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THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

1. PARTIES

A. Address

**THIS AGREEMENT FOR CHECK PROCESSING, VALIDATION, IMAGING AND ATM CONCESSION 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 **JPMORGAN CHASE BANK, N.A.** ("Bank"), a Delaware 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 \_\_\_\_\_ Bank

City Purchasing Agent  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251

JPMorgan Chase Bank, N.A.  
707 Travis St., 9<sup>th</sup> Floor North  
Houston, TX 77002  
Phone: (713) 216 - 1147

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
- B. Check Conversion Fees And Scanning Equipment Costs
- C. Equal Employment Opportunity
- D. Drug Policy Compliance Agreement
- E. Drug Policy Compliance Declaration
- F. Bank's Certification of No Safety Impact Positions

**C. Parts Incorporated**

The above described exhibits are incorporated into this Agreement.

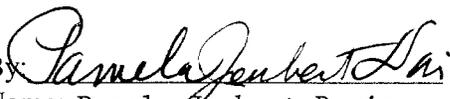
**D. Controlling Parts**

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

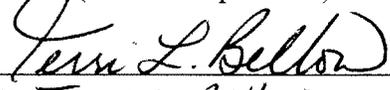
E. Signatures

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

**JPMORGAN CHASE BANK, N.A.**

By:   
Name: Pamela Joubert Davis  
Title: Senior Vice President

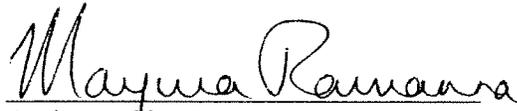
ATTEST/SEAL (if a corporation)  
WITNESS (if not a corporation)

By:   
Name: Terri L. Bellow  
Title: Vice President

APPROVED:

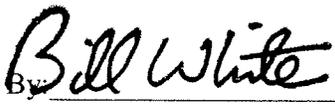
  
Director, Municipal Courts  
Administration Department

APPROVED AS TO FORM:

  
Assistant City Attorney  
L.D. No. 0370800028001

**CITY OF HOUSTON, TEXAS**

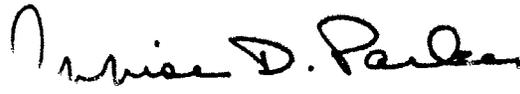
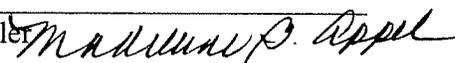
Signed by:

By:   
Mayor 

ATTEST/SEAL:

  
City Secretary

COUNTERSIGNED BY:

  
City Controller 

DATE COUNTERSIGNED:

11-4-08

## 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 Bank.

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

"Check Processing, Validation and Imaging Services" or "Check Services" means the solution proposed by Bank in response to City's RFP S37-T22593 to scan paper checks received by the City's Municipal Courts Department for maintaining records of the checks and for speedy clearing of such checks for expedited payments to City.

"City" 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 City Purchasing Agent and the Director of the Municipal Courts Administration Department, or designee.

"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".

"MCAD" means the City's Municipal Court's Administration Department.

"Notice to Proceed" means a written communication from the Director to Bank instructing

Bank to begin performance.

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

### III. DUTIES OF BANK

#### A. Scope of Services

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

#### B. Coordinate Performance

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

#### C. RELEASE

**BANK 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.**

#### D. INDEMNIFICATION

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

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

**E. INDEMNIFICATION - PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT**

**BANK 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 BANK FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. BANK SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.**

**BANK 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, BANK 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 BANK SHALL REFUND THE PURCHASE PRICE.**

**F. INDEMNIFICATION - SUBCONTRACTOR'S INDEMNITY**

      **BANK 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.**

**G. INDEMNIFICATION - PROCEDURES**

(1) Notice of Claims. If the City or Bank 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 Bank is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

(a) Assumption of Defense. Bank may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Bank shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Bank must advise the City as to whether or not it will defend the

claim. If Bank 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 Bank 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. Bank 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 Bank 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.

#### H. Insurance

Bank 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. Bank 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, Bank 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 Bank does not comply with this requirement, the Director, at his or her sole discretion, may

- (1) immediately suspend Bank 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 Bank under this Agreement.

#### I. Warranties

Bank'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 Bank provides under this Agreement.

J. Confidentiality - Protection of City's Interest

Bank, 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. Bank, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Bank shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this Section.

K. 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 Bank prepares or obtains under this Agreement.

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

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

L. Licenses and Permits

Bank shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Bank shall immediately notify the Director of any suspension, revocation, or other detrimental action against his or her license.

M. Compliance with Laws

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

N. Compliance with Equal Opportunity Ordinance

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

O. 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. Bank 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, Bank shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

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

If Bank files a written designation of safety impact positions with its Drug Policy Compliance

Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "E." Bank 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 Bank begins work under this Agreement.

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

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

P. 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. Bank 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.

#### **IV. DUTIES OF THE CITY**

A. Payment Terms

City shall pay and Bank shall accept the applicable fee listed in Exhibit "B" for check conversion services provided to the Director on the two MCAD accounts already established with the Bank. In the event the Director makes a written request to the City Controller for a lock-box to be set up at the Bank for MCAD, then City shall pay and Bank shall accept the fee mutually agreed to

by the Director and Bank for each lock-box provided by Bank in response to a written request from the Director to the City Controller for such a lock-box.

Except for the cost of lock-boxes provided to City at the written request of the Director to the City Controller, any and all check conversion fees paid to Bank under this Agreement shall be solely paid from the funds collected by Bank in accordance with this Agreement. Bank acknowledges and agrees that the City's liability for payment of such check conversion fees shall be limited to the fees collected from transactions conducted in the two MCAD accounts with Bank. No funds are or will be appropriated or allocated for Bank's performance under the terms of this Agreement. The City's duties to pay money to Bank for any purpose under this Agreement are limited in their entirety by the provisions of this Section IV, A.

B. Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Bank'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 Bank if requested.

C. Method of Payment

\_\_\_\_\_The City shall pay Bank on the basis of invoices submitted by Bank and approved by the Director showing the applicable check conversion and other fees for transactions conducted and services rendered during the preceding month. The City shall make payments to Bank through its bank accounts with Bank via the City Controller's office. \_\_

D. Method of Payment - Disputed Payments

If the City disputes any items in an invoice Bank 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 Bank of the dispute and request remedial action. After the dispute is settled, Bank 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 Bank 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 \$\_\_\_\_\_ 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 Bank 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) City Council delegates to the Director the authority to approve up to \$100,000 in supplemental allocations for this Agreement without returning to Council.

(5) 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. Bank must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Bank'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.

## V. TERM AND TERMINATION

### A. Contract Term

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

### B. Renewals

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 or the City chooses not to renew this Agreement, the Director shall notify Bank of non-renewal at least 30 days before the expiration of the then-current term.

### C. Termination for Convenience by City

The Director may terminate this Agreement at any time by giving 30 days written notice to Bank. 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, Bank 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, Bank 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 Bank 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 BANK'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. BANK 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.

D. Termination for Cause

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

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

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

If default occurs, the Director may, but is not obligated to, deliver a written notice to Bank 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 Bank to cure the default and Bank does so to the Director's satisfaction before the termination date, then the termination is ineffective. If Bank 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

Bank 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 Bank's performance under this Agreement. All personnel Bank uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Bank 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 Bank. 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 Bank, 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 Bank 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 Bank 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 Bank. This termination is not a default or breach of this Agreement. **BANK 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 Bank. 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 Bank'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 Bank's books and records pertaining to this Agreement, and (2) inspections of all places where work is

undertaken in connection with this Agreement. Bank shall have the right to exclude from such inspection any of its confidential or proprietary information which was not otherwise provided to the City as part of Exhibit "A," "Scope of Services," subject to the requirements of the Texas Public Information Act or any applicable court order. Bank 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. Bank shall provide to the City Attorney all pertinent documents and records relating to the materials and/or services provided hereunder that the City Attorney requests to assist in determining Bank's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation or not otherwise provided to the City as part of Exhibit "A," "Scope of Services," subject to the requirements of the Texas Public Information Act or any applicable court order.

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

Bank 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

Bank 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 Bank 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

Bank 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, Bank 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.

Bank 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. BANK DEBT

IF BANK, 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 BANK HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY BANK IN WRITING. IF BANK 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 BANK UNDER THIS AGREEMENT, AND BANK WAIVES ANY RECOURSE THEREFOR.

## EXHIBIT "A"

### SCOPE OF SERVICES

1. Bank shall provide the City with Check Processing, Validation and Imaging Services that meet the technical specifications proposed by Bank in response to City's RFP S37-T22593.
2. Bank warrants that the check conversion Services and scanning Equipment it provides under this Agreement will meet the City's requirements for a process that:
  - a. ensures that MCAD retains a scanned image of the front and back of the check as proof of payment;
  - b. uses the most efficient retention system to reduce storage space and enhance access to data contained in scanned checks;
  - c. offers check validation and conversion facility for ACH Electronic Drafts according to threshold amounts set by MCAD, thus eliminating costs associated with checks returned for insufficient funds;
  - d. offers lock box services at MCAD locations identified by the Director, that include:
    - i. front-end processing through MCAD's own case management system;
    - ii. general processing of cash as defined by the Chief Clerk;
    - iii. the setting-up of a systematic work flow detail, that is flexible; and
    - iv. on-site demonstrations to train staff and to set up internal controls.

## PAYMENT PROCESSING SERVICES

- e. offers on-line viewing of checks to allow research of returned items;
  - f. provides on-line reporting and monthly activity statements;
  - g. allows for the automatic settlement of funds;
  - h. provides check verification information in real time;
  - i. identifies the current status of a checking account:
    - i. by its balance at the opening of the business day;
    - ii. as long as the account is open;
    - iii. after the account is closed;
    - iv. is part of an NSF balance account;
    - v. if it has a positive balance;
    - vi. accepts electronic debits;
    - vii. has a stop payment already placed against that item; and
    - viii. the ability to locate the account.
3. Bank shall provide MCAD with its Image Direct Deposit web-based solution, which is the Bank's remote deposit solution to enable MCAD to eliminate all paper check payments at locations where MCAD receives such payments from its customers by allowing MCAD to scan checks it receives and submit to Bank such scanned checks for clearing.
4. Bank shall provide MCAD with scanning Equipment at rates set for such equipment in Exhibit "B" to enable MCAD to scan checks and submit scanned checks to Bank for clearing.

**EXHIBIT "B"**

**CHECK CONVERSION FEES AND SCANNING EQUIPMENT COSTS**

<b>Description of Fee</b>	<b>Cost</b>	<b>Unit/P eriod</b>
Maintenance Per Application	\$ 20.00	Per Month
Software Maintenance Fee Per Seat	\$ 20.00	Per Month
ACH Conversion Fee	\$ 0.04	Per Item
Check Clearing Via IRD	\$ 0.075	Per Item
Check Clearing Via Image Exchange	\$ 0.065	Per Item
Electronic Return Item	\$ 0.550	Per Item
Electronic return Item Reclear	\$ 0.400	Per Item
Implementation Fee	\$ <b>Waived</b>	
Scanners (MyVisionX 30-30)	\$1,065 .00	Per Scanner, fee waived for first six scanners

**EXHIBIT "C"**  
**EQUAL EMPLOYMENT OPPORTUNITY**

1. The Bank, 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 Bank, 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 Bank, 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 Bank, 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 Bank, 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 Bank'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 Bank, 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 Bank, 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 Bank'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 Bank, 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 Bank 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 Bank 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 Bank becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Bank may request the United States to enter into such litigation to protect the interests of the United States.

8. The Bank 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 Bank and each subcontractor.

**EXHIBIT "D"**  
**DRUG POLICY COMPLIANCE AGREEMENT**

I, Pamela Joubert Davis, SVP as an owner or officer of  
(Name) (Print/Type) (Title)

J. P. Morgan Chase Bank, N. A. (Bank)  
(Name of Company)

have authority to bind Bank 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 Bank 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 Bank 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 Bank 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.

9-5-08  
Date

J. P. Morgan Chase Bank, N. A.  
Bank Name

Pamela Joubert Davis  
Signature

Senior Vice President  
Title

**EXHIBIT "E"**  
**DRUG POLICY COMPLIANCE DECLARATION**

I, Pamela Joubert Davis, SVP as an owner or officer of  
 (Name) (Print/Type) (Title)

J. P. Morgan Chase Bank, N. A. (Bank)  
 (Name of Company)

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

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

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

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

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

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

\_\_\_\_\_ From \_\_\_\_\_ to \_\_\_\_\_ the following test has occurred  
 Initials (Start date) (End date)

	Random	Reasonable <u>Suspicion</u>	Post <u>Accident</u>	<u>Total</u>
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

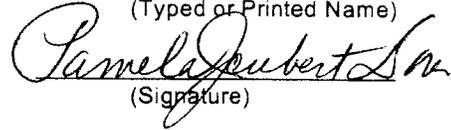
\_\_\_\_\_  
Initials Any employee who tested positive was immediately removed from the City  
worksite consistent with the Mayor's Policy and Executive Order No. 1-31.

\_\_\_\_\_  
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.

9-5-08  
(Date)

Pamela Joubert Davis  
(Typed or Printed Name)

  
(Signature)

Senior Vice President  
(Title)

**EXHIBIT "F"**

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

Pamela Joubert Davis, Senior Vice President  
(Name) (Title)

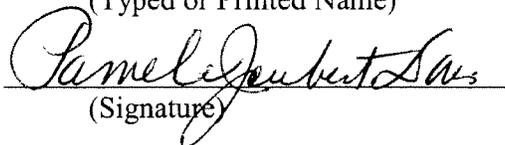
as an owner or officer of J. P. Morgan Chase Bank. N. A.  
(Name of Bank)

has authority to bind the Bank with respect to its bid, and hereby certify that Bank has no employee safety impact positions, as defined in §5.18 of Executive Order No. 1-31, that will be involved in performing: Check processing, Validation, Imaging, and ATM Concession Services  
(Project)

Bank agrees and covenants that it shall immediately notify the City of Houston Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

9-5-08  
(Date)

Pamela Joubert Davis  
(Typed or Printed Name)

  
(Signature)

9-5-08  
(Title)



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

Contractor Name: JPMorgan Chase Bank, NA \$ \_\_\_\_\_  
(Contractor/Subcontractor) (Amount of Contract)

Contractor Address: 707 Travis, 9th Floor North, Houston, TX 77002

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, under the contract with the City.

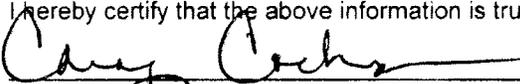
Yes [ ] No Contractor agrees to offer health benefits to each covered employee, including covered subcontractors' employees that meet or exceed the following criteria:  
(1) the employer will contribute no less than \$150 per employee per month toward the total premium cost; and  
(2) the employee contribution, if any amount, will be no greater than 50% of the total premium cost.

Yes [ ] No Contractor agrees to pay of behalf of some covered employees and play on behalf of other covered employees, in accordance with program requirements, including subcontractors' employees, if applicable.

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.

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

  
\_\_\_\_\_  
CONTRACTOR (Signature)  
Carolyn Cochran, AVP & Technical Support Analyst  
NAME AND TITLE (Print or type)

May 2, 2008  
\_\_\_\_\_  
DATE