**THE STATE OF TEXAS**

**COUNTY OF HARRIS**

**BID # S30-L22367**
**ORDINANCE #** 2013-464
**CONTRACT #** 4600012122

## I. PARTIES

### 1.0 ADDRESS:

**THIS AGREEMENT FOR DEMOLITION SERVICES FOR THE CITY OF HOUSTON** ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a Texas Home-Rule City and **CHERRY MOVING COMPANY, INC., DBA CHERRY DEMOLITION** ("Contractor "), a corporation doing business in Texas.

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

| **City** | **Contractor** |
|---|---|
| City Purchasing Agent for Director | Cherry Moving Company, Inc., |
| of Department of Neighborhoods | dba Cherry Demolition |
| City of Houston | 6131 Selinsky |
| P.O. Box 1562 | Houston, Texas 77048 |
| Houston, Texas 77251 | Phone No. 713-987-0000 |

The Parties agree as follows:

### 2.0 TABLE OF CONTENTS:

2.1 This Agreement consists of the following sections:

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## 3.0 PARTS INCORPORATED:

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

## 4.0 CONTROLLING PARTS:

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

## 5.0 DEFINITIONS:

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

## 6.0 SIGNATURES:

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

ATTEST/SEAL (if a corporation):

WITNESS (if not a corporation):

By: _____

Name: LEONARD CHERRY

Title: VICE PRESIDENT

Cherry Moving Company Inc., dba

Cherry Demolition

By: Rick Cherry

Name: RICK CHERRY

Title: PRESIDENT

Federal Tax ID Number: 76-0164125

ATTEST/SEAL:

City Secretary

CITY OF HOUSTON, TEXAS

Signed by:

Mayor

APPROVED:

Katherine Tipton

Director, Department of Neighborhoods

Arnold Colunga, Assistant City Attorney

LD #: _____

COUNTERSIGNED BY:

City Controller

5-22-13

Date

## II. DUTIES OF CONTRACTOR

**1.0 SCOPE OF SERVICES:**

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

**2.0 INDEMNITY AND RELEASE:**

**2.1 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.**

**2.2 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, ATTORNEY'S FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:**

**2.2.1 CONTRACTOR AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY, IN NUMBERED PARAGRAPHS 2.1-2.3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**

**2.2.2 THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND**

**2.2.3 THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.**

**2.2.4 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 $500,000.00 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.**

**2.3 INDEMNIFICATION:**

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

## 3.0 INDEMNIFICATION PROCEDURES:

3.1 Notice of Claims. If the City or 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:

3.1.1 a description of the indemnification event in reasonable detail,

3.1.2 the basis on which indemnification may be due, and

3.1.3 the anticipated amount of the indemnified loss.

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

3.3 Defense of Claims

3.3.1 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.

3.3.2 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.

## 4.0 INSURANCE:

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

edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

4.1.1 Commercial General Liability insurance including Contractual Liability insurance:
$500,000 per occurrence; $1,000,000 aggregate

4.1.2 Workers' Compensation including Broad Form All States endorsement:
Statutory amount

4.1.3 Automobile Liability insurance
$1,000,000 combined single limit per occurrence
Defense costs are excluded from the face amount of the policy.
Aggregate Limits are per 12-month policy period unless otherwise indicated.

4.1.4 Employer's Liability
Bodily injury by accident $100,000 (each accident)
Bodily injury by disease $100,000 (policy limit)
Bodily injury by disease $100,000 (each employee)

4.2 All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City. Contractor shall give written notice to the Director if any of its insurance policies are cancelled, materially changed or non-renewed. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or sole discretion, may:

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

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

## 5.0 WARRANTIES:

5.1 Contractor represents and warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.

5.2 With respect to any parts and goods furnished by it, Contractor warrants:

5.2.1 that all items are free of defects in title, material, and workmanship,

5.2.2 that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,

5.2.3 that each replacement item is new in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and

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

## 6.0 LICENSES AND PERMITS:

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

## 7.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE:

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

## 8.0 MWBE COMPLIANCE:

8.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 20% of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunity and will comply with them.

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

## 9.0 DRUG ABUSE DETECTION AND DETERRENCE:

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

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

9.2.1 a copy of its drug-free workplace policy,

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

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

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

City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

9.4 Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

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

## 10.0 ENVIRONMENTAL LAWS:

10.1 Contractor shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), the Texas Commission on Environmental Quality ("TCEQ"), and any other governmental agency with the authority to promulgate environmental rules and regulations ("Environmental Laws"). Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply.

10.2 Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Regulations. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City Property in violation of the Environmental Laws.

## 11.0 CONTRACTOR'S PERFORMANCE:

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

11.2 The City of Houston's Department of Neighborhoods may visit the works site and inspect work done on site, at any time.

## 12.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS:

12.1 Contractor shall make timely payments in accordance with applicable state and federal law to all persons and entities supplying labor, materials or equipment for the performance of this Agreement including Contractor's employees.

12.2 Failure of Contractor to pay its employees as required by law shall constitute a default under this contract for which the Contractor and its surety shall be liable on Contractor's performance bond if Contractor fails to cure the default as provided under this Agreement.

12.3 Contractor shall defend and indemnify the City from any claims or liability arising out of Contractors failure to pay its subcontractors as required by law. Contractor shall submit

disputes relating to payment of M/WBE subcontractors to arbitration in the same manner as any other disputes under the M/WBE subcontract.

**13.0 CONTRACTOR PAY OR PLAY PROGRAM:**

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

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

## III. DUTIES OF CITY

**1.0 PAYMENT TERMS:**

1.1 The City shall pay and Contractor shall accept fees at the unit prices provided in Exhibit H for all services rendered and the Deliverables furnished by Contractor. The fees must only be paid from Allocated Funds, as provided below.

1.2 Any quantities of services or Deliverables shown in any part of this contract or its exhibits are estimated only and are not any guarantee that the City will not purchase more or less of those services or Deliverables. The City will pay only for the services or Deliverables actually ordered and only at the unit prices set out.

**2.0 TAXES:**

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

**3.0 METHOD OF PAYMENT:**

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

**4.0 METHOD OF PAYMENT - DISPUTED PAYMENTS:**

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

**5.0 LIMIT OF APPROPRIATION:**

5.1 The City's duty to pay money to Contractor under this Agreement is limited in its entirety

by the provisions of this Section.

5.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of **$250,000.00** 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:

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

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

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

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

## 6.0 CHANGES:

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

6.2 The City Purchasing Agent or Director will issue the Change Order in substantially the following form:

**CHANGE ORDER**

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

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

[Here describe the additions to or changes to the equipment or services and the Change

Order Charges applicable to each.]

Signed:
[Signature of City Purchasing Agent or Director]

6.3 The City Purchasing Agent or Director may issue more than one Change Order, subject to the following limitations:

6.3.1 Council expressly authorizes the City Purchasing Agent or Director to approve a Change Order of up to $25,000. A Change Order of more than $25,000 over the approved contract amount must be approved by the City Council.

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

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

6.4 Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The City Purchasing Agent's or Director's decision regarding a time extension is final.

6.5 A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.

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

## IV. TERM AND TERMINATION

### 1.0 CONTRACT TERM:

1.1 This Agreement is effective on the Countersignature Date and expires three (3) years after the date specified in the Notice to Proceed unless sooner terminated according to the terms of this Agreement. Renewals are discussed in subsection 3.0, "Renewals", below.

### 2.0 NOTICE TO PROCEED:

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

### 3.0 RENEWALS:

3.1 Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two successive one-year terms on the same terms and conditions. If the Director of the City

Department elects not to renew this Agreement, the City Purchasing shall notify Contractor in writing of non-renewal at least 30 days before the expiration of the then-current term.

## 4.0 TIME EXTENSIONS:

4.1 If the Department requests an extension of time to complete its performance, then the City Purchasing Agent may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay regardless of the cause of the delay(s).

## 5.0 TERMINATION FOR CONVENIENCE BY THE CITY:

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

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

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

## 6.0 TERMINATION FOR CAUSE BY CITY:

6.1 If Contractor defaults under this Agreement, the City Purchasing Agent or Director may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:

6.1.1 Contractor fails to perform any of its duties under this Agreement;

6.1.2 Contractor becomes insolvent;

6.1.3 all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or

6.1.4 a receiver or trustee is appointed for Contractor.

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

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

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

**7.0 TERMINATION FOR CAUSE BY CONTRACTOR:**

7.1 Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date.

7.2 The date must be at least 30 days after the Director receives notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date.

**8.0 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS:**

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

## V. MISCELLANEOUS

**1.0 INDEPENDENT CONTRACTOR:**

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

**2.0 FORCE MAJEURE:**

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

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

2.2.1 uses due diligence to remove the Force Majeure as quickly as possible; and

8.1 If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

8.2 An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

## 9.0 INSPECTIONS AND AUDITS:

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

## 10.0 ENFORCEMENT:

10.1 The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

## 11.0 AMBIGUITIES:

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

## 12.0 SURVIVAL:

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

## 13.0 PARTIES IN INTEREST:

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

## 14.0 SUCCESSORS AND ASSIGNS:

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

## 15.0 BUSINESS STRUCTURE AND ASSIGNMENTS:

15.1 Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the City Purchasing Agent's or Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest under Section 9.406 (c) of the Texas

Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

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

## 16.0 REMEDIES CUMULATIVE:

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

## 17.0 CONTRACTOR DEBT:

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

## EXHIBIT "A"
## SCOPE OF SERVICES

**1.0 SCOPE OF SERVICES:**

1.1 The Contractor shall furnish all supervision, labor, materials, supplies, tools, permits, fees, equipment and supervision necessary for the demolition of structures and/or removal of demolition debris, as per the specifications outlined in this Contract. Contractor shall demolish and clear the locations within the Contract Service Area when requested by the Director or a designee (hereinafter "Director") upon receipt of a Work Order delivered to the Contractor.

1.2 It is the City of Houston's intent to have all structures that are declared dangerous by the Hearing Official or the Buildings and Standards Commission which are located in the City of Houston and within Harris, Montgomery or Fort Bend County demolished and cleared as soon as possible and at a reasonable cost.

1.3 The City may require Contractor to follow additional regulations or perform additional services to comply with any administrative, policy or ordinance changes.

**2.0 SUPERVISION, EQUIPMENT, AND MATERIAL:**

2.1 The methods of demolition shall vary depending upon the type of structure to be demolished. The winning Contractor(s) shall determine the most efficient and effective means or methods current in the construction trade at various locations throughout the City of Houston. The Contractor must receive approval from the appropriate City Department before beginning work.

2.2 The Contractor shall furnish all of the following on this non-exclusive list: labor, equipment, supervision, materials and supplies, and transportation necessary for providing Demolition Services for the City of Houston.

2.3 All prospective contractors must affirmatively demonstrate their responsibility, including the responsibility of their proposed subcontractors. To be determined responsible (1) a prospective contractor must have adequate financial resources to perform the contract, or the ability to obtain them, (2) the contractor must be able to comply with the required schedule, taking into consideration all existing commercial and governmental business commitments, (3) have a satisfactory performance record, (4) have a satisfactory record of integrity and business ethics, (5) have the organizational experience, operational skills or the ability to obtain them, (6) have the technical equipment and manpower or the ability to obtain them, and (7) be otherwise qualified and eligible to receive an award under applicable laws and regulations.

2.4 2" Transient Water Meters shall be in accordance with City Regulations and all equipment shall have a visible company name.

**3.0 INSURANCE AND PERMITS:**

3.1 All standardized requirements of insurance and permits by the City of Houston will be the responsibility of the successful contractor awarded the contract, and shall be provided when required by the City of Houston.

**4.0 DEMOLITION SERVICES:**

4.1 Areas that require Demolition Services include, but are not limited to:

4.1.1 Demolition and debris removal of one-story wood frame residential structures on concrete blocks/piers/beams and non-demolition related debris removal up to 30 cubic yards;

4.1.2 Demolition and debris removal of one-story wood frame or brick vender residential structures on concrete slab and non-demolition related debris removal up to 30 cubic yards;

4.1.3 Demolition and debris removal of two-story wood frame residential structures on concrete blocks/piers/beams and non-demolition related debris removal up to 30 cubic yards;

4.1.4 Demolition and debris removal of two-story wood frame or brick veneer residential structures on concrete slab and non-demolition related debris removal up to 30 cubic yards;

4.1.5 Demolition and debris removal of detached garages and non-demolition related debris removal up to 30 cubic yards;

4.1.6 Demolition and debris removal of detached sheds and non-demolition related debris removal up to 30 cubic yards;

4.1.7 Demolition and debris removal of carports and non-demolition related debris removal up to 30 cubic yards;

4.1.8 Demolition and debris removal of accessory structures, such as doghouses, horse stalls, etc. and non-demolition related debris removal up to 30 cubic yards;

4.1.9 Demolition and debris removal of non-asbestos containing commercial structures on slab and non-demolition related debris removal up to 30 cubic yards;

4.1.10 Demolition and debris removal of non-asbestos containing multi-family structures on slab and non-demolition related debris removal up to 30 cubic yards;

4.1.11 Removal of building debris and removal of non-demolition related debris removal up to 30 cubic yards;

4.1.12 Removal of non-demolition related debris in excess of 30 cubic yards from a demolition site; and

4.1.13 Removal of tires.

## 5.0 DETAILED TECHNICAL SPECIFICATIONS:

5.1 The City of Houston shall issue WORK ORDER(S) allowing five (5) calendar days per address, excluding recognized City holidays, to complete demolition services.

5.2 Schedules shall be faxed to the Department no later than 8:00 A.M. on the Thursday prior to demolition start date.

5.3 The work to be done shall be governed by the following specifications:

5.3.1 All permits must be purchased prior to demolition of each structure;

5.3.2 All sewer and water line shall be disconnected and capped in accordance with the Uniform Plumbing Code 7220 and all applicable revisions;

5.3.3 All demolition must be performed on site;

5.3.4 Septic tank must be filled with dirt or sand, including septic tanks that have lids;

5.3.5 The overall site(s) must be completed in such a manner that enables the property owner to mow the lot once the grass is re-grown;

5.3.6 All debris, rubbish, trash and other refuse must be removed from the premises and not buried;

5.3.7 All water well pumps and tanks must remain on site;

5.3.8 The contractor is held responsible for all damage to any property associated with the demolition operation;

5.3.9 All holes or depressions in the ground must be filled with dirt or sand to grade level;

5.3.10 All abandoned motor vehicles, trailer and boats must remain on site, but will be moved by the contractor when necessary to complete the demolition service. Following such service, vehicles, trailers and/or boats will be returned to the site;

5.3.11 The contractor is responsible for the removal all tires from the property and the disposal of all tires at the approved depository facilities;

5.3.12 All possible hazardous chemicals must be reported to the Contract Compliance

Officer, and are not to be removed until further notice;

5.3.13 All fences are to remain intact unless otherwise indicated. Fences may be removed to allow access to the property, but must be restored to its original condition upon completion of the work;

5.3.14 All slabs must be removed unless otherwise instructed by the Department;

5.3.15 All foundation beams and pipes must be removed;

5.3.16 All lumber, pipes, conduits, piping steps, porches, walkway and other building materials must be removed from the property at grade level. All driveways, sidewalks and parking lots remain unless otherwise notified;

5.3.17 All weeds must be cut and removed, according to the lot size indicated. This includes all weeds located in ditches in front of the lot and along the fence lines;

5.3.18 To final out the Sewer Disconnects and Demolition Permits a request for inspection must be done through the Houston Permitting Center, located at 1002 Washington Ave.;

5.3.19 The contractor is responsible for obtaining a Certificate of Compliance from Houston Permitting Center, located at 1002 Washington Ave., for all completion demolition projects;

5.3.20 There is a re-inspection fee when the Houston Permitting Center, located at 1002 Washington Ave., has to re-inspect any incomplete work site;

5.3.21 The contractor is responsible for submitting a 10-day notice, or other notice, to the Texas Department of Health (TDH) when required by TDH rules;

5.3.22 All water meters shall be removed, unless otherwise instructed; and

5.3.23 Water shall be applied to the structure before and during the demolition.

## 6.0 UNIFORMS

6.1 Contractors and employees shall wear apparel identifying the company name while on demolition sites.

## 7.0 CONTRACTOR WORK PLAN:

7.1 The Contractor shall complete a work plan for all work orders received on a form approved by the City. The work plan shall be returned to the Director's representative within three (3) working days of the Contractors' receipt.

## 8.0 NON-PERFORMANCE / REASSIGNMENT OF WORK ORDERS:

8.1 Unless the time period for completion of a work order is extended by the Director, failure to complete a work order within a specified time period is deemed to be non-performance under the contract. The Contractor shall have five (5) days per site to complete the work. If the Contractor fails to complete the work within the specified five (5) days, the City reserves the right to reassign the incomplete work to another contractor. The method of reassignment shall be at the City's sole discretion. Accordingly, the Contractor's failure to complete the work within the specified time period shall be considered delinquent performance and may constitute cause for termination of the contract for non-performance.

## 9.0 SUBMITTING INVOICES FOR PAYMENT:

9.1 Invoices submitted for payment for the contract shall be precise, and without error. Failure to follow the outline for submittal shall result in lengthy delay for payment. Invoices shall include, but not be limited to the following:

9.1.1 All invoices for the work performed under this contract shall be submitted in triplicate and on Contractor's company stationary, signed original by the authorized agent of the company;

9.1.2 City of Houston contract number and address of property;

9.1.3 A Contractor's company invoice number that cannot be duplicated during the term period of the contract;

9.1.4 Original sewer disconnect permit, demolition permit, certificate of compliance,

dump receipts, fill dirt receipts and tire manifest must accompany all invoices; and

9.1.5 Photographic documentation of work performed- Contractor shall submit digital photographs with JPEG documenting the conditions of the structure and premises serviced. **Digital photographs must be copied to a compact disc (CD) and submitted with all invoices**. The minimum photos required number three and must include before, during, and after photos documenting deteriorated condition of the premises. The address of the structure and date must be label on the photos. **ALL PHOTOS MUST ALSO BE MOUNTED ON THE CITY SUPPLIED "Request for Payment Form."**

9.1.6 Submit invoices for payment to City of Houston, Department of Neighborhoods, Inspections and Public Service, 7125 Ardmore Street, 3rd Floor, Houston, Texas 77054 or an address designated by the Director.

10.0 **ADDITION & DELETIONS:**

10.1 At any time during the term of this contract, the City, by written notice from the City Purchasing Agent to the Contractor, may add or delete like or similar equipment, locations, or services to the list of equipment, location(s) or services to be performed. Any such written notice shall take effect on the date stated in the notice from the City. The additional equipment, locations, or services shall be subject to the contract services and charges or rates as an item already specified in the fee schedule. In the event the additional equipment, locations, or services is not identical to any item already under contract, the charges shall be the Contractor's normal and customary charges or rates for the equipment, locations and/or services classified in the fee schedule.

11.0 **ESTIMATED QUANTITIES NOT GUARANTEED:**

11.1 The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of demolition services during the term of this contract. Therefore, the City shall not be liable for any contractual agreements/obligations the Contractor enters into based on the City purchasing/requiring all the quantities specified herein.

12.0 **WARRANTY OF SERVICES:**

12.1 Definitions:

12.1.1 "Acceptance" means the act of an authorized representative of the City by which the City assumes for itself approval of specific services as partial or complete performance of this contract.

12.1.2 "Correction" means the elimination of a defect.

12.2 Notwithstanding inspection and acceptance by the City or any provision concerning the conclusiveness of the City's inspection and acceptance, the Contractor warrants that all services performed under this contract shall be free from defects in workmanship and conform to the requirements of this contract, at the time of acceptance. The City shall give written notice of any defect or nonconformance to the Contractor within a one-year period from the date of acceptance by the City. This notice shall state either (1) that the Contractor shall correct or re-perform any defective or non-conforming services at no additional cost to the City, or (2) that the City does not require correction or re-performance.

12.3 If the Contractor is required to correct or re-perform, it shall be at no cost to the City, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as the work initially performed. If the Contractor fails or refuses to correct or re-perform, the City may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the

City thereby, or make an equitable adjustment in the contract price.

12.4 If the City does not require correction or re-performance, the City shall make an equitable adjustment in the contract price.

13.0 **MOBILIZATION:**

13.1 Mobilization occurs when equipment is dispatched to site and the City verifies its arrival. Mobilization charges apply per location. Mobilization charges are applicable when the contractor does not perform demolition work or when the amount payable for demolition/debris removal services is **less than** the cost for mobilization. Mobilization charges **will not** be applicable if the contractor receives a "stop work" order prior to site arrival.

14.0 **SLAB REMOVAL**

14.1 Slab removal refers to removal of the building foundation. Porches, steps, walkways and patios are not considered to be part of the slab and shall be disposed of as building debris.

15.0 **INSURANCE REQUIREMENTS:**

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

15.1.1 Commercial General Liability insurance including Contractual Liability insurance:
$500,000 per occurrence; $1,000,000 aggregate

15.1.2 Workers' Compensation including Broad Form All States endorsement:
Statutory amount

15.1.3 Automobile Liability insurance
$1,000,000 combined single limit per occurrence
Defense costs are excluded from the face amount of the policy
Aggregate Limits are per 12-month policy period unless otherwise indicated

15.1.4 Employer's Liability

| | |
|---|---|
| Bodily injury by accident | $100,000 (each accident) |
| Bodily injury by disease | $100,000 (policy limit) |
| Bodily injury by disease | $100,000 (each employee) |

15.1.5 Pollution Liability
$1,000,000.00 per occurrence; $2,000,000.00 aggregate (12-month period).

15.2 All insurance policies must require by endorsement that the insurance carrier waives any rights of subrogation against the City. The Contractor shall give 30 days' written notice to the Director if any of its insurance policies are cancelled, materially changed or non-renewed. Within the 30 day period, the Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or sole discretion, may:

15.2.1 immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default; or purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

15.2.2 All certificates of insurance submitted by Contractor shall be accompanied by

endorsements for additional insured coverage in favor of the City for Commercial General Liability and Automobile Liability policies; and waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and Worker's Compensation/Employers' Liability policies. For a list of pre-approved endorsement, forms see **http://purchasing.houstontx.gov/forms.shtml.** The Director will consider all other forms on a case-by-case basis.

16.0 **M/WBE COMPLIANCE:**

16.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("M/WBE") 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 **20%** of the value of this Agreement to M/WBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the Mayor's Office of Business Opportunity (MOBO) and will comply with them.

16.2 Contractor shall require written subcontracts with all M/WBE subcontractors and shall submit all disputes with M/WBEs to binding arbitration to be conducted in Houston, Texas if directed to do so by the OBO Director.

## EXHIBIT "B"
## EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

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

# EXHIBIT "C"
# MWBE REQUIREMENTS

## EXHIBIT "D"
## CITY OF HOUSTON CERTIFIED M/WBE SUBCONTRACT TERMS

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

1. _____ (M/WBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Office of Business Opportunity Director ("the Director")

2. _____ (M/WBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform 1) audits of the books and records of the subcontractor, and 2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

3. Within five (5) business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.

4. As conclude by the parties to this subcontract, and as evidenced by their signatures hereto, any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 – "the Act"). Arbitration shall be conducted according to the following procedures:

   a. Upon the decision of the Director or upon written notice to the Director form either party that a dispute ahs arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.

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

   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. In the event the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

These provisions apply to goal-oriented contracts. A goal oriented contract means any contract for the supply of goods or non-personal or non-professional services in excess of $100,000.00 for which competitive bids are required by law; not within the scope of the MBE/WBE program of the United States Environmental Protection Agency on the United States Department of Transportation; and ;, which the City Purchasing Agent has determined to have significant M/WBE subcontracting potential in fields which there are an adequate number on known MBEs and/or WBE's to compete for City contract.

The M/WBE policy of the City of Houston will be discussed during the pre-bid. For information assistance, and/or to receive a copy of the City's Affirmative action policy and/or ordinance contact the Office of Business Opportunity at (713) 837-9000, 611 Walker, 20th Floor, Houston, Texas.

**EXHIBIT "E"**

**CITY OF HOUSTON**
**AFFIRMATIVE ACTION & CONTRACT COMPLIANCE**
**M/WBE UTILIZATION REPORT**

**Report Period** _____

PROJECT NAME & NUMBER: _____

PRIME CONTRACTOR: _____

ADDRESS: _____

LIAISON/PHONE No.: _____

AWARD DATE: _____

CONTRACT No.: _____

CONTRACT AMOUNT: _____

M/WBE GOAL: _____

| M/WBE SUB/VENDOR NAME | DATE OF AA CERTIFICATION | DATE OF SUBCONTRACT | SUBCONTRACT AMOUNT | % OF TOTAL CONTRACT | AMOUNT PAID TO DATE | % OF CONTRACT TO DATE |
|---|---|---|---|---|---|---|
| | | | | | | |
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Use additional pages if needed. Submit by the 15th day of the following month.
Provide support documentation on all revenues paid to end of the report period to:
M/WBEs to reflect up/down variances on contract amount

Office of Business Opportunity
ATTN: Carlecia Wright 713-837-9018
611 Walker, 20th Floor
Houston, Texas 77002

**EXHIBIT "F"**
**DRUG POLICY COMPLIANCE AGREEMENT**

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

_____(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.

Date _____

Contractor Name_____

Signature _____

Title _____

## EXHIBIT "G"
## CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS IN PERFORMANCE OF A CITY CONTRACT

I, _____
**(Name)(Print/Type)** **(Title)**

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

_____
Date

_____
Contractor Name

_____
Signature

_____
Title

---

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

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

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

_____
**DATE**

_____
**CONTRACTOR NAME**

_____
**SIGNATURE**

_____
**TITLE**

# EXHIBIT "H"
# FEES AND COSTS

**Regular Demolition Services**

| Description | Year One | Year Two | Year Three | Option Year One | Option Year Two |
|---|---|---|---|---|---|
| 1.) Demolition and Debris Removal (including non-demolition related debris up to 30 cubic yards) Demolition permit costs are incorporated in the itemized cost. | $3.40 per sq. ft. | $3.46 per sq. ft. | $3.53 per sq. ft. | $3.60 per sq. ft. | $3.68 per sq. ft. |
| 2.) Mobilization | $1,427.33 each | $1,455.87 each | $1,484.99 each | $1,514.69 each | $1,544.98 each |
| 3.) Sewer Disconnects (including capping water lines and filling septic tanks, if necessary) | $742.05 each | $756.89 each | $772.03 each | $787.47 each | $803.22 each |
| 4.) Certificate of Compliance | $233.47 each | $238.14 each | $242.90 each | $247.76 each | $252.71 each |
| 5.) Building Debris Removal Only (including non-demolition related debris up to 30 cubic yards) | $33.96 per cu. yd. | $34.63 per cu. yd. | $35.33 per cu. yd. | $36.03 per cu. yd. | $36.75 per cu. yd. |
| 6.) Non-demolition related debris in excess of 30 cu. Yards. | $33.96 per cu. yd. | $34.63 per cu. yd. | $35.33 per cu. yd. | $36.03 per cu. yd. | $36.75 per cu. yd. |
| 7.) Tire Removal | $16.98 each | $17.32 each | $17.67 each | $18.02 each | $18.38 each |
| 8.) Slab Removal | $2.34 per sq. ft. | $2.38 per sq. ft. | $2.43 per sq. ft. | $2.48 per sq. ft. | $2.53 per sq. ft. |
| 9.) 10-Day Notification Per Building | $119.00 each | $122.00 each | $125.00 each | $128.00 each | $131.00 each |
| 10.) Fill Dirt | $16.98 per cu. yd. | $17.32 per cu. yd. | $17.67 per cu. yd. | $18.02 per cu. yd. | $18.38 per cu. yd. |

**Emergency Demolition Services**

| Description | Year One | Year Two | Year Three | Option Year One | Option Year Two |
|---|---|---|---|---|---|
| 1.) Mobilization 8:00 am - 5:00 pm | $2,270.99 each | $2,316.41 each | $2,362.74 each | $2,409.99 each | $2,458.19 each |
| 2.) Mobilization 5:01 pm - 7:59 am | $2,838.73 each | $2,895.51 each | $2,953.42 each | $3,012.48 each | $3,072.73 each |
| 3.) Demolition (residential dwelling of 1 - 3 living units) | $5,109.72 each | $5,211.92 each | $5,316.15 each | $5,422.48 each | $5,530.93 each |
| 4.) Demolition (multi-family dwelling of 4 or more living units) | $7,380.70 each | $7,528.31 each | $7,678.88 each | $7,832.46 each | $7,989.11 each |
| 5.) Demolition (commercial-non warehouse) | $8,510.89 each | $8,681.11 each | $8,854.73 each | $9,031.82 each | $9,212.46 each |
| 6.) Demolition (commercial warehouse | $10,781.87 each | $10,997.51 each | $11,217.46 each | $11,441.81 each | $11,670.64 each |
| 7.) Demolition (accessory structure) | $3,401.17 each | $3,469.19 each | $3,538.58 each | $3,609.35 each | $3,681.54 each |
| 8.) Partial Demolition (residential dwelling of 1 - 3 living units) | $4,417.81 each | $4,506.17 each | $4,596.29 each | $4,688.22 each | $4,781.98 each |
| 9.) Partial Demolition (multi-family dwelling of 4 or more units) | $6,973.20 each | $7,112.66 each | $7,254.92 each | $7,400.01 each | $7,548.02 each |
| 10.) Partial Demolition (commercial-non warehouse) | $8,111.23 each | $8,273.46 each | $8,438.93 each | $8,607.71 each | $8,779.86 each |
| 11.) Partial Demolition ( commercial warehouse) | $9,717.69 each | $9,912.05 each | $10,110.29 each | $10,312.49 each | $10,518.74 each |
| 12.) Fill Dirt | $16.98 per cu. yd. | $17.32 per cu. yd. | $17.67 per cu. yd. | $18.02 per cu. yd. | $18.38 per cu. yd. |
| 13.) Extended Service Fee applies to emergency demolition services greater than 8 hours. Fee shall be prorated by quarter hour (e.g. $125.00 per 15 minutes) | $500.00 per hour | $500.00 per hour | $500.00 per hour | $500.00 per hour | $500.00 per hour |

**EXHIBIT "I"**
**DRUG POLICY COMPLIANCE DECLARATION**

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

_____ (Contractor or Vendor)
(Name of Company)

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

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

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

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

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

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

_____ Initials — 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 "J"
# PAY OR PLAY PROGRAM

## FORM POP 2 (DOCUMENT 00630)

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

Contractor Name: _____ $ _____
(Contractor/Subcontractor) (Amount of Contract)

Contractor Address: _____

Project No.: [GFS/CIP/AIP/File No.] _____

Project Name: [Legal Project Name] _____

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, including compliance for covered subcontractors' employees and contract labor, underthe contract with the City.

[ ] Yes [ ] No Contractor agrees to offer health benefits to each covered employee, including compliance by the covered subcontractors that meet or exceed 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.

[ ] 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.

[ ] 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.

| Following Information Is Mandatory | Prime Contractor | Sub-Contractor |
|---|---|---|
| Total No. Of Employees on City Job | | |
| No. Of Employees-"Playing" | | |
| No. Of Employees –"Paying" | | |
| No. Of Employees "Exempt" | | |

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

_____ _____
CONTRACTOR (Signature) DATE

_____
NAME AND TITLE (Print or type)