclosure of confidential information, including, but not limited to, PHI and EPHI received from, or created or received on behalf of, the City in a time and manner designated by the City for the purposes of the City determining compliance with the Privacy and Security Requirements. Contractor agrees to allow such access until the expiration of four (4) years after the services are furnished under the contract or subcontract or until the completion of any audit or audit period, whichever is later. Contractor agrees to allow similar access to books, records, and documents related to contracts between Contractor and organizations related to or subcontracted by Contractor to whom Contractor provides confidential information, including, but not limited to, PHI and EPHI received from, or created or received on behalf of, the City.

15. *PHI or EPHI Amendment.* Contractor agrees to incorporate any amendments, corrections, or additions to the PHI or EPHI received from or created, compiled, or used by the City pursuant to this BAA when notified by the City that the PHI or EPHI is inaccurate or incomplete, or that other documents are to be added as required or allowed by the Privacy and Security Requirements.

16. *Documentation of Disclosures.* Contractor agrees to document disclosure of PHI or EPHI and information related to such disclosures as is necessary for the City to respond to a request by an individual for an accounting of disclosures of PHI or EPHI in accordance with 45 C.F.R. § 164.528, as amended.

17. *Termination Procedures.* Upon termination of this BAA for any reason, Contractor agrees to deliver all PHI or EPHI received from the City or created, compiled, or used by Contractor pursuant to this BAA within thirty (30) days from the date of termination, or, if specially requested to do so by the City in writing, to destroy all PHI or EPHI within the time frame determined by the City, which will be no less than thirty (30) days from the date of the notice of termination. This provision applies when Contractor maintains PHI or EPHI from the City in any form. If Contractor determines that transferring or destroying the PHI or EPHI is infeasible, Contractor agrees:

    a) to notify the City of the conditions that make transfer or destruction infeasible;

    b) to extend the protections of this BAA to such PHI or EPHI; and

    c) to limit any further uses and disclosures of such PHI or EPHI to those purposes that make the return, or transfer to the City, or destruction infeasible.

18. *Notice-Termination.* Upon written notice to Contractor, the City may terminate any portion of the Agreement under which Contractor maintains, compiles, or has access to PHI or EPHI. Additionally, upon written notice to Contractor, the City may terminate the entire Agreement if the City determines, at its sole discretion, that Contractor has repeatedly violated a Privacy or Security Requirement.

E. Survival of Privacy Provisions. Contractor's obligations with regard to PHI and EPHI shall survive termination of this BAA and the Agreement.

F. Amendment Related to Privacy and Security Requirements. The Parties agree to take such action as is necessary to amend this BAA if the City, in its reasonable discretion, determines that amendment is necessary for the City to comply with the Privacy and Security Requirements or any other law or regulation affecting the use or disclosure of PHI or EPHI. Any ambiguity in this BAA shall be resolved to permit the City to comply with the Privacy and Security Requirements.

G. Indemnification. Contractor agrees to indemnify and hold harmless the City and its officers, employees, and agents (individually and collectively "Indemnitees") against any and all losses, liabilities, judgments, penalties, awards, and costs (including costs of investigations, legal fees, and expenses) arising out of or related to:

1. **a breach of this BAA relating to the Privacy and Security Requirements by Contractor; or**

2. **any negligent or wrongful acts or omissions of Contractor or its employees, directors, officers, subcontractors, or agents, relating to the Privacy and Security Requirements, including failure to perform their obligations under the Privacy and Security Requirements.**

H. Electronic Mail Addresses. Contractor affirmatively consents to the disclosure of its e-mail addresses that are provided to the City, including any agency or department of the City. This consent is intended to comply with the requirements of the Texas Public Information Act, TEX. GOV'T CODE ANN. § 552.137 *et seq.*, as amended, and shall survive termination of this BAA. This consent shall apply to e-mail addresses provided by Contractor and agents acting on behalf of Contractor and shall apply to any e-mail address provided in any form for any reason whether related to this BAA or otherwise.

I. Except as otherwise limited in this BAA, Contractor may use or disclose Protected Health Information it creates or receives from or on behalf of the City to provide the services to or on behalf of the City set out in the Agreement to which this BAA is attached.

J. This BAA survives the termination of the Agreement and expires when all of the PHI provided by the City to Contractor is returned to the City.

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

WITNESS:

By:_____
Name:
Title:

(BUSINESS ASSOCIATE)

By: [signature]
Name: RAM TACKETT
Title: PRESIDENT
Tax Identification No. 75-3049856

ATTEST/SEAL:

_____
City Secretary

(COVERED ENTITY)
CITY OF HOUSTON, TEXAS
Signed by:

_____
Mayor

APPROVED:

_____
Director,
Department of _____

COUNTERSIGNED BY:

_____
City Controller

APPROVED AS TO FORM:

_____
Assistant City Attorney
L.D. File No.

DATE COUNTERSIGNED:

_____

EXHIBIT I

NOTICE OF AWARD