

460001366
2012-0615

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

KNOW ALL BY THESE PRESENTS:

I. PARTIES

Section 1.1 Address

THIS CONTRACT FOR MYSTERY SHOPPING SERVICES for the Houston Airport System ("Contract"), is made and entered into on the date of countersignature by the City Controller ("Effective Date") by and between the **CITY OF HOUSTON, TEXAS**, ("City") a home-rule city by and through its governing body, and **EVALUATION SYSTEMS FOR PERSONNEL, INC.**, ("Contractor") a corporation authorized to do business in Texas.

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

City
Director of Houston Airport System
City of Houston
P. O. Box 60106
Houston, Texas 77205-0106

Contractor
Evaluation Systems for Personnel, Inc.
2620 Fountain View Drive, Suite 302
Houston, Texas 77057

Section 1.2 Index

The City and Contractor hereby agree to the terms and conditions of this Contract. This Contract consists of the following articles:

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Section 1.3 Parts Incorporated

All of the above described articles and exhibits are hereby incorporated into this Contract by this reference for all purposes.

Section 1.4 Controlling Parts

In the event of any conflict or inconsistency between or among the provisions of such articles or exhibits, it is agreed that the provisions of the Contract shall control over the provisions of the exhibits.

Section 1.5 Signatures

IN WITNESS HEREOF, the City and Contractor have made and executed this Contract in three (3) copies, each of which is an original.

EVALUATION SYSTEMS FOR PERSONNEL, INC. "Contractor")

ATTEST/SEAL:

By: G.D. BLUMENTHAL
Name: G.D. Blumenthal
Title: VP/Sec
Federal Taxpayer ID No. 20-5737238

By: S. BLUMENTHAL
Name: S. Blumenthal
Title: PRESIDENT

CITY OF HOUSTON, TEXAS ("City")

ATTEST/SEAL:

Annise D. Parker
Mayor M. Parker

Mark Russell
City Secretary

APPROVED:

COUNTERSIGNED BY:

Maudie
Director, Houston Airport System

Ronald C. Shew
City Controller R.C. Shew

APPROVED

Alvin Swill
City Purchasing Agent

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

[Signature]
Sr. Assistant City Attorney
L.D. File No. 0041200097001

7-9-12

II. DEFINITIONS

Certain Terms As used in this Contract, the following terms have meanings as given below:

"**Allocated Funds**" is defined in Section 4.2 herein.

"**City**" is defined in Article I hereof and includes its successors and assigns.

"**City Council**" means the governing body of the City of Houston, Texas.

"**Contract**" means this document including all exhibits, as may be amended from time to time by written agreement of the parties hereto.

"**Contractor**" is defined in Article I hereof and includes its successors and assigns.

"**Department**" or "**HAS**" means the Houston Airport System.

"**Director**" means the Director of HAS or his designee.

"**Effective Date**" is defined in Article I hereof.

"**Force Majeure**" means any condition described in Section 6.2.

"**Scope of Services**" is defined in Article III and Exhibit "A" hereof.

"**Term**" is defined in Section 5.1 herein.

III. DUTIES OF CONTRACTOR

Section 3.1 Scope of Services - General

In consideration of the payments specified in this Contract,

Contractor shall provide all labor, material, and supervision necessary to perform the services described in Exhibit "A".

Section 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 Contract.

Section 3.3 Reports

Contractor shall submit all reports and progress updates set forth in Exhibit "A".

Section 3.4 Time of Performance

The Director shall provide Contractor a written Notice to Proceed specifying a date to begin performance and Contractor shall begin its performance no later than such specified date.

Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s). Contractor acknowledges that time is of the essence.

Section 3.5 Contractor's Duty to Pay Subcontractors

Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Contract. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.**

Section 3.6 Personnel of Subcontractors

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

Contractor and its subcontractors personnel shall conform to all Airport security regulations at all times while on the Airport if applicable.

Section 3.7 **RELEASE AND INDEMNIFICATION**

EXCEPT FOR THE CITY'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT, 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.

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 FOR THE DURATION OF THIS RIGHT OF ACCESS AGREEMENT AND FOR FOUR YEARS AFTER IT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$1,000,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

Section 3.8 **INDEMNIFICATION PROCEDURES**

- (1) Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:
 - (a) a description of the indemnification event in reasonable detail,
 - (b) the basis on which indemnification may be due, and
 - (c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

- (a) Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.
- (b) Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

Section 3.9 SUBCONTRACTORS' INDEMNIFICATION

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

Section 3.10 Insurance

3.10.1 Minimum Insurance Requirements. Contractor shall maintain the following coverages in the following amounts:

<u>(COVERAGE)</u>	<u>(LIMIT OF LIABILITY)</u>
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	Bodily Injury by Accident \$500,000 (each accident) Bodily Injury by Disease \$500,000 (policy limit)

(COVERAGE)

(LIMIT OF LIABILITY)

	Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury; and Completed Operations Coverage	Bodily Injury and Property Damage, Combined Limits of \$500,000 each Occurrence, and \$1,000,000 aggregate
Automobile Liability Insurance:	\$500,000 combined single limit for (1) any auto or (2) all owned, hired, and non-owned autos

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

3.10.2 Form of Policies. The insurance may be in one or more policies of insurance, the form of which must be approved by the Director and City Attorney; however, such approval shall never excuse non-compliance with the terms of this Section.

3.10.3 Issuers of Policies. The issuer of any policy shall have (1) a Certificate of Authority to transact insurance business in Texas, or (2) shall be an eligible non-admitted insurer in 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.

3.10.4 Insured Parties. Each policy, except those for Workers' Compensation, Employer's Liability, and Professional Liability, must name the City (and its officers, agents and employees) as Additional Insured parties on the original policy and all renewals or replacements.

3.10.5 Deductibles. Contractor shall be responsible for and pay any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, agents, or employees.

3.10.6 Cancellation. Contractor shall notify the Director in writing 30 days prior to any cancellation or reduction in coverage or limits to Contractor's insurance coverage. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled

or nonrenewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, as his or her sole discretion, may:

3.10.6.1 immediately suspend Contractor from any further performance under this Contract and begin procedures to terminate for default, or

3.10.6.2 purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Contract.

3.10.7 Subrogation. Each policy, except Professional Liability, must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees.

3.10.8 Endorsement of Primary Insurance. Each policy, except Workers' Compensation and Professional Liability, must contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Contract. Certificates of Insurance shall be accompanied by endorsements for additional insured coverage and waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and Workers Compensation/Employers' Liability. Endorsement forms that are acceptable include CG2404, CA0403, CAT353, and WC 42304A.

3.10.9 Liability for Premium. Contractor shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.

3.10.10 Subcontractors. Contractor shall require all subcontractors, whose subcontracts exceed \$100,000.00, to carry insurance naming the City as an additional insured (to the same extent it is required of Contractor) and meeting all of the above requirements except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per occurrence. Contractor shall provide copies of insurance certificates to the Director.

3.10.11 Delivery of Policies.

3.10.11.1 At the time this Contract is signed and as long as this Contract continues, Contractor must furnish to the Director certificates of insurance, together with all endorsements, that meet the requirements of Section 3.10 of this Contract. These certificates must bear the Contractor's name for which they are insured. If requested by the Director, Contractor must provide, at a mutually agreeable location, the originals of all policies referred to above, or copies certified by the agent or attorney-in-fact issuing them. Notwithstanding the immediately foregoing sentence, City acknowledges that proprietary information in any such

policies will be redacted by Contractor prior to disclosure to City and that City will be required to execute a mutually agreeable non-disclosure agreement prior to any such disclosure. Contractor shall provide updated certificates of insurance to the Director upon request. Every certificate of insurance Contractor delivers for the Project shall:

- (1) be less than 12 months old;
- (2) include all pertinent identification information for the Insurer, including the company name and address, policy number, NAIC number or AMB number, and authorized signature ;
- (3) include the Project name and reference numbers and indicates the name and address of the Project Manager in the Certificate Holder Box; and
- (4) be appropriately marked to accurately identify
 - i) all coverages and limits of the policy;
 - ii) effective and expiration dates; and
 - iii) waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and Worker's Compensation /Employers' Liability.

3.10.11.2 Contractor shall continuously and without interruption, maintain in force the required insurance coverage specified in this Section. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may:

- (1) immediately suspend Contractor from any further performance under this Contract 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 Contract.

3.10.11.3 The City shall never waive or be stopped to assert its rights to terminate this Contract because of its acts or omissions regarding its review of insurance documents.

3.10.11.4 Contractor shall, upon the City's request, deliver an assurance letter from -Contractor's insurer stating that the insurer intends to issue Contractor a new policy that meets the terms of this Article.

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

Section 3.11 Warranties

Contractor's performance shall conform to the professional standards prevailing in the United States with respect to the scope, quality, due diligence, and care of the services and products Contractor provides under this Contract.

Section 3.12 Confidentiality

Contractor and its subcontractors shall hold all City information, data, and documents (collectively, "Information") that they receive, or to which they have access, in strictest confidence. Contractor and its subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing.

Section 3.13 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.

Section 3.14 Compliance with Laws

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

Section 3.15 Compliance with Equal Opportunity Ordinance

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

Section 3.16 Access to Site

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

Section 3.17 Security

Contractor shall comply with all HAS, TSA, FAA and other governmental agency security directives, rules, and regulations in performance of services under this Contract. Contractor shall be responsible for any requirements (and costs associated therewith, including

the cost of badging) of the FAA and the HAS (as applicable) regarding employee background checks and badging.

Section 3.18 Use of Parking Areas

Contractor is granted the right to use reasonably convenient vehicular parking areas at locations designated by the Director for use by Contractor's employees and its subcontractors, at Contractor's expense. It will be the responsibility of the Contractor to secure the required parking for its employees as it deems appropriate.

Section 3.19 MWBE Compliance

Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 17% of the value of this Contract to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Affirmative Action Division and will comply with them.

Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration to be conducted in Houston, Texas, if directed to do so by the Mayor's Office of Business Opportunity. MWBE subcontracts must contain the terms set out in Exhibit "D". If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

IV. DUTIES OF CITY

Section 4.1 Payment for Contractor Services

(a) Throughout the Term of the Contract, the City shall pay Contractor for its services and its subcontractor's services at the rates per visit set forth in Exhibit "B" and the not to exceed amounts set forth in Exhibit "B" for the recognition program described in Exhibit "A". Payment for visits shall be based upon invoices showing actual number of visits at each concession multiplied by particular rate set forth in Exhibit "B" and any other information required by the Director. Payment for the recognition program shall be based on invoices received from Contractor setting forth details of the cost, Contractor's charges, and any other information required by the Director.

(b) All invoices are subject to approval by the Director and are due and payable on or about thirty (30) days after receipt and approval by Director. Contractor shall not invoice the City more often than biweekly. The City agrees that it will not unreasonably withhold or delay approval of payment of any invoice. Payments shall be made by check at Contractor's address as listed in Article I and shall be subject to Tex. Gov't Code Ann. § 2251 (Vernon 1994).

Section 4.2. Limit of Appropriation

4.2.1 The fees specified in Article 4 above are Contractor's total compensation for its services under this Contract. Contractor recognizes that, under the City's Charter, the City may not obligate itself by contract to pay more money than the amount the City Council appropriates, and further recognizes that the City Council has appropriated and allocated only

\$100.00

to pay for all services under this Contract. Unless the City Council makes further appropriations for this Contract, the City's obligation to Contractor under this Contract must not exceed \$436,262.76. With no intent to obligate the City or modify any terms and conditions of this Contract, it is currently anticipated that during the Term, this Contract will be supplemented by an additional amount(s), at the sole discretion of City Council.

4.2.2 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

4.2.2.1 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 Contract 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.

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4.2.3 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 Contract, and it has no other remedy in

law or in equity against the City and no right to damages of any kind.

4.2.4 City Council delegates to the Director the authority to approve up to \$436,162.76 in supplemental allocations for this Contract without returning to Council.

4.2.5 The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Contract 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 Contract and it has no other remedy in law or in equity against the City and no right to damages of any kind.

Section 4.3 Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor 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.

Section 4.4 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 Contract.

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.

Section 4.5 Publicity

Contractor shall make no announcement or release of information concerning this Contract or any of its services until such release has been submitted to and approved in writing by the Director.

V. TERM AND TERMINATION

Section 5.1 Term

Unless sooner terminated in accordance with the terms and conditions herein, the term of this Contract shall commence on the Effective Date and shall continue for five continuous years thereafter ("Term").

Contractor acknowledges and agrees that any services it provides to the City after the termination date of this Contract, unless an extension of time has been granted, will be deemed to

be gratuitously provided, and the City shall have no obligation to pay for such services unless the City Council, in its sole discretion, approves an agreement to do so.

Section 5.2 Termination for Convenience by the City

The Director of HAS may terminate this Contract at any time by giving 24 hours' written notice to Contractor. Upon receipt of the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Contract and cancel all existing orders and subcontracts that are chargeable to this Contract. As soon as practicable after receiving notice of termination, Contractor shall submit an invoice showing in detail the services performed under this Contract up to the date of termination. The City shall then pay the prescribed fees to Contractor for any 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 Contract.

TERMINATION OF THIS CONTRACT 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 CONTRACT. 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.

Section 5.3 Termination by City for Contractor's Default

If Contractor-defaults and (1) the Director sends notice of the default as provided below and (2) Contractor does not cure the default, then, the City may terminate its performance under this Contract. Default by Contractor occurs if:

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

If a default occurs, the Director should deliver a written notice to Contractor describing the default and the proposed termination date. The date must be at least 14 days after Contractor's receipt of the notice. The Director, at his or her sole option, may extend the

proposed termination date to a later date. If Contractor cures the default to the Director's satisfaction before the proposed termination date, then the proposed termination is ineffective. If Contractor does not cure the default before the proposed termination date, then the Director may terminate the City's performance under this Contract on the termination date, at no further obligation of the City. If Contractor defaults 3 times, the City may, at the Director's discretion, terminate this Contract upon 10 days written notice to Contractor by the Director, regardless of whether Contractor cures the default(s) or not.

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 Contract, and promptly cancel all orders or subcontracts chargeable to this Contract.

Section 5.4 Termination by Contractor for City's Default

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

VI. MISCELLANEOUS

Section 6.1 Independent Contractor

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

Section 6.2 Force Majeure

6.2.1 Timely performance by both parties is essential to this Contract. However, neither party is liable for delays or other failures to perform its obligations under this Contract to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, and other acts of God, explosions, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.

6.2.2 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
- (b) provides the other party with prompt written notice of the cause and its anticipated effect.

6.2.3 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 Contract by the City.

6.2.4 If the Force Majeure continues for more than 7 days from the date performance is affected, the Director may terminate this Contract by giving 7 days' written notice. This termination is not a default or breach of this Contract. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.**

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

Section 6.3 Severability

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

Section 6.4 Entire Agreement

This Contract 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 Contract.

Section 6.5 Written Amendment

Unless otherwise specified elsewhere in this Contract, this Contract 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 Contract.

Section 6.6 Applicable Law

This Contract 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 of America, and all rules and regulations of any regulatory body or officer having jurisdiction.

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

Section 6.7 Notices

All notices required or permitted by this Contract 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 Contract or at such other address as the receiving party designates by proper notice to the sending party.

Section 6.8 Captions

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

Section 6.9 Non-Waiver

If either party fails to require the other to perform a term of this Contract, 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 Contract.

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 Contract or establish a standard of performance other than that required by this Contract and by law. The Director is not authorized to vary the terms of this Contract.

Section 6.10 Inspections and Audits

City representatives may have the right to perform, or to have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Contract for the purpose of determining compliance with this Contract. Contractor shall keep its books and records available for this purpose for at least 3 years after this Contract terminates. This provision does not affect the applicable statute of limitations.

Section 6.11 Enforcement

The City Attorney or his or her designee may enforce all legal rights and obligations under this Contract 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 Contract, with the exception of those documents made confidential by federal or State law or regulation.

Section 6.12 Ambiguities

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

Section 6.13 Survival

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

Section 6.14 Parties In Interest

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

Section 6.15 Successors and Assigns

This Contract 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 Contract does not create any personal liability on the part of any officer or agent of the City.

Section 6.16 Business Structure and Assignments

Contractor shall not assign this Contract 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 Contract without the Director's prior written consent.

Section 6.17 Non-discrimination

Contractor agrees that it shall comply with the applicable non-discrimination provisions required by the United States of America, including but not limited to the provisions of 49 CFR Part 21 and 49 CFR Part 21, Appendix C (a)(1). This provision is inclusive of any amendments which may be made to such regulations.

Section 6.18 Remedies Cumulative

Unless otherwise specified elsewhere in this Contract, the rights and remedies contained in this Contract 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 Contract except in accordance with its provisions.

Section 6.19 Contractor's Debt

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

Section 6.20 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 Contract by reference. Contractor has reviewed Executive Order 1-7 and shall comply with its terms and conditions. Contractor shall include the foregoing language in its agreements with its subcontractors whose subcontracts have a dollar value of \$200,000 or more. Contractor shall complete and submit to the Director POP-2 Form on or before execution of this Contract. POP-2 is available at <http://www.houstontx.gov/obo/popforms.html>.

EXHIBIT "A"
SCOPE OF SERVICES

1.0 BASIC SERVICES

1.1 The Houston Airport System currently has ninety-nine (99) concession locations to be covered by this Agreement: eighty (80) at IAH and nineteen (19) at HOU. HAS owns six (6) parking facilities: five (5) at IAH and one (1) at HOU. Mystery shoppers shall visit three (3) shared ride shops (includes counters and van service/ride experience) at IAH and two (2) at HOU. Increases or decreases in the number of concession locations, parking facilities and shared ride shops shall have no effect on the unit prices set forth in Exhibit "B".

1.2 Contractor shall evaluate through mystery shoppers each concession location, each parking facility and five (5) shared ride shops one time every month. In his sole discretion throughout the term, the Director may elect to increase or decrease the number of visits for each category in 1.1 above.

1.3 **RECOGNITION PROGRAM**

1.3.1 Contractor shall develop a written Recognition Program to be submitted to the Director for his review and approval. The foundation of the program will be to increase concessionaires employee productivity, performance, morale, and attendance with quarterly and annual events for which budgets are established and approved by the Director in advance (not to exceed the annual amounts set forth in Exhibit "B").

1.4 **MYSTERY SHOPPING ACTIVITIES**

1.4.1 **Develop Evaluation Forms**

Contractor shall develop different evaluation forms for the different categories set forth in 1.1 above. At a minimum, Contractor shall produce appropriate evaluation forms for retail services, food and beverage, and parking concessions, and transportation services. The evaluation forms shall include, at a minimum, criteria such as level of customer service, sales skills of personnel, facility and staff appearance, and staff knowledge of products, services and familiarity with the particular airport. Contractor may incorporate other criteria. Proposed evaluation forms developed by Contractor shall be sent to the Director for his review and approval prior to use by the Contractor. Any changes required by the Director shall be incorporated into the evaluation forms prior to implementation. Any changes to the forms throughout the term that Contractor desires subsequent to the initial approval of the Director must first be approved by him prior to implementation.

1.4.2 Development of Guidelines for Mystery Shoppers

The Contractor shall develop guidelines for mystery shoppers which shall be sent to the Director for his review and approval prior to implementation. Any guideline modifications that Contractor desires throughout the term must also be approved by the Director prior to implementation.

1.4.3 Mystery Shoppers and Project Manager

1.4.3.1 Contractor shall provide qualified, trained and experienced mystery shoppers, and a project manager who is authorized to act on behalf of the Contractor in all matters pertaining to this Agreement. Any mystery shoppers who are deemed unsuitable by the Director shall be removed by Contractor from further performance under this Agreement.

1.4.3.2 The name and address of the project manager shall be submitted to the Director prior to beginning performance under this Agreement. The project manager shall be the contact person for the Director. Director shall have the right to request that the project manager or any replacement project manager be removed from this Agreement.

1.4.4 Scheduling of Mystery Shoppers

The Contractor shall develop mystery shopping schedules based on random sampling days, times, and locations. Shoppers shall be scheduled on a rotating basis (days, times, and locations) to prevent the disclosure of the shopper's identity by the employees being evaluated. The Contractor shall provide a monthly schedule of mystery shopping visits to the Director for his review and approval prior to implementation.

1.4.5 Mystery Shopping Evaluations

With the exception set forth in Section 1.4.6 below, the Contractor shall review and edit all completed mystery shopping evaluations. The Director shall be provided password-protected electronic access to edited evaluations within ten (10) days of each employee's evaluation.

1.4.6 Unacceptable Findings

Unacceptable evaluations or observations shall be reported to the Commercial Development Division of HAS within twenty-four (24) hours of such evaluation or observation. Unacceptable evaluations or observations include, but are not limited to, actual or potential employee thefts, or exceptionally poor service experiences.

1.4.7 Develop Quantitative Statistical Reports

During the term, The Contractor shall develop and provide quarterly statistical reports that will convey substantive information obtained from mystery shopping activities. The statistical report format shall be reviewed and approved by the Director prior to implementation.

1.4.8 Computer-Generated Comparative Data Reports

During the term of this Agreement, the Contractor shall provide monthly data reports (within 5 days of the end of each reporting month), quarterly summary reports within 10 days of the conclusion of each Agreement quarter and an annual report due with 20 days of the conclusion of each Agreement year. [and when otherwise requested by HAS for comparative analysis]. Data reports, at a minimum, shall include concession identification number, type of concession, location of concession and date and time of activity. Parking reports shall include entry point, cashier booth number and date and time of activity. Shared ride reports shall include shuttle number, shuttle driver and date and time of activity. The reports provided to HAS shall be:

1.4.8.1 In electronic spreadsheet, graphic, and executive summary formats.

1.4.8.2 Easily summarized, sorted, filtered, and copied by HAS.

1.4.8.3 In Microsoft Word® and/or Excel®.

1.4.8.4 NOT to be “read-only.”

1.4.8.5 The Contractor shall provide data summary reports that include:

1.4.8.5.1 Performance overview (question-by-question analysis) per unit, per concept.

1.4.8.5.2 Criteria comparison graphics (with a three (3) month trend) per unit, per concept.

2.0 SPECIAL PROVISIONS

2.1 The Contractor shall comply with all applicable Federal rules governing security at the Airport, as may be amended from time to time.

2.2 All Contractor on-site personnel, including subcontractors that perform services under this Agreement, are required to undergo a fingerprint-based criminal history records check. Fingerprints shall be collected at the Airport Badging Office.

2.3 The Contractor shall obtain HAS security badges for all personnel performing services on-site, including subcontractor’s personnel. The cost of badges, which is subject to change, is currently \$55.00 each at IAH and HOU. Costs for the fingerprint-based criminal history records check are reflected in the cost of the badges. Contractor is responsible for the cost of badges, including replacements thereof. Personnel losing badges shall be charged for replacement badges at the then-current rate. Badge is valid for one year and renewable at the prevailing cost. Current annual renewal cost for each badge is \$16.00.

2.4 Contractor’s employees shall park at locations designated by the Director, at Contractor’s expense.

3.0 ADDITIONS & DELETIONS

- 3.1 The City, by written notice from the Director to the Contractor, at any time during the term of this Agreement, may add or delete like or similar locations and/or services to the list of locations and/or services to be provided. Any such written notice shall take effect on the date stated in the notice from the Director. Similar services, or locations added to the contract shall be the same as specified in the fee schedule. In the event that the additional locations and/or services are not identical to the item(s) already under contract, the charges therefore will then be the Contractor's normal and customary rates for the locations and/or services classified in the fee schedule.

EXHIBIT "B"
FEE SCHEDULE

BASIC SERVICES

(IAH)

YEAR ONE

<u>Concession Description</u>	<u>Est. Annual mystery shopper visits</u>	<u>Unit Price Per Visit</u>
News/Gift/Specialty (28)	336	\$41.50
Food & Beverage (42)	504	\$43.50
Duty Free (4)	48	\$42.50
Services (6)	72	\$42.50
Parking (5)	60	\$39.95
Shared Ride Service	36	\$94.00

(HOU)

YEAR ONE

News/Gift/Specialty (7)	84	\$41.50
Food & Beverage (10)	120	\$43.50
Services (2)	24	\$42.50
Parking (1)	12	\$39.95
Shared Ride Service	24	\$94.00

BASIC SERVICES

(IAH)

YEAR TWO

<u>Concession Description</u>	<u>Est. Annual mystery shopper visits</u>	<u>Unit Price Per Visit</u>
News/Gift/Specialty (28)	336	\$43.16
Food & Beverage (42)	504	\$45.24
Duty Free (4)	48	\$44.20
Services (6)	72	\$44.20
Parking (5)	60	\$41.55
Shared Ride Service	36	\$97.76

(HOU)

YEAR TWO

News/Gift/Specialty (7)	84	\$43.16
Food & Beverage (10)	120	\$45.24
Services (2)	24	\$44.20
Parking (1)	12	\$41.55
Shared Ride Service	24	\$97.76

BASIC SERVICES

(IAH)

YEAR THREE

<u>Concession Description</u>	<u>Est. Annual mystery shopper visits</u>	<u>Unit Price Per Visit</u>
News/Gift/Specialty (28)	336	\$44.89
Food & Beverage (42)	504	\$47.05
Duty Free (4)	48	\$45.97
Services (6)	72	\$45.97
Parking (5)	60	\$43.21
Shared Ride Service	36	\$101.67

(HOU)

YEAR THREE

News/Gift/Specialty (7)	84	\$44.89
Food & Beverage (10)	120	\$47.05
Services (2)	24	\$45.97
Parking (1)	12	\$43.21
Shared Ride Service	24	\$101.67

BASIC SERVICES

(IAH)

YEAR FOUR

<u>Concession Description</u>	<u>Est. Annual mystery shopper visits</u>	<u>Unit Price Per Visit</u>
News/Gift/Specialty (28)	336	\$46.68
Food & Beverage (42)	504	\$48.93
Duty Free (4)	48	\$47.81
Services (6)	72	\$47.81
Parking (5)	60	\$44.94
Shared Ride Service	36	\$105.74

(HOU)

YEAR FOUR

News/Gift/Specialty (7)	84	\$46.68
Food & Beverage (10)	120	\$48.93
Services (2)	24	\$47.81
Parking (1)	12	\$44.94
Shared Ride Service	24	\$105.74

BASIC SERVICES

(IAH)

YEAR FIVE

<u>Concession Description</u>	<u>Est. Annual mystery shopper visits</u>	<u>Unit Price Per Visit</u>
News/Gift/Specialty (28)	336	\$48.55
Food & Beverage (42)	504	\$50.89
Duty Free (4)	48	\$49.72
Services (6)	72	\$49.72
Parking (5)	60	\$46.74
Shared Ride Service	36	\$109.97

(HOU)

YEAR FIVE

News/Gift/Specialty (7)	84	\$48.55
Food & Beverage (10)	120	\$50.89
Services (2)	24	\$49.72
Parking (1)	12	\$46.74
Shared Ride Service	24	\$109.97

RECOGNITION PROGRAM (IAH and HOU)

	Maximum Annual Amount Payable for the Recognition Program
Agreement Year One	\$ 21,335.00
Agreement Year Two	\$ 22,188.40
Agreement Year Three	\$ 23,075.94
Agreement Year Four	\$ 23,998.97
Agreement Year Five	\$ 24,958.93

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

EXHIBIT "D"
MWBE SUBCONTRACT TERMS

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

1. Wallin Personnel Services (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. Wallin Personnel Services (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of subcontractor's books and records, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep its 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 5 business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given under Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of the agent.

4. Any controversy between the parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract must, upon the written request of one party served upon the other or upon notice by the 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 must 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 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 the American Arbitration Association on file in the City's Affirmative Action Division Office.

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 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.

Vicki Wallin
Wallin Personnel Services

EXHIBIT "E"
DRUG POLICY COMPLIANCE AGREEMENT

I, E.D. BLUMENTHAL VP/Sec as an owner or officer of
(Name) (Print/Type) (Title)
EVALUATION SYSTEMS for PERSONNEL 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.

6/5/2012
Date

E.D. BLUMENTHAL
Contractor Name
[Signature]
Signature
VP/Sec
Title

EXHIBIT "G"

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

I, G.D. BLUMENTHAL VP/Sec. as an owner or officer of
(Name) (Print/Type) (Title)

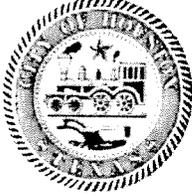
EVALUATION SYSTEMS FOR PERSONNEL INC (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has fewer than fifteen (15) employees during any 20-week period during a calendar year and also certify that Contractor has no employee safety impact positions 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.

6/6/2012
DATE

G.D. BLUMENTHAL
Contractor Name
[Signature]
Signature
VP/Sec.
Title

EXHIBIT "H"

Document 00460
(Form POP-1A)



City of Houston

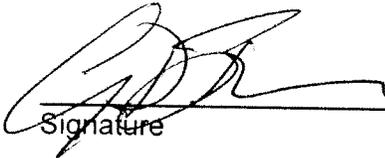
Pay or Play Program
Acknowledgement Form

What this form does. This form acknowledges your awareness of the Pay or Play program. Your signature affirms that you will comply with the requirements of the program if you are the successful bidder/proposer, and ensure the same on behalf of subcontracts subject to the Pay or Play Program.

For more information, contact the Contract Administrator.

Routing. Return this form with your bid or proposal.

I declare under penalty of perjury under the laws of the State of Texas that if awarded a contract, I will comply with the requirements of the Pay or Play Program.


Signature

6/5/2012
Date

G.D. BLUMENTHAL
Print Name

137841
City Vendor ID

EVALUATION SYSTEMS for PERSONNEL INC
Company Name

(713) 528 3730
Phone Number

gblum@espshop.com
Email Address



**CERTIFICATION OF AGREEMENT TO
COMPLY WITH PAY OR PLAY PROGRAM**

Contractor Name: EVALUATION SYSTEMS & PERSONNEL INC \$ 436,262.76
(Contractor/Subcontractor) (Amount of Contract)

Contractor Address: 2620 FOUNTAIN VIEW DR. #302 HOUSTON, TX 77057

Project No.: [GFS/CIP/AIP/File No.] S10-T24084

Project Name: [Legal Project Name] MYSTERY SHOPPER SERVICES

In accordance with the City of Houston Pay or Play Program authorized by Ordinance 2007-534, Contractor agrees to abide by the terms of this Program. This certification is required of all contractors for contracts subject to the program. You must agree EITHER to PAY or to PLAY for each covered employee, including those of subcontractors subject to the program.

Yes No Contractor agrees to Pay \$1.00 per hour for work performed by covered employees under the contract with the City and to ensure compliance by covered subcontractors and contract labor to the terms of the Pay or Play Program.

Yes No Contractor agrees to provide health benefits to each covered employee and ensure compliance by the covered subcontractors. The health benefits must meet the following criteria:
(1) the employer will contribute no less than \$150 per employee per month toward the total premium cost; and
(2) the employee contribution, if any amount, will be no greater than 50% of the total premium cost and no more than \$150 per month.

Yes No Contractor agrees to pay on behalf of some covered employees and contract labor and play on behalf of other covered employees, in accordance with program requirements, including subcontractors' employees, if applicable. (NOTE: IF YOU SELECT YES ON THIS OPTION PLEASE CHECK YES ON THE ABOVE TWO OPTIONS "AGREES TO PAY AND AGREES TO PROVIDE HEALTH BENEFITS")

Yes No If contract labor is utilized the Contractor agrees to report hours worked by the contract laborer and Pay \$1.00 per hour for work performed.

Yes No Contractor will comply with all provisions of the Pay or Play Program and will furnish all information and reports requested to determine compliance with program provisions.

Yes No For Prime Contractors Only: Contractor will file compliance reports with the City, which will include activity for subcontractors subject to the program, in the form and to the extent requested by the administering department or the Office of Business Opportunity. Compliance reports shall contain information including, but not limited to, documentation showing employee health coverage and employee work records.

*Estimated Number of:	Prime Contractor	Sub-Contractor
Total Employees on City Job	2	1
Covered Employees	2	
Non-Covered Employees		
Exempt Employees		1

*Required

I hereby certify that the above information is true and correct.

[Signature]
CONTRACTOR (Signature)

6/6/2012
DATE

G.D. BLUMENHALL VP/Sec.
NAME AND TITLE (Print or type)