

4600009145
08-0875

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

I. PARTIES

A. Address

THIS AGREEMENT FOR PROFESSIONAL ACCOUNTING AND FINANCIAL SERVICES ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a home rule city of the State of Texas, and **ACCRETIVE SOLUTIONS - HOUSTON, LP**, ("Contractor"), a limited partnership doing business in Texas.

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

City

Director, Finance Department
City of Houston
P.O. Box 1562
Houston, Texas 77251

Contractor

Accretive Solutions - Houston, LP
10375 Richmond Ave, Suite 450
Houston, TX 77042

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

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EXHIBITS

- A. Scope of Service
- A-1. Résumé's of Contractor's On-Call Staff
- B. Hourly Rates for On-Call Staff
- B-1 Form, Engagement Letter
- C. MWBE Subcontract Terms
- D. Equal Employment Opportunity
- E. Drug Policy Compliance Agreement
- F. Drug Policy Compliance Declaration
- G. Certification of No Safety Impact Positions

C. Parts Incorporated

The above described exhibits are incorporated into this Agreement.

D. Controlling Parts

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

E. Signatures

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

**ACCRETIVE SOLUTIONS -
HOUSTON, LP**

CITY OF HOUSTON, TEXAS

Signed By:

By: 
Name: SCOTT D. DICKINSON
Title: SVP Market Leader

By: Bill White
Mayor 

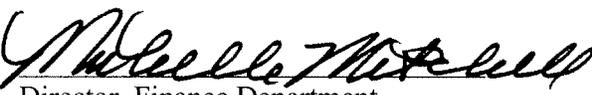
ATTEST/SEAL (if a corporation)
WITNESS (if not a corporation)

ATTEST/SEAL:

By: 
Name: BRIAN A. BORQUE
Title: MANAGER BUSINESS DEVELOPMENT


City Secretary

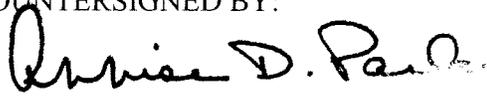
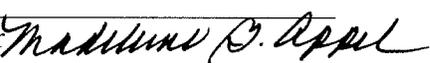
APPROVED:


Director, Finance Department

APPROVED AS TO FORM:


Assistant City Attorney
L.D. No. 0340800096001

COUNTERSIGNED BY:


City Controller 

DATE COUNTERSIGNED:

10-13-08

II. DEFINITIONS

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

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

"Business Day" means any calendar day except Saturdays, Sundays and full-day holidays designated by City Council for City employees.

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

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

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

"Director" means the Director of Finance Department, or the person he or she designates.

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

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

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

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

III. DUTIES OF CONTRACTOR

A. Scope of Services

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

B. Coordinate Performance

Contractor shall coordinate its performance with the Director and other persons that the Director designates. Contractor shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

C. Time of Performance

Contractor acknowledges that time is of the essence. Contractor shall commence services under this Agreement on the start date specified in each Engagement Letter by the Director and continue to perform diligently until all services specified by the Director in each Engagement Letter are completed within the time specified by the Director in that Engagement Letter or until this Agreement is terminated, whichever comes first.

D. Reports

Contractor shall prepare and submit reports required by the Director in each Engagement Letter.

E. Subcontractors

Contractor shall be responsible for negotiating subcontracts with its subcontractors. Such agreements shall require the subcontracting parties to substantially comply with all the terms expressed herein. Also, Contractor shall notify the Director any time it utilizes a subcontractor and

shall provide the Director with the subcontractor's professional qualifications and responsibilities prior to entering into an agreement with the subcontractor.

F. Payment of Subcontractors

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

G. 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.

H. INDEMNIFICATION

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION,

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

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

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

I. INDEMNIFICATION - PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT

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

CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.

WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND

CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

J. INDEMNIFICATION - SUBCONTRACTOR'S INDEMNITY

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

K. 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.

L. Insurance

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

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

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

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

Statutory amount

- (3) Professional Liability

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

- (4) Automobile Liability insurance

\$1,000,000 combined single limit

Defense costs are excluded from the face amount of the policy.

Aggregate Limits are per 12-month policy period
unless otherwise indicated.

All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, and that it shall give 30 days written notice to the City before they may be canceled, materially changed, or nonrenewed. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or nonrenewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may

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

M. Warranties

Contractor's performance shall conform to the professional standards prevailing in Harris County, Texas with respect to the scope, quality, due diligence, and care of the services and products

Contractor provides under this Agreement.

N. Confidentiality - Protection of City's Interest

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

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

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

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

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

P. 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.

Q. Compliance with Laws

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

R. Compliance with Equal Opportunity Ordinance

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

S. Drug Abuse Detection and Deterrence

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

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

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

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 "F." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

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

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

T. Minority and Women Business Enterprises

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

Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 15% of the value of this Agreement to MWBEs. The City's policy does not require Contractor to in fact meet or exceed this goal, but it does require Contractor to objectively demonstrate that it has made good faith efforts to do so. To this end, Contractor shall maintain records showing

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

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

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

U. Pay or Play Policy

The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement.

V. Personnel of Contractor

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

IV. DUTIES OF THE CITY

A. Payment Terms

Subject to the allocation of funds as set out in Section IV(E) of this Agreement and for on-call professional accounting and financial services provided in response to an Engagement

Letter from the Director, City shall pay and Contractor shall accept the applicable hourly rate for that professional listed in Exhibit "B" for the actual number of hours of professional services provided by that professional to City under that Engagement Letter. The Director, in his or her sole discretion, may transfer allocated funds from one engagement to another, to be used as needed, until all allocated funds are exhausted.

B. Taxes

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

C. Method of Payment

The City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Director showing the hours worked to provide on-call services requested by the Director in writing and the applicable hourly rate for the professional who provided such services. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

D. Method of Payment - Disputed Payments

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

E. Limit of Appropriation

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

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

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

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

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

\$ _____

(4) The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay

for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

F. Access to Site

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

V. TERM AND TERMINATION

A. Contract Term

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

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

B. Termination for Convenience by City

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

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

TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT 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.

C. Termination for Cause

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

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

- (4) a receiver or trustee is appointed for Contractor.

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

VI. MISCELLANEOUS

A. Independent Contractor

Contractor is an independent contractor and shall perform the services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Contractor's performance under this Agreement. All personnel Contractor uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all workers' compensation benefits coverage.

B. Force Majeure

1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Agreement. Force Majeure

means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, strikes, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to extra Reimbursable Expenses or payment.

2. This relief is not applicable unless the affected party does the following:
 - (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
 - (b) provides the other party with prompt written notice of the cause and its anticipated effect.

3. The Director will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days. The decision of the Director is final.

4. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.

5. If the Force Majeure continues for more than 10 days from the date performance is affected, the Director may terminate this Agreement by giving 7 days' written notice to Contractor. This termination is not a default or breach of this Agreement.

CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.

C. Severability

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

D. Entire Agreement

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

E. Written Amendment

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

F. Applicable Laws

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

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

G. Notices

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

H. Captions

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

I. Non-Waiver

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

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

J. Inspections and Audits

City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with

this Agreement. Contractor shall keep its books and records available for this purpose for at least 4 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

K. Enforcement

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

L. Ambiguities

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

M. Survival

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

N. Publicity

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

O. Parties In Interest

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

P. Successors and Assigns

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

Q. Business Structure and Assignments

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

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

R. Remedies Cumulative

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

S. CONTRACTOR DEBT

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON

CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR.

EXHIBIT "A"

SCOPE OF SERVICES

1. During the term of this Agreement and in response to an Engagement Letter from the Director, Contractor warrants that it can provide the on-call accounting professionals whose resume's were submitted by Contractor in response to City's RFQ #Q22969 and are attached to this Agreement as Exhibit "A-1" at the hourly rates quoted by Contractor in response to the RFQ, which are set out in Exhibit "B." The hourly rates for the various job classifications listed in Exhibit "B" remain in effect for the term of this Agreement.

Contractor acknowledges and understands that this is not an exclusive contract and that the City shall have the right to contract with other firms to perform some or all of the services described hereunder and that the City makes no guarantees as to the quantity of work or specific projects that Contractor will receive during the term of this Agreement. All requests for professional accounting and financial services shall be on an as-needed basis. In addition, City and Contractor understand and acknowledge that the Director will be responsible for requesting the specific services to be provided by Contractor and the Contractor shall assume responsibility for performing such services and preparing the resulting report(s). The Director shall have the sole responsibility for approving the scope of each work plan, the required fees and the hours to be dedicated to each task in the work plan.

The Director will request for accounting and financial services in writing in the form of an Engagement Letter substantially similar to the letter attached to this Agreement as Exhibit "B-1." If the Director requests such services, Contractor shall, within ten Business Days thereafter, provide the Director with a written itemized estimate at the rates set out in Exhibit "B" for performance of such services, along with a description of the specific work plan, financial and business risks associated with the accounting and financial services to be provided, specialized skills, timetable, documents to be delivered and the estimated hours and personnel required to perform the accounting and financial services requested. Upon agreement between the Director and the Contractor as to the accounting and financial services to be performed, the Director shall deliver to the Contractor an Engagement Letter in a form substantially similar to the letter set forth in Exhibit "B-1" attached hereto.

Contractor shall provide all services and materials necessary for the proper performance of the accounting and financial services requested. When engaged to conduct or assist on an accounting and financial services engagement, Contractor shall notify the Director of any material deficiencies of which it becomes aware and make recommendation for curing such deficiencies of which it becomes aware and make recommendations for curing such deficiencies with the objective of improving the performance of the operation being examined/performed.

2. Contractor warrants that the professionals listed in Exhibit "A-1" meet the City's requirements for accounting and financial services professionals with the education, training and experience in accounting, including:
 - i. Government accounting/GASB;
 - ii. Financial accounting/ FASB;
 - iii. Auditing;
 - iv. Internal controls;
 - v. Federal and state grants/Single Audit;
 - vi. Fixed Assets;
 - vii. SAP experience in financial accounting, especially in fixed assets and grants management;
 - viii. Advanced skills in the use of major Microsoft applications, such as Excel and Access; and
 - ix. Knowledge of documentation of policies and procedures, such as accounting and internal control flowcharts and accounting manuals.

3. Contractor further warrants that the professionals listed in Exhibit "A-1" have the education, training and experience to assist City Finance Department staff in the following areas of work:
 - a. general ledger account reconciliations;
 - b. preparation for and support of the annual financial audit, including:
 - i. preparation of audit schedules;
 - ii. analysis of accounting transactions;

- iii. coordination of audit responses;
 - iv. assistance in internal and compliance audits;
 - v. identifying weaknesses of internal controls and providing recommendations to improve and strengthen such controls; and
 - vi. providing accounting and reporting support for cost recovery from unusual events, such as natural disasters like hurricane Katrina, etc.
4. Contractor understands that the list set out in Section 4 above is not exhaustive and that the professionals it provides under this Agreement must be qualified and experienced to perform tasks to assist the City Finance Department staff in their areas of responsibilities, which include:
- i. Coordination of the financial audit in order to issue the Comprehensive Annual Financial Report;
 - ii. Compliance with accounting policies and procedures;
 - iii. Fixed asset management;
 - iv. Auditing services, such as Tax Abatement Audits, Hotel Occupancy Tax Audits, internal controls and compliance audits, and other special audits;
 - v. Grant accounting and compliance management;
 - vi. General fund cash management;
 - vii. Cost accounting studies and reviews; and
 - viii. Revenue and tax accounting.
5. Contractor understands that the accounting professionals it provides in response to a written request from the Director under this Agreement, must work alongside

City employees, including during critical financial reporting periods and must provide such employees unrestricted access to all work performed, including all work product developed as a part of such work, including full documentation and detailed explanation of all work performed under this Agreement.

6. During the term of this Agreement, in the event the Director makes a written request for Contractor's accounting and financial services as set out in this Exhibit "A," then Contractor shall submit for the Director's approval, the resume's of professionals it assigns to provide such services and upon the Director's approval of the resume's submitted, Contractor shall provide the services of those professionals whose resume's were approved by the Director.

EXHIBIT "A-1"

RESUME'S OF CONTRACTOR'S ON-CALL STAFF

Qualifications of Personnel

Our professionals are carefully selected based on the skills and experience required to effectively achieve a given engagement's objectives. Upon acceptance of this proposal, we will formally assign professionals to the engagement that will complete the activities of this engagement under the direction of an assigned Engagement Director. The Engagement Director will obtain advance approval from City of Houston, as necessary, for any changes to scope that affects the size and skills of the engagement delivery team.

Accretive proposes to utilize the following professionals on this engagement. Additional or alternative resources may be assigned upon Accretive's formal engagement to serve the City depending on the timing of the engagement. Professional profiles are attached to this Request for Qualifications as Exhibit A.

George Jones, CPA – Engagement Director / Director, Business & Technology Practice

George has over 30 years of diversified industry experience in business and technology consulting, including process improvement, technology strategy, project management and business system implementation. *George was the Engagement Director on the previously mentioned Assessment Project that Accretive recently completed and has extensive background and knowledge of the City's current environment and needs.* Prior to joining Accretive Solutions, George provided business and IT consulting services through his own company. George has also held positions as Director of Service Delivery for Keane and Managing Director for two offices of BSG, a systems integrator that focused on client/server solutions. At BSG, George provided project management for software development projects, started an office in Chicago, and held operations and P&L responsibility for the company's Houston office. Prior to BSG, George was a Partner in Accenture's Houston office. At Accenture, he led project teams of up to 80 personnel on multi-year software development projects, developed a training program on the insurance industry, and was the head of a task force that upgraded the firm's world-wide new hire training program. George is a CPA and holds two M.S. degrees (Mathematics and Computer Science) from The Ohio State University.

Paul Vanek, CPA – Engagement Quality Assurance Director / Director, Enterprise Governance Practice

Paul has over 20 years experience including Sarbanes-Oxley, finance, accounting, and sales. *Paul was the Engagement Quality Assurance Director on the previously mentioned Assessment Project that Accretive recently completed and is familiar with the background of the City's current environment and needs.* Prior to joining Accretive, Paul started his career with Arthur Andersen. In this role, Paul was a member of the development team for firm-wide strategic initiatives in business analysis, and cost and productivity management. Paul also planned and directed audits of entities and employee benefit plans for clients ranging from small, privately held companies to large, SEC multi-national corporations. In addition to usual auditing and business advisory services, Paul's experience includes responsibilities for engagements involving: Major Asset Sales; Litigation Support; Internal Audit Support; and Professional Education. Paul has also held Chief Financial Officer, Controller and Manager positions for various companies in the Houston area. Paul is a Certified Public Accountant and a member of the American Institute of Certified Public Accountants, the Texas Society of Certified Public Accountants, and the Houston CPA Society. Paul received his BBA in Accounting from Texas A&M University where he was part of the College of Business Administration Fellows Program.

Karim Momin, CISA, CISM, CEH – Subject Expert, SAP / Senior Manager, Technology Risk Management Services

Karim has extensive experience in SAP including application controls, segregation of duties controls, the development of SAP data extracts and interfaces and developing custom ABAP programs and systems administration controls. Karim is a Senior Manager for the Technology Risk Management Services (TRMS) practice, which delivers enterprise IT solutions to companies that wish to improve security, compliance, and reduce IT audit risk and costs. *Karim was the Subject Expert, SAP, on the previously mentioned Assessment Project that Accretive recently completed and has extensive background and knowledge of the City's current environment and needs.* Throughout his business career Karim has exhibited a record of strong achievement and significant contributions in IT security, IT audit, risk assessments and business impact assessments, project management, and application development areas. Karim is also the national subject matter expert in auditing and control design for SAP, PeopleSoft, Oracle and Syteline. Karim has also developed automated tools to audit and assess segregation of duties violations within various applications. Karim has also managed and led an international global IT Audit team for multiple clients. Karim has been with Accretive Solutions for 8 years.

John Hagelman, CPA – Project Team Member / Senior Consultant, Enterprise Governance Practice

John has extensive experience in internal auditing and audit preparation. *John was a Project Team Member on the previously mentioned Assessment Project that Accretive recently completed and has extensive background and knowledge of the City's current environment and needs.* John has held a number of positions throughout his 20 plus year career including cost analyst, controller, cash management supervisor, and financial consultant for companies such as Getty Oil, Intrepid Drilling and EOTT Energy. Since joining Accretive Solutions, John has performed Sarbanes Oxley work for oil and gas, bio-pharmaceutical, and IT staffing companies as well as internal control reviews, contract reviews and inventory analyses. John holds a Bachelors of Business Administration (BBA) degree in Accounting from the University of Texas at Austin.

Cherise Story, CPA – Project Team Member / Consultant, Enterprise Governance Practice

Cherise is an MBA and CPA with over 15 years experience. She has proven expertise implementing and designing workflow processes, assessing controls, mitigating risks and coordinating business projects. Cherise exemplifies effective analytical and management consulting skills; highly developed critical thinking skills leading to solutions for complex problems. She is dedicated to superior service fro internal and external clients and has been recognized for her strong leadership skills and extensive background in corporate trust, banking, public accounting and internal audit. *Cherise was a Project Team Member on the previously mentioned Assessment Project that Accretive recently completed and has extensive background and knowledge of the City's current environment and needs.* Since joining Accretive Solutions, Cherise has performed internal audit and Sarbanes Oxley work for manufacturing and financial services companies as well as financial/tax reporting and analysis. Cherise holds a Bachelors of Science (BS) degree in Accounting from Southern University and a Masters of Business Administration (MBA) from the University of Wisconsin.

Greg DeCastro, Six Sigma Black Belt – Project Team Member / Consultant, Business & Technology Practice

Greg has over 20 years experience as an executive in the consumer and financial products industries. He received his Six Sigma Black Belt certification while a Regional Manager with CONSECO Finance Servicing Corporation. Greg has managed regional production and servicing platforms with as many as 65 employees. He possesses an enterprise wide perspective from his combination of Six Sigma Black Belt certification and Sarbanes-Oxley financial controls experience. *Greg was a Project Team Member on*

the previously mentioned Assessment Project that Accretive recently completed and has extensive background and knowledge of the City's current environment and needs. Since working with Accretive, Greg has focused on process improvement consulting in prior engagements.

Accretive can also engage the following consultants as project advisors with particular subject matter expertise on an as needed basis:

Robert Miranda, CPA – Project Advisor, Government Auditing / Vice President, Consulting Services, Southern California

Robert has over 30 years of professional experience in finance, accounting, government auditing and internal audit. *He was the Subject Expert, Governmental Auditing, on the previously mentioned Assessment Project that Accretive recently completed and is familiar with the background of the City's current environment and needs.* Robert has extensive experience in government auditing including serving as past audit partner for audits of LACERS, the City of Los Angeles, and other local, state and federal agencies. Prior to joining Accretive, Robert led major internal audits for The Boeing Company, American Honda Finance Corporation and Science Applications International Corporation (SAIC). Robert's earlier career included the position of National Director at Deloitte and Touche and partnership in regional CPA firms. Robert is a Certified Public Accountant in California and received his BS from the University of Southern California.

Michael Latimer, CPA, CMA – Project Advisor / Manager, Consulting Services, Dallas

Michael is a senior financial executive with extensive experience in management reporting, organizational performance assessment, financial and operational analysis, accounting and tax, systems integration and conversion, mergers and acquisitions, strategic planning, forecasting and auditing. He is a strong team builder with excellent communication skills at all levels of management. Michael designed and implemented a management and financial reporting system for the City of Houston's \$300 million of Katrina disaster relief effort with FEMA, acting as lead source of supporting documentation for external audits by Deloitte and federal and state authorities. Michael is a Certified Public Accountant in Texas and received his BS from Allegheny College and his MBA from the University of Chicago. Michael has been an Adjunct Professor of Strategic Management at the University of Dallas Graduate School of Management.

Our professionals are highly experienced, results-oriented consultants with an average of 15 years of professional experience, typically with a combination of both industry and client service. The vast majority of our professionals maintain certifications which demonstrate commitment to their profession, including CPA, CMA, CIA, CFE, CISA, and CISSP, among others.

Our professionals are available for additional engagements as diverse as information systems application strategy assessment and development, user training and support, systems implementation project management, IT system (network, wireless, application) vulnerability assessment and penetration testing and additional process improvement.

Our consulting teams are comprised of experts who enjoy the unique combination of career advancement, professional work environment, training, flexibility, and project variety offered by Accretive. As a result, our consultants have the perfect blend of business experience and skills essential to quickly achieve the desired results for our clients.

EXHIBIT "B"

HOURLY RATES FOR CONTRACTOR'S ON-CALL STAFF

	JOB CLASSIFICATION	HOURLY RATE
1.	Vice President - Level 3	\$250.00
	Vice President - Level 2	\$225.00
	Vice President - Level 1	\$200.00
2.	Director - Level 3	\$200.00
	Director - Level 2	\$175.00
	Director - Level 1	\$165.00
3.	Technology Specialist - Level 3	\$175.00
	Technology Specialist - Level 2	\$165.00
	Technology Specialist - Level 1	\$150.00
4.	Senior Manager - Level 3	\$160.00
	Senior Manager - Level 2	\$140.00
	Senior Manager - Level 1	\$120.00
5.	Manager - Level 3	\$140.00
	Manager - Level 2	\$125.00
	Manager - Level 1	\$95.00
6.	Senior Consultant - Level 3	\$100.00
	Senior Consultant - Level 2	\$90.00
	Senior Consultant - Level 1	\$80
7.	Consultant - Level 3	\$85.00
	Consultant - Level 2	\$75.00
	Consultant - Level 1	\$65.00

EXHIBIT "B-1"

FORM ENGAGEMENT LETTER

To: Contractor

Re: [Insert Project Name]

Dear _____:

This letter shall serve as the Engagement Letter between the City of Houston and your firm as described in Contract No. _____, approved by City Council Ordinance No. _____. The City hereby engages you to perform the following:

[Insert description, objectives, and scope of services including any reports to be produced by Contractor as a result of the accounting and financial services provided under this Engagement Letter]

You are to begin services for this engagement on _____ [date]. The final report including management's response will be delivered to the Director no later than _____, unless the undersigned grants a written extension of time.

The contracted rates shall apply to the services performed by your firm for this engagement. The Director has agreed to the following categories of personnel performing services for this engagement: _____ [Insert categories of personnel]. The total fee for services provided under this Engagement Letter may not exceed \$ _____, except as specified herein. Please note that the City has only allocated \$ _____ for this engagement. The fee stated above is the entire fee that your firm will receive for performing this engagement, unless the Director authorizes a change to the scope of the services set out in this Engagement Letter, approves an increase in the fee and allocates sufficient funds therefor.

The Director has established a MWBE participation goal of 15 percent of the fee established for this engagement. You must make good faith efforts as described in our Agreement to meet this goal.

Please indicate your acceptance of this engagement by completing the signature block set forth below and returning this original Engagement Letter to the Director. All questions concerning services to be provided under this Engagement Letter should be directed to _____. [Insert name of Project Administrator and telephone number].

Michelle Mitchell
Director, Finance Department

[Insert name of Contractor]

By: _____

Date: _____

EXHIBIT "C"
MWBE SUBCONTRACT TERMS

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

1. _____ (MWBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director").
2. _____ (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for inspection for at least 4 years after the end of its performance under this subcontract. Nothing in this provision shall change the time for bringing a cause of action.
3. Within five business days of execution of this subcontract, Engineer (prime engineer) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.
4. Any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 -- "the Act"). Arbitration shall be conducted according to the following procedures:
 - a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.
 - b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with American Arbitration Association on file in the Office of the City's Affirmative Action Division.
 - c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
 - d. If the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.
 - e. All arbitrations shall be conducted in Houston, Texas unless the parties agree to another location in writing.

EXHIBIT "D"
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.

DRUG POLICY COMPLIANCE AGREEMENT

I, Scott D. Dickinson, Senior Vice President as an owner or officer of
(Name) (Print/Type)(Title)

Accretive Solutions-Houston, LP (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.

September 23, 2008
Date

Scott D. Dickinson
Contractor Name


Signature

Senior Vice President
Title

DRUG POLICY COMPLIANCE DECLARATION

I, Scott D. Dickinson, Senior Vice President as an owner or officer of
 (Name) (Print/Type) (Title)

Accretive Solutions-Houston, LP (Contractor)
 (Name of Company)

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

This reporting period covers the preceding six months from March 1 to Aug. 31, 192008.

 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).

 Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order 1-31. Employees have been notified of such procedures.

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

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

 From Mar 1, 2008 to Aug 31, 2008 the following testing has occurred:
 (start date) (end date)

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number of Employees Tested	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>
Number of Employees Positive	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Percent Employees Positive	<u>0%</u>	<u>0%</u>	<u>0%</u>	<u>0%</u>

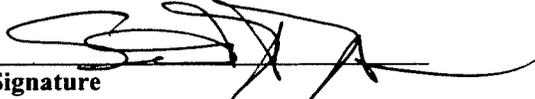
 Any employee who tested positive was immediately removed from the City worksite consistent with the Mayor's Policy and Executive Order No. 1-31.

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

September 23, 2008
 Date

Scott D. Dickinson
 Contractor Name


 Signature

Senior Vice President
 Title



City of Houston

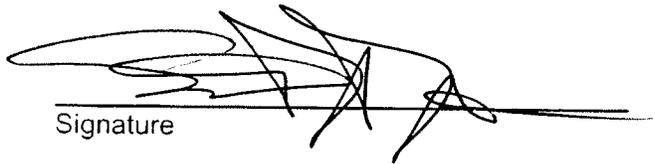
Pay or Play Program
Acknowledgement Form

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

October 1, 2008
Date

Scott D. Dickinson
Print Name

123463
City Vendor ID

Accretive Solutions-Houston, LP
Company Name

(281) 763-2800
Phone Number

sdickinson@accretivesolutions.com
Email Address



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

Contractor Name: Accretive Solutions-Houston, LP \$ 300,000
(Contractor/Subcontractor) (Amount of Contract)

Contractor Address: 10375 Richmond Ave., Suite 450 Houston, TX 77042

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

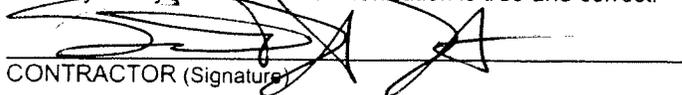
Project Name: [Legal Project Name]

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 covered subcontractors' employees and contract labor, under the contract with the City.
- Yes No Contractor agrees to offer health benefits to each covered employee, including covered subcontractors' employees 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 Affirmative Action and Contract Compliance Office. Compliance reports shall contain information including, but not limited to, documentation showing employee health coverage and employee work records.

Following Information is Mandatory	
Total No. Of Employees on City Job	0
No. Of Employees -"Playing"	0
No. Of Employees -"Paying"	0
No. Of Employees "Exempt"	0

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


 CONTRACTOR (Signature)

October 1, 2008
 DATE

Scott D. Dickinson, Senior Vice President
 NAME AND TITLE (Print or type)